

## Synopsis of the Defamation Bill, 1898.

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THE Bill consolidates the provisions of our Defamation Acts 11 Vic. No. 13 and 50 Vic. No. 26 (except such of those provisions as more properly belong to other branches of the Statute law), together with certain provisions of the Statute law relating to evidence and procedure in actions of libel and slander; it also amends the law by the addition of certain provisions of the Imperial Newspaper Libel Act of 1881 (44 & 45 Vic., c. 60) and the Libel Amendment Act of 1888 (51 & 52 Vic., c. 64).

The following is a summary of the new matter introduced.

*Clause 6* follows section 7 of the Act of 1888, but extends that section to include blasphemous libels, and overrules the decision in Bradlaugh's case that the obscene passages charged in a prosecution for an obscene libel must be set out in the indictment.

*Clause 7* follows section 8 of the Act of 1888, in providing that the order of a judge in chambers must be procured before taking criminal proceedings against a newspaper for libel. The former Imperial law contained in section 3 of the Act of 1881 required the approval of the Director of Public Prosecutions.

*Clauses 12 and 13* follow sections 3 and 4 of the Act of 1888, by enacting that fair and accurate reports in newspapers of judicial proceedings and proceedings at public meetings shall be privileged. Section 3 of the above Act is new, and to a certain extent is declaratory of the law. Section 4 amplifies section 2 of the Act of 1881. In the provisos to those clauses the word "seditious" has been added after the word "blasphemous," thereby providing that the clauses shall not authorise the publication of seditious matter. The omission is noticed in Odgers on Libel and Slander, page 294.

*Clause 16* follows section 4 of the Act of 1881, and enables a defendant charged before magistrates with the publication of a libel in a newspaper to rely on the same defences as would be open to him on his trial, overruling pro tanto, *R. v. Carden* (5 Q. B. D. 1).

*Clause 17* follows section 5 of the Act of 1881, and refers to publications in newspapers. It authorises magistrates to deal with trivial offences in a summary way, by imposing a fine in each case not exceeding £50.

*Clause 18* follows section 6 of the Act of 1881, and relates to actions against proprietors of newspapers. It allows evidence that the plaintiff has recovered or brought actions for damages or received compensation in respect of a similar libel to be given in mitigation of damages.

*Clause 20* follows section 5 of the Act of 1888, and provides for the consolidation of actions by the same plaintiff in respect of substantially the same libel.

The Bill does not codify the law of defamation, as was done in the Queensland Act of 1889 (53 Vic. No. 12); neither does it (nor does the Queensland Act) constitute the offence of publishing blasphemous, seditious, or obscene libels. Those offences are misdemeanours at Common Law, and it would appear that the Imperial Acts 9 & 10 W. III, c. 35, relating to blasphemous libels, and 60 Geo. III & 1 Geo. IV, c. 8, relating to blasphemous and seditious libels are in force in the Colony.

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# Defamation Act, 1898.

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## ARRANGEMENT OF SECTIONS.

Section.

1. Extension of right of action for slander.
  2. Publishing libel with intent to extort money.
  3. Publishing false libel.
  4. Publishing malicious libel.
  5. Declaration in libel and slander.
  6. Obscene matter need not be set forth.
  7. Order of judge required for prosecution.
  8. Where plaintiff's character not likely to be injured.
  9. Money may be paid into court.
  10. Defence in civil action of truth of matters charged.
  11. Defence in criminal trial of truth of matters charged.
  12. Newspaper reports of proceedings in court privileged.
  13. Newspaper reports of proceedings in public meetings privileged.
  14. Proceedings for publication of Parliamentary papers.
  15. Publication by agent.
  16. Evidence in inquiry before court of summary jurisdiction.
  17. Summary conviction for libel.
  18. Other actions for similar libels in mitigation of damages.
  19. Offer of apology in mitigation of damages.
  20. Consolidation of actions.
  21. Costs where verdict less than forty shillings.
  22. Defendant's and plaintiff's costs on private prosecution.
  23. Costs out of types used in printing libel.
  24. Saving of effect of defence of not guilty.
  25. Where benefits of Act do not extend.
  26. Repeal.
  27. Definitions.
  28. Short title.
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1881

ALPHABETICALLY

1. The first part of the document contains a list of names and their corresponding addresses. The names are arranged in alphabetical order. The addresses are listed below each name. The list includes names such as John Smith, Jane Doe, and Robert Johnson. The addresses are located in various parts of the city.

2. The second part of the document contains a list of names and their corresponding addresses. The names are arranged in alphabetical order. The addresses are listed below each name. The list includes names such as Mary White, Thomas Green, and Elizabeth Black. The addresses are located in various parts of the city.

3. The third part of the document contains a list of names and their corresponding addresses. The names are arranged in alphabetical order. The addresses are listed below each name. The list includes names such as William Brown, Susan Gray, and Charles White. The addresses are located in various parts of the city.

4. The fourth part of the document contains a list of names and their corresponding addresses. The names are arranged in alphabetical order. The addresses are listed below each name. The list includes names such as David Black, Margaret White, and James Green. The addresses are located in various parts of the city.

5. The fifth part of the document contains a list of names and their corresponding addresses. The names are arranged in alphabetical order. The addresses are listed below each name. The list includes names such as Henry White, Elizabeth Black, and Thomas Green. The addresses are located in various parts of the city.

Legislative Council.

No. , 1898.

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# A BILL

To consolidate and amend the law of Defamation.

[MR. WANT ;—21 *September*, 1898.]

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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*Rights of action and criminal offences.*

1. Subject to the provisions of this Act the right of action for oral slander extends to all defamatory words for which an action might before the twenty-fourth day of August, one thousand eight hundred and forty-seven, have been maintained if the same were reduced into writing; and all the rules then in force relating to actions for libel, so far as they are applicable, may be applied in all actions for such defamatory words.

Right of action for libel extends to defamatory words.  
[11 Vic. No. 13, s. 1.]

c 17—

2.

Publishing or threatening to publish a libel with intent to extort money.

[11 Vic. No. 13, s. 7.]

2. Whosoever with intent to extort any money or security for money or any valuable thing from any person or with intent to induce any person to confer on or procure for any person any appointment or office of profit or trust publishes or threatens to publish any libel, or directly or indirectly threatens to print or publish, or directly or indirectly proposes to abstain from printing or publishing, or directly or indirectly offers to prevent the printing or publishing of any matter or thing touching any person shall be liable to be imprisoned for any term not exceeding three years: 5

Provided that nothing herein contained shall in any manner 10 alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings.

Punishment of false libel.

[11 Vic. No. 13, s. 8.]

3. Whosoever maliciously publishes any libel knowing the same to be false shall be liable to be imprisoned for any term not exceeding two years, and to pay such fine as the Court may award. 15

And of malicious libel.

[11 Vic. No. 13, s. 9.]

4. Whosoever maliciously publishes any libel shall be liable to fine or imprisonment or both as the Court may award, such imprisonment not to exceed the term of one year.

*Declarations, indictments, and criminal prosecutions.*

Declaration in libel and slander.

[17 Vic. No. 21, s. 56.]

5. In any action for defamation the plaintiff may aver that the 20 words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander, and where the words or matter set forth with or without the 25 alleged meaning show a cause of action, the declaration shall be sufficient.

Obscene or blasphemous matter need not be set out.

[51 & 52 Vic., c. 64, s. 7.]

6. It shall not be necessary to set out in any indictment or criminal proceeding instituted against the publisher of any obscene or blasphemous libel the obscene or blasphemous passages, but it shall 30 be sufficient to deposit the book, newspaper, or other document containing the alleged libel with the indictment or criminal proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall 35 be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or proceeding.

Order of Judge required for prosecution of newspaper.

[51 & 52 Vic., c. 64, s. 8.]

7. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publica- 40 tion of any newspaper for any libel published therein without the order of a Judge of the Supreme Court first had and obtained.

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

*Civil*

*Civil and criminal defences.*

8. On the trial of any action for defamatory words not imputing an indictable offence, the jury, under the plea of not guilty, may consider whether the words set forth in the declaration were spoken on an occasion when the plaintiff's character was likely to be injured thereby, and if they are of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, may find a verdict for the defendant.

Where plaintiff's character not likely to be injured thereby. [11 Vic. No. 13, s. 2.]

9. In any action for defamation, the defendant, or one or more of several defendants, may pay into Court a sum of money by way of compensation, satisfaction, and amends.

Money may be paid into Court. [50 Vic. No. 26, s. 2.]

10. In any action for defamation, the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters should be published.

Defence of truth of matters charged in action for defamation. [11 Vic. No. 13, s. 4.]

15 Where the truth of the said matters is relied upon as a defence to such action it shall be necessary for the defendant, in his plea of justification, to allege that it was for the public benefit that the said matters should be published, and the particular facts by reason whereof it was for the public benefit that the said matters should be published, and unless the said allegation is made out to the satisfaction of the jury, as well as the truth of the said matters, the plaintiff shall be entitled to recover a verdict with such damages as the jury may think proper.

25 11. On the trial of any indictment or information for the publication of a libel (the defendant having pleaded such plea as hereinafter mentioned), the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters should be published.

Defence of truth of matters charged in indictment or information for libel. [11 Vic. No. 13, s. 10.]

30 To entitle the defendant to give evidence of the truth of the said matters as a defence to such indictment or information, it shall be necessary for the defendant in pleading to the said indictment or information to allege the truth of the said matters in the manner required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters should be published, and the particular facts by reason whereof it was for the public benefit that the said matters should be published, to which plea the prosecutor may reply, generally denying the whole thereof.

40 If after such plea the defendant is convicted on such indictment or information, the Court may, in pronouncing sentence, consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or to disprove the same :

The truth of the said matters shall in no case be inquired into without such plea of justification :

In

In addition to such plea, the defendant may plead a plea of not guilty.

Newspaper reports of proceedings in Court privileged.  
[51 & 52 Vic., c. 64, s. 3; 11 Vic. No. 13, s. 5.]

**12.** A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged : 5  
Provided that nothing in this section shall authorise the publication of any blasphemous, seditious, or indecent matter or of any judicial proceedings which are not concluded and which the presiding judge may declare that it would be improper to publish at their then stage. 10

Newspaper reports of proceedings of public meetings privileged.  
[51 & 52 Vic., c. 64, s. 4.]

**13.** A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a municipal council or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed 15 by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, or other lawful authority, or of any select committee of either House of Parliament, and the publication at the request of any Government office or department or minister of the Crown, or at the request of the 20 inspector general of police, of any notice or report issued by them for the information of the public, shall be privileged, unless it be proved that such report or publication was published or made maliciously :

Provided that nothing in this section shall authorise the publication of any blasphemous, seditious, or indecent matter : 25

Provided also that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction of such 30 report or other publication, and has refused or neglected to insert the same :

Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege conferred by this Act or now by law existing, or to protect the publication of any 35 matter not of public concern and the publication of which is not for the public benefit.

For the purposes of this section "public meeting" means any meeting bonâ fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the 40 admission thereto be general or restricted.

Publication of papers printed by order of either House of Parliament.  
[13 Vic. No. 16, s. 7.]

**14.** (1) A defendant in any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any report, papers, votes or proceedings of the Legislative Council or Legislative Assembly, may bring before the Court in which such 45 proceeding



proceeding has been so commenced or prosecuted, or before any Judge of the same (first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor in such proceeding) a certificate under the hand of the President of the Legislative Council or the  
 5 Speaker of the Legislative Assembly, or of the Clerk of the Legislative Council or Legislative Assembly, stating that such report, paper, votes or proceedings, as the case may be, was so published by or under the authority of the Legislative Council or Legislative Assembly or a committee thereof, as the case may be, together with an affidavit  
 10 verifying such certificate.

Such Court or Judge shall thereupon stay such proceeding, and the same and every writ or process issued therein shall be thereby finally put an end to, determined, and superseded.

(2) In case of any civil or criminal proceeding commenced  
 15 or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant may at any stage of the proceeding lay before the Court or Judge such report, paper, votes or proceedings, and such copy with an affidavit verifying such report, paper, votes or proceedings and the correctness of such  
 20 copy.

Publication of a copy.  
 [13 Vic. No. 16, s. 8.]

The Court or Judge shall thereupon stay such proceeding, and the same and every writ or process issued therein shall be thereby finally put an end to, determined, and superseded.

(3) It shall be lawful in any civil or criminal proceeding  
 25 commenced or prosecuted for printing any extract from, or abstract of, such report, paper, votes or proceedings, to give in evidence under the general issue such report, paper, votes or proceedings, and to show that such extract or abstract was published bonâ fide and without malice; and if such be the opinion of the jury a verdict of not guilty shall be  
 30 entered for the defendant.

Extract or abstract privileged if published bonâ fide and without malice.  
 [13 Vic. No. 16, s. 9.]

15. Where, upon the trial of any indictment or information for the publication of a libel, evidence is given under the plea of not guilty which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, such  
 35 defendant may prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

Evidence to rebut primâ facie case of publication by an agent.  
 [11 Vic. No. 13, s. 11.]

*Summary proceedings.*

40 16. Where a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper is charged before justices of the peace for a libel published in such newspaper, the justices may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true,  
 45 and as to the report being fair and accurate and published without malice, and as to any matter which under this or any other Act, or otherwise might be given in evidence by way of defence by the person charged

Evidence admissible in inquiry by Court of summary jurisdiction.  
 [44 & 45 Vic., c. 60, s. 4.]

charged on his trial on indictment; and the justices, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Summary conviction  
for libel.

[44 & 45 Vic., c. 60,  
s. 5.]

17. If justices of the peace upon the hearing of a charge 5  
against a proprietor, publisher, editor, or any person responsible for  
the publication of a newspaper for a libel published therein, are of  
opinion that though the person charged is shown to have been guilty,  
the libel was of a trivial character, and that the offence may be  
adequately punished by virtue of the powers of this section, the justices 10  
shall cause the charge to be reduced into writing and read to the  
person charged, and then address a question to him to the following  
effect, "Do you desire to be tried by a jury or do you consent to the  
case being dealt with summarily?" and if such person assents to the  
case being dealt with summarily, the justices may summarily convict 15  
him and adjudge him to pay a fine not exceeding *fifty* pounds.

*Mitigation of damages.*

Compensation in  
other actions  
admissible in  
mitigation of  
damages.

[51 & 52 Vic., c. 64,  
s. 6.]

18. At the trial of an action for a libel contained in any  
newspaper, the defendant may give in evidence in mitigation of  
damages that the plaintiff has already recovered or has brought 20  
actions for damages, or has received or agreed to receive compensation  
in respect of a libel or libels to the same purport or effect as the libel  
for which such action has been brought.

Offer of an apology  
admissible in  
mitigation of  
damages.

[11 Vic. No. 13, s. 3.]

19. In any action for defamation, the defendant may (after  
notice in writing of his intention so to do, duly given to the plaintiff 25  
at the time of filing or delivering the plea in such action) give in  
evidence in mitigation of damages that he made or offered an apology  
to the plaintiff for such defamation before the commencement of the  
action, or as soon afterwards as he had an opportunity of doing so,  
in case the action has been commenced before there was an opportunity 30  
of making or offering such apology.

*Trial, costs, and execution.*

Consolidation of  
actions.

[51 & 52 Vic., c. 64,  
s. 5.]

20. It shall be competent for the Court or a Judge, upon an  
application by or on behalf of two or more defendants in actions in  
respect to the same, or substantially the same libel brought by one and 35  
the same person, to make an order for the consolidation of such actions,  
so that they shall be tried together; and after such order has been  
made, and before the trial of the said actions, the defendants in any  
new actions instituted in respect to the same or substantially the  
same libel shall also be entitled to be joined in a common action 40  
upon a joint application being made by such new defendants and the  
defendants in the actions already consolidated.

In a consolidated action under this section the jury shall assess  
the whole amount of the damages (if any) in one sum, but a separate  
verdict shall be taken for or against each defendant in the same way 45

as

as if the actions consolidated had been tried separately; and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they have so found between and against the said last-mentioned defendants; and the Judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as he may deem just for the apportionment of such costs between and against such defendants.

21. If in any action for defamation a verdict is returned in favour of the plaintiff for damages in any sum less than forty shillings the plaintiff shall have judgment to recover such sum only, and shall not have judgment to recover any costs unless the Judge in any case of libel certifies that the words charged as defamatory were published without reasonable grounds or excuse.

Verdict for plaintiff for less than forty shillings not to carry costs.

[50 Vic. No. 26, s. 1.]

22. If in the case of an indictment or information by a private prosecutor for the publication of a libel judgment is given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by him by reason of such indictment or information.

Defendant's and plaintiff's costs on private prosecution.

[11 Vic. No. 13, s. 12.]

If the issue upon a special plea of justification to such indictment or information is found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea.

The costs so to be recovered by the defendant or prosecutor respectively shall be taxed by the proper officer of the Court before which the said indictment or information is tried.

23. Where, in a civil or criminal proceeding for the publication of a libel, judgment is given against any defendant, the plaintiff or prosecutor may, under his writ of execution, levy the costs, damages, penalty, and expenses named therein out of the whole of the types, presses, or printing materials belonging to the person whose types, presses, or printing materials or any part thereof have been used in printing such libel, as well as out of the property of the defendant on the record.

Plaintiff having obtained judgment may levy costs out of certain types.

[11 Vic. No. 13, s. 13.]

*Application of Act, supplemental and repeal.*

24. Nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty, which the defendant may now make under such plea to any action, indictment, or information for defamatory words or libel.

Nothing herein to prejudice effect of plea of not guilty.

[11 Vic. No. 13, s. 10.]

25. No defendant in any proceeding, civil or criminal, for the publication of any printed matter alleged to be libellous, shall be able to avail himself of any of the benefits or advantages of this Act, unless at the time of the publication of the alleged libel, all the provisions made by law for regulating the printing and publication of newspapers and papers of a like nature or of the trade of printing generally applicable to such a work as that in which the alleged libel was printed

Benefits of this Act not to extend to defendant, who has not complied with the laws regulating the publication of newspapers.

[11 Vic. No. 13, s. 15.]

printed have been complied with, but such defendant shall nevertheless be bound by the other parts of this Act. Any specified non-compliance with such provisions shall be a good answer to any pleading under this Act.

Repeal.

**26.** The Acts specified in the Schedule to this Act are hereby repealed to the extent therein indicated. But references in any Statute to any provisions of the Act eleventh Victoria number thirteen hereby repealed shall be construed as references to those provisions as re-enacted in this Act, with or without modification. 5

Definitions.

[44 &amp; 45 Vic., c. 60, s. 1.]

**27.** In this Act, unless the context otherwise requires— 10  
 “Jury” includes a District Court Judge sitting for the determination of questions of fact in an action in a District Court.

“Newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale and published in New South Wales, periodically or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers. 15

Also any paper printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements. 20

“Proprietor” means and includes as well the sole proprietor of any newspaper, as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person. 25

Short title.

**28.** This Act may be cited as the “Defamation Act, 1898.”

## SCHEDULE.

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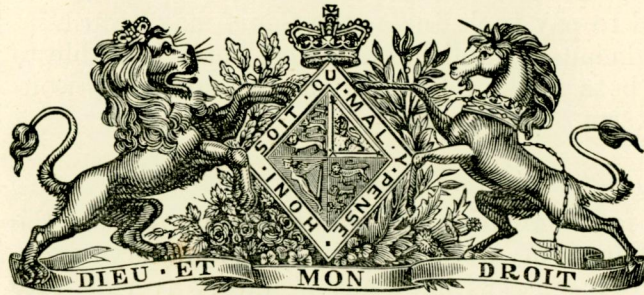
Act.	Title of Act.	Extent of repeal.	
11 Vic. No. 13 ...	An Act to amend the law respecting defamatory words and libel.	Sections 1 to 13, and section 15.	
13 Vic. No. 16 ...	An Act to amend the law of evidence and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a Committee thereof.	Sections 7, 8, and 9.	35
17 Vic. No. 21 ...	The Common Law Procedure Act of 1853 ...	Section 56.	40
50 Vic. No. 26 ...	An Act to amend the law relating to libel and slander.	The whole.	

*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council Chamber,  
Sydney, 20th October, 1898.* }

JOHN J. CALVERT,  
*Clerk of the Parliaments.*

## New South Wales.



ANNO SEXAGESIMO SECUNDO

## VICTORIÆ REGINÆ.

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Act No. , 1898.

An Act to consolidate and amend the law of Defamation.

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5

### *Rights of action and criminal offences.*

1. Subject to the provisions of this Act the right of action for oral slander extends to all defamatory words for which an action might be maintained if the same were reduced into writing; and all the rules in force relating to actions for libel, so far as they are applicable, may be applied in all actions for such defamatory words.

Right of action for libel extends to defamatory words. [11 Vic. No. 13, s. 1.]

c 17—

2.

*Defamation.*

2. Whosoever with intent to extort any money or security for money or any valuable thing from any person or with intent to induce any person to confer on or procure for any person any appointment or office of profit or trust publishes or threatens to publish any libel, or 5 directly or indirectly threatens to print or publish, or directly or indirectly proposes to abstain from printing or publishing, or directly or indirectly offers to prevent the printing or publishing of any matter or thing touching any person shall be liable to be imprisoned for any term not exceeding three years :
- 10 Provided that nothing herein contained shall in any manner alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings.
3. Whosoever maliciously publishes any libel knowing the same to be false shall be liable to be imprisoned for any term not 15 exceeding two years, and to pay such fine as the Court may award.
4. Whosoever maliciously publishes any libel shall be liable to fine or imprisonment or both as the Court may award, such imprisonment not to exceed the term of one year.

Publishing or threatening to publish a libel with intent to extort money.  
[11 Vic. No. 13, s. 7.]

Punishment of false libel.  
[11 Vic. No. 13, s. 8.]

And of malicious libel.  
[11 Vic. No. 13, s. 9.]

*Declarations, indictments, and criminal prosecutions.*

5. In any action for defamation the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or 25 slander, and where the words or matter set forth with or without the alleged meaning show a cause of action, the declaration shall be sufficient.
6. It shall not be necessary to set out in any indictment or criminal proceeding instituted against the publisher of any obscene or blasphemous libel the obscene or blasphemous passages, but it shall 30 be sufficient to deposit the book, newspaper, or other document containing the alleged libel with the indictment or criminal proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other 35 document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or proceeding.
7. No criminal prosecution shall be commenced against any 40 proprietor, publisher, editor, or any person responsible for the publication of any newspaper for any libel published therein without the order of a Judge of the Supreme Court first had and obtained.

Declaration in libel and slander.  
[17 Vic. No. 21, s. 56.]

Obscene or blasphemous matter need not be set out.  
[51 & 52 Vic., c. 64, s. 7.]

Order of Judge required for prosecution of newspaper.  
[51 & 52 Vic., c. 64, s. 8.]

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

*Civil*

*Defamation.**Civil and criminal defences.*

8. On the trial of any action for defamatory words not imputing an indictable offence, the jury, under the plea of not guilty, may consider whether the words set forth in the declaration were spoken on an occasion when the plaintiff's character was likely to be injured thereby, and if they are of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, may find a verdict for the defendant.
9. In any action for defamation, the defendant, or one or more of several defendants, may pay into Court a sum of money by way of compensation, satisfaction, and amends.
10. In any action for defamation, the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters should be published.
- 15 Where the truth of the said matters is relied upon as a defence to such action it shall be necessary for the defendant, in his plea of justification, to allege that it was for the public benefit that the said matters should be published, and the particular facts by reason whereof it was for the public benefit that the said matters should be published, and unless the said allegation is made out to the satisfaction of the jury, as well as the truth of the said matters, the plaintiff shall be entitled to recover a verdict with such damages as the jury may think proper.
- 20 11. On the trial of any indictment or information for the publication of a libel (the defendant having pleaded such plea as hereinafter mentioned), the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters should be published.
- 25 To entitle the defendant to give evidence of the truth of the said matters as a defence to such indictment or information, it shall be necessary for the defendant in pleading to the said indictment or information to allege the truth of the said matters in the manner required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters should be published, and the particular facts by reason whereof it was for the public benefit that the said matters should be published, to which plea the prosecutor may reply, generally denying the whole thereof.
- 30 If after such plea the defendant is convicted on such indictment or information, the Court may, in pronouncing sentence, consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or to disprove the same :
- 35 The truth of the said matters shall in no case be inquired into without such plea of justification :

Where plaintiff's character not likely to be injured thereby. [11 Vic. No. 13, s. 2.]

Money may be paid into Court. [50 Vic. No. 26, s. 2.]

Defence of truth of matters charged in action for defamation. [11 Vic. No. 13, s. 4.]

Defence of truth of matters charged in indictment or information for libel. [11 Vic. No. 13 s. 10.]

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In addition to such plea, the defendant may plead a plea of not guilty.

12. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged :

Newspaper reports of proceedings in Court privileged.

[51 & 52 Vic., c. 64, s. 3; 11 Vic. No. 13, s. 5.]

Provided that nothing in this section shall authorise the publication of any blasphemous, seditious, or indecent matter or of any judicial proceedings which are not concluded and which the presiding judge may declare that it would be improper to publish at their then stage.

13. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a municipal council or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed

Newspaper reports of proceedings of public meetings privileged.

[51 & 52 Vic., c. 64, s. 4.]

by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, or other lawful authority, or of any select committee of either House of Parliament, and the publication at the request of any Government office or department or minister of the Crown, or at the request of the inspector general of police, of any notice or report issued by them for the information of the public, shall be privileged, unless it be proved that such report or publication was published or made maliciously :

Provided that nothing in this section shall authorise the publication of any blasphemous, seditious, or indecent matter :

Provided also that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction of such report or other publication, and has refused or neglected to insert the same :

Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege conferred by this Act or now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

For the purposes of this section "public meeting" means any meeting bonâ fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

14. (1) A defendant in any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any report, papers, votes or proceedings of the Legislative Council or Legislative Assembly, may bring before the Court in which such proceeding has been so commenced or prosecuted, or before any Judge of

Publication of papers printed by order of either House of Parliament.

[13 Vic. No. 16, s. 7.]



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of the same (first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor in such proceeding) a certificate under the hand of the President of the Legislative Council or the Speaker of the Legislative Assembly, or of the Clerk of the Legislative Council or Legislative Assembly, stating that such report, paper, votes or proceedings, as the case may be, was so published by or under the authority of the Legislative Council or Legislative Assembly or a committee thereof, as the case may be, together with an affidavit verifying such certificate.

10 Such Court or Judge shall thereupon stay such proceeding, and the same and every writ or process issued therein shall be thereby finally put an end to, determined, and superseded.

(2) In case of any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant may at any stage of the proceeding lay before the Court or Judge such report, paper, votes or proceedings, and such copy with an affidavit verifying such report, paper, votes or proceedings and the correctness of such copy.

Publication of a copy.  
[13 Vic. No. 16, s. 8.]

20 The Court or Judge shall thereupon stay such proceeding, and the same and every writ or process issued therein shall be thereby finally put an end to, determined, and superseded.

(3) It shall be lawful in any civil or criminal proceeding commenced or prosecuted for printing any extract from, or abstract of, such report, paper, votes or proceedings, to give in evidence under the general issue such report, paper, votes or proceedings, and to show that such extract or abstract was published bonâ fide and without malice; and if such be the opinion of the jury a verdict of not guilty shall be entered for the defendant.

Extract or abstract privileged if published bonâ fide and without malice.  
[13 Vic. No. 16, s. 9.]

30 15. Where, upon the trial of any indictment or information for the publication of a libel, evidence is given under the plea of not guilty which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, such defendant may prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

Evidence to rebut primâ facie case of publication by an agent.  
[11 Vic. No. 13, s. 11.]

*Summary proceedings.*

16. Where a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper is charged before justices of the peace for a libel published in such newspaper, the justices may receive evidence as to any matter which under this or any other Act, or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment; and the justices, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Evidence admissible in inquiry by Court of summary jurisdiction.  
[44 & 45 Vic., c. 60, s. 4.]

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17. If justices of the peace upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein, are of opinion that though the person charged is shown to have been guilty, 5 the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the justices shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect, "Do you desire to be tried by a jury or do you consent to the 10 case being dealt with summarily?" and if such person assents to the case being dealt with summarily, the justices may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Summary conviction for libel.

[44 & 45 Vic., c. 60, s. 5.]

*Mitigation of damages.*

18. At the trial of an action for a libel contained in any 15 newspaper, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought actions for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel 20 for which such action has been brought.

Compensation in other actions admissible in mitigation of damages.

[51 & 52 Vic., c. 64, s. 6.]

19. In any action for defamation, the defendant may (after 20 notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action) give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the 25 action, or as soon afterwards as he had an opportunity of doing so, in case the action has been commenced before there was an opportunity of making or offering such apology.

Offer of an apology admissible in mitigation of damages.

[11 Vic. No. 13, s. 3.]

*Trial, costs, and execution.*

20. It shall be competent for the Court or a Judge, upon an 30 application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any 35 new actions instituted in respect to the same or substantially the same libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Consolidation of actions.

[51 & 52 Vic., c. 64, s. 5.]

In a consolidated action under this section the jury shall assess 40 the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury find a verdict against the defendant or defendants in more than one

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one of the actions so consolidated, they shall proceed to apportion the amount of damages which they have so found between and against the said last-mentioned defendants; and the Judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as he may deem just for the apportionment of such costs between and against such defendants.

21. If in any action for defamation a verdict is returned in favour of the plaintiff for damages in any sum less than forty shillings the plaintiff shall have judgment to recover such sum only, and shall not have judgment to recover any costs unless the action is an action for libel and the Judge certifies that the words charged as defamatory were published without reasonable grounds or excuse.

Verdict for plaintiff for less than forty shillings not to carry costs.

[50 Vic. No. 26, s. 1.]

22. If in the case of an indictment or information by a private prosecutor for the publication of a libel judgment is given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by him by reason of such indictment or information.

Defendant's and plaintiff's costs on private prosecution.

[11 Vic. No. 13, s. 12.]

If the issue upon a special plea of justification to such indictment or information is found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea.

The costs so to be recovered by the defendant or prosecutor respectively shall be taxed by the proper officer of the Court before which the said indictment or information is tried.

23. Where, in a civil or criminal proceeding for the publication of a libel, judgment is given against any defendant, the plaintiff or prosecutor may, under his writ of execution, levy the costs, damages, penalty, and expenses named therein out of the whole of the types, presses, or printing materials belonging to the person whose types, presses, or printing materials or any part thereof have been used in printing such libel, as well as out of the property of the defendant on the record.

Plaintiff having obtained judgment may levy costs out of certain types.

[11 Vic. No. 13, s. 13.]

*Application of Act, supplemental and repeal.*

24. Nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty, which the defendant may now make under such plea to any action, indictment, or information for defamatory words or libel.

Nothing herein to prejudice effect of plea of not guilty.

[11 Vic. No. 13, s. 10.]

25. No defendant in any proceeding, civil or criminal, for the publication of any printed matter alleged to be libellous, shall be able to avail himself of any of the benefits or advantages of this Act, unless at the time of the publication of the alleged libel, all the provisions made by law for regulating the printing and publication of newspapers and papers of a like nature or of the trade of printing generally applicable to such a work as that in which the alleged libel was printed have been complied with, but such defendant shall nevertheless

Benefits of this Act not to extend to defendant, who has not complied with the laws regulating the publication of newspapers.

[11 Vic. No. 13, s. 15.]

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be bound by the other parts of this Act. Any specified non-compliance with such provisions shall be a good answer to any pleading under this Act.

26. The Acts specified in the Schedule to this Act are hereby Repeal.  
5 repealed to the extent therein indicated. But references in any Statute to any provisions of the Act eleventh Victoria number thirteen hereby repealed shall be construed as references to those provisions as re-enacted in this Act, with or without modification.

27. In this Act, unless the context otherwise requires—  
10 "Jury" includes a District Court Judge sitting for the determination of questions of fact in an action in a District Court. Definitions.  
[44 & 45 Vic., c. 60, s. 1.]

15 "Newspaper" means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale and published in New South Wales, periodically or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

20 Also any paper printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

25 "Proprietor" means and includes as well the sole proprietor of any newspaper, as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

28. This Act may be cited as the "Defamation Act, 1898." Short title.

## SCHEDULE.

30 Act.	Title of Act.	Extent of repeal.
11 Vic. No. 13 ...	An Act to amend the law respecting defamatory words and libel.	Sections 1 to 13, and section 15.
13 Vic. No. 16 ...	An Act to amend the law of evidence and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a Committee thereof.	Sections 7, 8, and 9.
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40 17 Vic. No. 21 ...	The Common Law Procedure Act of 1853 ...	Section 56.
50 Vic. No. 26 ...	An Act to amend the law relating to libel and slander.	The whole.