

(No. 2.)

Legislative Council.

No. , 1901.

A BILL

To amend the law of Defamation.

[MR. SUTTON ;—7 November, 1901.]

BE it enacted by the King'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 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.]

Declarations, indictments, and criminal prosecutions.

2. 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 be

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

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 5 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.]

3. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publica- 10 tion of any newspaper for any libel published therein, or against the writer of any libel so published, 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. 15

Civil and criminal defences.

Money may be paid into court and pleaded together with other pleas.

4. 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.

And may plead together with a plea of such payment any other 20 pleas which he or they might have pleaded had such payment not been made.

Plea of truth.

5. In any action for defamation, notwithstanding anything contained in the Act eleventh Victoria number thirteen, the defendant may plead that the defamatory matter charged is true and relates to a 25 matter of current public interest, and such defence if proved shall be an answer to the action :

Provided that such defence must be pleaded specially and may be pleaded either with or without any other plea.

Publication of matters of public interest.

(Queensland Statute, 53 Vic. No. 12.)

Proceedings of Parliament.

6. No criminal proceeding or civil action shall be maintainable 30 against any person or corporation in respect of the printing or publishing in good faith for the information of the public in any newspaper any of the following matters—

Parliamentary papers.

(1) a fair report of the proceedings of either House of the Federal Parliament, or of the Parliament of any State of the 35 Commonwealth, or of any committee thereof ;

(2) a copy of, or an extract from or abstract of, any paper published by order or under the authority of either House of any such Parliament as aforesaid ;

Proceedings of courts of justice.

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

(Comp. 11 Vic. No. 13, s. 5.)

(3) a fair report of the public proceedings of any court of justice, 40 whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings if published contemporaneously with such proceedings, unless, in the

case

case of proceedings which are not final, the publication has been prohibited by the court, or unless the matter published is blasphemous or obscene ;

- 5 (4) a fair report of the proceedings of any inquiry held under the authority of any Act, or under the authority of the Queen, or of the Governor-in-Council, or an extract from or abstract of any such proceedings, or a copy of, or an extract from or abstract of, any official report made by the person by whom the inquiry was held ; Proceedings of official inquiries. *Ibid.*
- 10 (5) any notice or report issued by any Government office or department, officer of State or officer of police, for the information of the public, published at the request of such office, department, or officer ; Public notifications by Government. *Ibid.*
- 15 (6) a fair report of the proceedings of any local authority, board, or body of trustees, or other persons, duly constituted under the provisions of any Act for the discharge of public functions so far as the matter published relates to matters of public concern, except where neither the public nor any newspaper reporter is admitted. Proceedings of local authorities. *Ibid.*
- 20 A publication is said to be made in good faith for the information of the public if the person by whom it is made is not actuated in making it by ill-will to the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news. Definition of publication in good faith for the information of the public.
- 25 7. The defendant in any action or prosecution commenced or prosecuted in respect of the publication of any paper published by the defendant, or by his servant, by order or under the authority of either House of any such Parliament as aforesaid, may bring before the court in which the proceeding is pending, or before any judge thereof, first Proceedings for publication of Parliamentary papers to be stayed. [Queensland Statute 53 Vic, No. 12, s. 40.]
- 30 giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor, a certificate under the hand of the President or Speaker of such House, as the case may be, or of the clerk of such House, stating that the paper in respect whereof such action or prosecution is commenced or prosecuted was published by the defendant, or by his
- 35 servant, by order or under the authority of such House, together with an affidavit verifying such certificate, and such court or judge may thereupon immediately stay such action or prosecution, and may order the plaintiff or prosecutor to pay the defendant his costs of defence.
- 40 8. In any action or prosecution commenced or prosecuted in respect of the publication of a copy of, or an extract from or abstract of, any such paper, the defendant may, at any stage of the proceedings, lay before the court or a judge thereof an original of such paper, with an affidavit verifying the same, and the court or judge may thereupon
- 45 stay such action or prosecution, and may order the plaintiff or prosecutor to pay the defendant his costs of defence. Proceedings may be stayed when commenced in respect of the publication of a copy of the authenticated report, &c., on affidavit verifying such copy being laid before the court. [Queensland Statute, 53 Vic. No. 12, s. 41.]

Mitigation

Mitigation of damages.

Compensation in
other actions
admissible in
mitigation of
damages.
[51 & 52 Vic., c. 64,
s. 6.]

9. 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 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. 5

Summary proceedings.

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

10. Where a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, or the writer of the matter complained of, 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. 15

Summary conviction
for libel.
[44 & 45 Vic., c. 60,
s. 5.]

11. 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, or against the writer of a libel so published, 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 shall cause the charge to be reduced into writing and read to the person charged, and shall 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 him and adjudge him to pay a fine not exceeding fifty pounds. 20 25 30

Trial, costs, and execution.

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

12. 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 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 upon a joint application being made by such new defendants and the defendants in the actions already consolidated. 35 40
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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 as if the actions consolidated had been tried separately; and if the
 5 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
 10 he may deem just for the apportionment of such costs between and against such defendants.

13. (1) In any action for defamation—
 if a verdict is returned in favour of the plaintiff for damages
 15 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 jury specially find that the plaintiff is entitled to recover such costs.

Verdict for less than 40s. not to carry costs unless a special finding on part of jury that they should.

20 Court— (2) In any action for defamation tried in the Supreme
 if a verdict is returned in favour of the plaintiff for damages
 in any sum not less than forty shillings or greater than thirty
 25 pounds, the plaintiff shall have judgment to recover such sum only, and shall not have judgment to recover any costs unless the judge shall for good cause otherwise order.

In cases tried in Supreme Court verdict of not less than 40s. and not more than £30 not to carry costs unless judge shall for good cause otherwise order.

14. In any action for libel, if the defendant can show, by
 affidavit or other evidence, to the satisfaction of a Judge of the
 Supreme Court, that the plaintiff has been adjudicated bankrupt, or
 has no visible means of paying the costs of the defendant should a
 30 verdict be found for the defendant or should the plaintiff become liable to pay such costs, and that the defendant has a good defence on the merits, the judge may, if he think fit, make an order that the plaintiff shall, within a time therein mentioned, give full security for the defendant's costs to the satisfaction of the prothonotary of
 35 such court, and that until such security be given all proceedings in the action shall be stayed.

Security for costs.

Provisions with respect to publishers and sellers of periodicals and sellers of books.

15. No person incurs any liability as for defamation by selling
 40 any newspaper, unless he knows that such newspaper contains defamatory matters, or that defamatory matter is habitually or frequently contained in that newspaper.

Protection of innocent sellers of periodicals. [Queensland Act, 53 Vic. No. 12, s. 34.]

Protection of
innocent sellers of
books.
[Queensland Act, 53
Vic. No. 12, s. 35.]

16. No person incurs any liability as for defamation by selling a book, pamphlet, print, or writing, or other thing not forming part of a newspaper, although it contains defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained therein.

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Protection of
servants.
[Queensland Act, 53
Vic. No. 12, s. 36.]

17. The sale by a servant of a book, pamphlet, print, or writing, or other thing, whether a newspaper or not, does not make his employer responsible in respect of defamatory matter contained therein, unless it is proved that such employer authorised the sale knowing that the book, pamphlet, print, writing, or other thing contained defamatory matter, or, in the case of a newspaper, that defamatory matter was habitually or frequently published therein.

Application of Act, supplemental and repeal.

Nothing herein to
prejudice effect of
plea of not guilty.
[11 Vic. No. 13,
s. 10.]

18. 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, and the defendant may with such plea or any other plea plead and give evidence that the matter complained of was substantially true and was published in good faith for the information of the public, and that any part of such matter as consists of comment was fair comment.

Name of writer of
article, &c., to be
disclosed.

19. The proprietor of any newspaper shall upon the written request of any person affected by any article, letter, report, or writing in any newspaper supply to such person affected thereby the name and address of the person who supplied such article, letter, report, or writing to such newspaper, and in default of compliance with such request any person affected thereby may apply to a Judge of the Supreme Court who may if he sees fit direct that such name and address be so supplied.

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.]

20. 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, 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.

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Repeal.

21. 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

repealed shall be construed as references to those provisions as re-enacted in this Act, with or without modification.

22. In this Act, unless the context otherwise requires,—

Definitions.

5 “Jury” includes a District Court Judge sitting for the determination of questions of fact in an action in a district court. [44 & 45 Vic., c. 60, s. 1.]

10 “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.

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.

15 “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.

23. This Act may be cited as the “Defamation Act, 1901.”

Short title.

SCHEDULE.

Act.	Title of Act.	Extent of Repeal.
25 21 Jac. I, c. 16 ...	An Act for limitation of actions, and for avoiding of suits in law.	Section 6.
11 Vic. No. 13 ...	An Act to amend the law respecting defamatory words and libel.	Section 1.
30 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 50 Vic. No. 26 ...	An Act to amend the law relating to libel and slander.	The whole.

1. The defendant is charged with the crime of...

2. It is alleged that the defendant...

3. The defendant is charged with...

4. It is further alleged that...

5. The defendant is charged with...

6. It is alleged that the defendant...