

DEFAMATION BILL

EXPLANATORY NOTE

THIS Bill amends the law of libel and slander by adopting some of the provisions of the Defamation Act 1952 of the United Kingdom Parliament. It goes further than that Act by abolishing the distinction between libel and slander. It also consolidates all the existing statutory enactments relating to the law of libel and slander, except sections 231 to 236 of the Crimes Act 1908, which relate to defamatory libel and criminal defamation.

New provisions are marked by a line in the margin in this note.

The Bill does not contain the whole of the law of defamation, which has its origin in the common law, and has been affected by statute to a comparatively minor degree.

Clause 2: This clause defines the term "broadcasting station" and substitutes a new definition for the existing definition of the term "newspaper" in section 12 of the Law of Libel Amendment Act 1910. The new definition follows the United Kingdom definition in section 7 (5) of the Defamation Act 1952, but retains the New Zealand period of three months, instead of the United Kingdom period of thirty-six days, as the maximum period between issues.

This clause also provides that references in the Act to words are to include pictures, visual images, gestures, and other methods of signifying meaning. *Subclause (2)* applies Part III of the First Schedule for the interpretation of that Schedule.

Clause 3: Except as provided in *clauses 4* and *5*, the Act is to apply to proceedings begun after the commencement of the Act, but is not to affect proceedings begun before its commencement.

PART I

CIVIL PROCEEDINGS

Clause 4 assimilates libel and slander by providing that it shall not be necessary to prove special damage in any action for defamation (whether libel or slander). Under the existing law, special damage need not be proved in the case of libel, but it must be proved in an action for slander, except in four cases:

- (a) Words imputing unchastity to a woman;
- (b) Words charging the plaintiff with having committed a criminal offence punishable by imprisonment;
- (c) Words imputing that the plaintiff has a contagious disease of a certain kind;
- (d) Words defamatory of the plaintiff in relation to his office, profession, or trade.

Clause 4 is to apply only where the cause of action arises after the commencement of the Act.

Clause 5 is a new provision following section 3 of the United Kingdom Act of 1952, but going further than that section in view of the assimilation of libel and slander. It provides that in an action for slander of title, slander of goods, or other malicious falsehood it shall not be necessary to allege or prove special damage if the words are calculated to cause pecuniary damage to the plaintiff. Under the common law as at present in force in New Zealand, it is necessary to prove special damage in all such actions. This clause is to apply only where the cause of action arises after the commencement of the Act.

Clause 6, as to unintentional defamation, follows section 4 of the United Kingdom Act of 1952. Under the common law, it is no defence to an action for libel or slander to show the absence of any intention to defame, and accordingly the most unlikely coincidence or unfortunate mistake may result in the publication of what turn out to be defamatory words involving a liability for damages. The clause alters this position by enabling a person who has innocently published a libel or slander to make an offer of amends and thus escape further liability.

To constitute an innocent publication the publisher must prove that he (and any servant or agent of his who was concerned with the contents of the publication) exercised all reasonable care, and must also prove either—

- (a) That the publisher did not intend to publish the words of and concerning the plaintiff and did not know of circumstances by virtue of which they might be understood to refer to him; or
- (b) That the words were not defamatory on the face of them and that the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of the plaintiff.

An offer of amends means an offer—

- (a) To publish a suitable correction of the words complained of, and a sufficient apology; and also
- (b) Where copies of a document containing the words have been distributed, to take all reasonably practicable steps to notify persons to whom copies have been distributed that the words are alleged to be defamatory of the party aggrieved.

An offer of amends must be expressed to be made for the purposes of the section, and must be accompanied by an affidavit specifying the facts relied on as showing that the publication was innocent.

If an offer of amends is accepted and duly performed, no action for defamation is to be commenced or continued against the person making the offer, but the Supreme Court may in default of agreement determine any question as to the steps to be taken in fulfilment of the offer, and may award costs to be paid by the person making the offer to the party aggrieved, including costs on an indemnity basis and reasonable expenses incurred in consequence of the publication.

If an offer of amends is not accepted, it will be a defence for the defendant to prove that the publication was innocent and that the offer was made as soon as practicable and has not been withdrawn. Section 4 (6) of the United Kingdom Act of 1952 provides that, if the defendant is not the author of the words published, he must also prove that the words were written by the author without malice, but instead of this provision *subclause (2)* of the clause provides in effect that the publisher must prove that the words were written by the author innocently within the meaning of the clause.

Clause 7 re-enacts section 4 of the Law of Libel Amendment Act 1910. It prohibits the commencement of an action for libel against a newspaper more than thirty days after the plaintiff has commenced an action against another newspaper for the same libel, unless the second action relates to a publication made after the commencement of the first action.

Clause 8 re-enacts section 5 of the Act of 1910. It requires a plaintiff who has commenced actions against two or more newspapers for the same libel to notify all the defendants, of the other actions, so that they may apply for consolidation of the actions under *clause 9*.

Clause 9 re-enacts section 6 of the Law of Libel Amendment Act 1910, and corresponds to section 5 of the United Kingdom Law of Libel Amendment Act 1888 as extended by section 13 of the Defamation Act 1952. It provides for the consolidation of two or more actions brought in the Supreme Court in respect of the same defamation, so that the actions will be tried together and the damages will be assessed in one amount and apportioned among the several defendants.

Clause 10 re-enacts section 7 of the Law of Libel Amendment Act 1910. It enables the defendant in an action for defamation to plead in mitigation of damages that he made or offered a public apology before the commencement of the action or at the first reasonable opportunity thereafter.

Clause 11 re-enacts section 8 of the Law of Libel Amendment Act 1910, and corresponds to section 12 of the United Kingdom Defamation Act 1952. It enables the defendant in an action for defamation to prove in mitigation of damages that the plaintiff has already recovered or taken steps to obtain damages or compensation for any other publication of the same libel or slander.

Clause 12 is new to New Zealand, and follows section 11 of the United Kingdom Defamation Act 1952. It provides that an agreement for indemnifying any person against civil liability for defamation shall not be unlawful where at the time of publication that person does not know that the matter is defamatory, or he reasonably believes that there is a good defence to any action brought upon it.

PART II

CRIMINAL PROCEEDINGS

Clause 13 re-enacts section 10 of the Law of Libel Amendment Act 1910. It empowers a Magistrate, upon the hearing of a charge for defamatory libel or criminal defamation, to receive any evidence (as to public benefit, truth, or otherwise) that could be given in evidence on the trial in the Supreme Court, and to dismiss the case if there is a strong or probable presumption that the jury on the trial would acquit the person charged.

Clause 14 re-enacts section 11 of the Law of Libel Amendment Act 1910. It declares the crimes of publishing a defamatory libel and of criminal defamation to be also offences punishable on summary conviction before a Magistrate. *Subclause (2)* makes it a defence in any summary proceedings to prove that the defamatory matter was true and that its publication was for the public benefit, but no evidence of truth is admissible until it is proved that the publication was for the public benefit. *Subclause (3)* provides that no such summary prosecution shall be heard except by a Magistrate, or commenced without the order of a Magistrate made after notice has been given to the person to be charged.

PART III

GENERAL

Clause 15 extends the statutory defence of qualified privilege conferred on certain reports by sections 2 and 3 of the Law of Libel Amendment Act 1910, as extended by the Law of Libel Amendment Act 1933 and section 26 of the Statutes Amendment Act 1948. The clause and the *First Schedule* replace the existing New Zealand provisions and largely follow section 7 of the United Kingdom Act of 1952 and the Schedule to that Act, but, like the New Zealand section 2 and unlike the United Kingdom provisions, the clause is not limited to newspaper reports, and it applies to criminal as well as civil proceedings. The clause provides that the publication of any matter mentioned in the *First Schedule* is to be privileged in a civil or criminal proceeding unless the publication is proved to be made with malice. *Subclause (2)* provides that, in a civil action in respect of any matter mentioned in Part II of the Schedule, the clause is not to be a defence to a newspaper or a broadcasting station if it is proved that the defendant has been requested by the plaintiff to publish in the same manner as the defamatory matter a reasonable letter or statement by way of explanation or contradiction and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable in the circumstances. *Subclause (3)*, which is new to New Zealand, provides that the clause is not to protect the publication of any matter the publication of which is prohibited by law or by order of any Court in New Zealand or in the territory in which the subject-matter arose, and is not to protect the publication of any matter mentioned in Part II of the *First Schedule* which is not of public concern or the publication of which is not for the public benefit. *Subclause (4)* preserves all other existing privileges.

The *First Schedule* sets out the matters to which *clause 15* applies, as follows:

PART I

Statements Privileged Without Explanation or Contradiction

1. Fair and accurate reports of the proceedings of the House of Representatives.

This clause follows section 2 (1) (a) of the Law of Libel Amendment Act 1910.

2. Fair and accurate reports of the proceedings of Courts of justice in New Zealand.

This clause follows part of section 2 (1) (b) of the Law of Libel Amendment Act 1910.

PART II

Statements Privileged Subject, in the case of a Newspaper or a Broadcasting Station, to Explanation or Contradiction

3. Fair and accurate reports of the proceedings of the legislature of any territory outside New Zealand.

This clause is new to New Zealand. Clause 1 of the United Kingdom Schedule is limited to the legislatures of Her Majesty's dominions outside Great Britain, and is in Part I of the Schedule.

4. Fair and accurate reports of Courts of justice outside New Zealand (including international Courts by virtue of the definition in Part III of the Schedule).

This clause follows the part of section 2 (1) (b) of the Law of Libel Amendment Act 1910 that is not in clause 2, but the extension to international Courts is new. Clauses 3 and 4 of the United Kingdom Schedule relate to international Courts (wherever held) and to other Courts in Her Majesty's dominions outside the United Kingdom, and those clauses are in Part I of the United Kingdom Schedule.

5. Fair and accurate reports of inquiries held under the authority of the Government or legislature of New Zealand or any other country, or copies or extracts from or abstracts of official reports of such inquiries.

This clause follows section 2 (1) (c) of the 1910 Act, except that the existing provision is limited to New Zealand inquiries. Clause 5 of the United Kingdom Schedule is limited to inquiries in Her Majesty's dominions outside the United Kingdom, and is in Part I of the Schedule.

6. Fair and accurate reports of the proceedings of international organizations of which the Government of New Zealand or any other part of the Commonwealth is a member, or of international conferences to which any such Government sends a representative.

This clause is new to New Zealand. Clause 2 of the United Kingdom Schedule is limited to organizations of which the United Kingdom is a member and to conferences to which it sends a representative, and is in Part I of the Schedule.

7. Fair and accurate copies of or extracts from public registers kept under any Act, or of other documents open to inspection by the public.

This clause is new to New Zealand and follows clause 6 of the United Kingdom Schedule, which is in Part I. The clause is limited to New Zealand registers and documents.

8. Notices or advertisements published by any Court of justice in New Zealand or elsewhere or by any officer thereof.

This clause is new to New Zealand and follows clause 7 of the United Kingdom Schedule, except that that clause is limited to Courts in the United Kingdom, and is in Part I.

9. Fair and accurate reports of public meetings or sittings in New Zealand of local authorities or of persons or bodies appointed or constituted under or acting under any Act (not being a Court of justice or a person holding an inquiry to which clause 5 relates).

This clause corresponds to section 2 (1) (d) of the 1910 Act, but follows parts of clause 10 of the United Kingdom Schedule.

10. Fair and accurate reports of the proceedings, or of the result of the proceedings, in inquiries held under the rules of any sporting, industrial, religious, or cultural association, relating to persons who are members of the association or are subject to its control by virtue of any contract.

This clause is new to New Zealand, except that paragraphs (f) and (g) of section 2 (1) of the Act of 1910, as added by the law of Libel Amendment Act 1933 and section 26 of the Statutes Amendment Act 1948, make similar provision for inquiries by horse-racing and boxing organizations.

11. Fair and accurate reports of public meetings held in New Zealand for a lawful purpose relating to matters of public concern.

This clause is new to New Zealand, and follows clause 9 of the United Kingdom Schedule.

12. Fair and accurate reports of general meetings of incorporated companies or associations constituted or operating in New Zealand (except private companies).

This clause is new to New Zealand, and follows clause 11 of the United Kingdom Schedule.

13. Copies of or fair and accurate reports or summaries of statements, notices, or other matters issued for public information by or on behalf of the Government or any local authority.

This clause follows clause 12 of the United Kingdom Schedule, and corresponds to section 2 (1) (e) of the 1910 Act, which relates to reports of the acts and proceedings of the Government or any State department or officer, so far as publication is authorized or requested by any Minister of the Crown.

Clause 16 re-enacts section 254 of the Legislature Act 1908, which corresponds to section 1 of the Parliamentary Papers Act 1840 of the United Kingdom Parliament. It provides for a stay of proceedings in any civil or criminal proceeding for the publication of a parliamentary report or paper if there is produced to the Court a certificate under the hand of the Speaker of the House of Representatives stating that the publication was ordered or authorized by the House. The certificate must be verified by affidavit.

Clause 17 re-enacts section 255 of the Legislature Act 1908, which corresponds to section 2 of the Parliamentary Papers Act 1840 (U.K.). It extends *clause 16* to the publication of copies of parliamentary reports and papers if the original report and the copy with an affidavit verifying its correctness are produced to the Court.

Clause 18 re-enacts section 256 of the Legislature Act 1908, corresponding to section 3 of the Parliamentary Papers Act 1840 (U.K.). The clause makes it a defence in any civil or criminal proceeding for the publication of an extract from or abstract of any such parliamentary report or paper if the defendant shows that the publication was in good faith and without malice. Section 256 is limited to printing, but this clause extends to all forms of publication.

Clause 19 re-enacts section 9 of the Law of Libel Amendment Act 1910. It provides that in any civil or criminal libel case a printed statement in any book, printed document, or newspaper or other periodical that it is published or printed by the defendant shall be *prima facie* evidence of that fact. The reference to other periodicals does not appear in the existing section, but is inserted so as to avoid the restricted definition of the term "newspaper" in *clause 2*.

Clause 20 re-enacts the Libel Act 1792 of the Parliament of Great Britain, which is at present in force in New Zealand. That Act refers only to criminal cases, but as it has been held to set out the common law in civil cases as well as criminal cases, the clause is made to apply to both civil and criminal cases. The clause makes it clear that a jury may give a general verdict in favour of the defendant upon the whole case, even though it has been proved that words have been published which in the opinion of the Judge are defamatory.

Clause 21 repeals all the existing enactments in force in New Zealand relating to libel or slander, except those contained in the Crimes Act 1908.



Hon. Mr Webb

DEFAMATION

ANALYSIS

- Title.
1. Short Title.
2. Interpretation.
3. Application of Act.

PART I

CIVIL PROCEEDINGS

4. Libel and slander actionable without proof of special damage.
5. Slander of title, etc.
6. Unintentional defamation.
7. Actions in respect of publication in different newspapers of same defamatory matter.
8. Plaintiff to give notice of such actions to each defendant.
9. Consolidation of actions on application of defendants.
10. Public apology in mitigation of damages.
11. Other evidence in mitigation of damages.
12. Agreements for indemnity.

PART II

CRIMINAL PROCEEDINGS

13. Powers of Magistrate in prosecutions for defamatory libel or criminal defamation.
14. Offences punishable summarily.

PART III

GENERAL

15. Qualified privilege for certain reports.
16. Stay of proceedings for publication of reports, etc., by order of Parliament.
17. Stay of proceedings in respect of copy of parliamentary report, etc.
18. Publication of extract from parliamentary report, etc., in good faith and without malice.
19. Evidence as to publisher or printer.
20. Jury may give a general verdict in civil or criminal cases.
21. Repeals.
Schedules.

A BILL INTITULED

AN ACT to amend the law relating to libel and slander and other malicious falsehoods. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 45—1

- Short Title. 1. This Act may be cited as the Defamation Act 1954.
- Interpretation. 2. (1) In this Act, unless the context otherwise requires,—
- 1910, No. 83, s. 12
- Cf. Defamation Act 1952, ss. 7 (5), 9 (3), 16 (1), (2) (U.K.)
- 1936, No. 15
- See Reprint of Statutes, Vol. VI, p. 854
- “Broadcasting station” means any station operated by the Minister under the Broadcasting Act 1936 or licensed as a broadcasting station under the Post and Telegraph Act 1928:
- “Newspaper” means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published, in New Zealand or elsewhere, periodically at intervals not exceeding three months:
- References to words shall be construed as including references to pictures, visual images, gestures, and other methods of signifying meaning.
- (2) The provisions of Part III of the *First* Schedule to this Act shall have effect for the purposes of the interpretation of that Schedule.
- Application of Act. Cf. Defamation Act 1952, s. 17 (1) (U.K.)
3. Except as otherwise provided in sections *four* and *five* of this Act, this Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose or the offence was committed, but does not affect any proceedings begun before the commencement of this Act.

PART I

CIVIL PROCEEDINGS

- Libel and slander actionable without proof of special damage.
4. (1) In any action for defamation (whether libel or slander), it shall not be necessary to allege or prove special damage.
- (2) This section applies for the purposes of any proceedings where the cause of action has arisen after the commencement of this Act, but does not affect any proceedings where the cause of action arose before the commencement of this Act, whenever the proceedings were commenced.

5. (1) In an action for slander of title, slander of goods, or other malicious falsehood, it shall not be necessary to allege or prove special damage if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff.

Slander of title, etc.
Cf. Defamation Act 1952, s. 3 (U.K.)

(2) This section applies for the purposes of any proceedings where the cause of action has arisen after the commencement of this Act, but does not affect any proceedings where the cause of action arose before the commencement of this Act, whenever the proceedings were commenced.

6. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section; and in any such case—

Unintentional defamation.
Cf. Defamation Act 1952, s. 4 (U.K.)

(a) If the offer is accepted by the party aggrieved and is duly performed, no action for defamation shall be commenced or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication):

(b) If the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any action by him for defamation against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) Paragraph (b) of subsection *one* of this section shall not apply in relation to the publication by any person of any words of which he is not the author unless he proves—

(a) That the author did not intend to write or publish them of and concerning the party aggrieved, and did not know of circumstances by virtue of which they might be understood to refer to him; or

(b) That the words were not defamatory on the face of them, and the author did not know of circumstances by virtue of which they might be understood to be defamatory of the party aggrieved,—

5

and that in either case the author exercised all reasonable care in relation to the matter.

(3) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection *one* of this section no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

15

(4) An offer of amends under this section shall be understood to mean an offer—

(a) In any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words:

20

(b) Where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

25

30

(5) Where an offer of amends under this section is accepted by the party aggrieved—

(a) Any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the Supreme Court, whose decision thereon shall be final:

35

(b) The power of the Court to make orders as to costs in any action by the party aggrieved against the person making the offer in respect

40

of the publication in question, or in any proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred by that party in consequence of the publication in question,—

5
10 and, if no such action or proceedings as aforesaid are taken, the Supreme Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in any such action or proceedings.

15 (6) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

20 (a) That the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or

25 (b) That the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,—

and in either case the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

30 7. (1) When an action has been commenced by any person in respect of the publication of defamatory matter in a newspaper, no other action shall thereafter be commenced by the same person in respect of the publication at any time before the commencement of the first-mentioned action of the same or substantially the same defamatory matter in any other newspaper, unless that
40 other action is commenced on or within thirty days after the date of the commencement of the first-mentioned action.

Actions in respect of publication in different newspapers of same defamatory matter.
1910, No. 83,
s. 4

(2) When any action is commenced in breach of the provisions of this section, it shall not be necessary for the defendant to plead this matter by way of defence, but the same may be given in evidence as a defence on the trial of the action.

(3) In determining for the purposes of this section the date of the publication of defamatory matter in a newspaper, the defamatory matter shall be deemed to have been published on the date of issue of that newspaper, and at no subsequent time.

Plaintiff to
give notice of
such actions to
each defendant.
1910, No. 83,
s. 5

8. (1) When two or more actions have been commenced by the same person in respect of the publication of the same or substantially the same defamatory matter in different newspapers, the plaintiff shall as soon as practicable give to the defendant in each of the actions such notice of the existence of the other actions as is reasonably sufficient to enable each defendant to make application for the consolidation of the actions under the provisions hereinafter contained.

(2) If the plaintiff makes default in giving notice as aforesaid to any defendant, that defendant may apply to the Court to dismiss or stay the action, and the Court may, if in its discretion it thinks fit to do so, dismiss or stay the action accordingly.

Consolidation
of actions on
application of
defendants.
1910, No. 83,
s. 6

Cf. Law of
Libel
Amendment
Act 1888, s. 5;
Defamation Act
1952, s. 13
(U.K.)

9. (1) The Supreme Court or any Judge thereof, upon the application of the defendants in two or more actions brought in that Court by one and the same person in respect of the publication of the same or substantially the same defamatory matter, may make an order for the consolidation of those actions so that they shall be tried together; and after any such order has been made, and before the trial of the actions, the defendant in any other action brought in respect of the same or substantially the same defamatory matter shall also be entitled to be joined in a common action upon a joint application being made by that defendant and the defendants in the actions already consolidated.

(2) In an action consolidated under the provisions of this section the Judge or jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately; and if a verdict is given against the defendants in more than one of the actions so consolidated, the Judge or jury shall proceed to

apportion the amount of damages so found between and against those defendants; and the Judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he deems just for the apportionment of those costs between and against those defendants.

(3) Every action consolidated under the provisions of this section shall be heard at such time and place as the Supreme Court or a Judge thereof may order.

10 10. In an action for defamation the defendant may prove in mitigation of damages that he made or offered a public apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was a reasonable opportunity of making or offering such an apology, as soon afterwards as he had a reasonable opportunity of doing so.

Public apology in mitigation of damages. 1910, No. 83, s. 7
Cf. Libel Act 1843, s. 1 (U.K.)

15 11. In an action for defamation the defendant may prove in mitigation of damages that the plaintiff has already recovered damages, or has brought an action for damages, or has received or agreed to receive compensation, in respect of any other publication by the same or any other person of the same or substantially the same defamatory matter.

Other evidence in mitigation of damages. 1910, No. 83, s. 8
Cf. Defamation Act 1952, s. 12 (U.K.)

20 12. An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe that there is a good defence to any action brought upon it.

Agreements for indemnity. Cf. Defamation Act 1952, s. 11 (U.K.)

30

PART II

CRIMINAL PROCEEDINGS

35 13. (1) A Magistrate, upon the hearing of a charge of the publication of a defamatory libel, may receive evidence as to the publication being for the public benefit, and as to the truth of the defamatory statement, and as to any other matter which might be given in evidence by way of defence by the person charged on his trial on indictment; and the Magistrate, if he is of opinion, after hearing any 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.

Powers of Magistrate in prosecutions for defamatory libel or criminal defamation. 1910, No. 83, s. 10

(2) This section shall extend and apply, with the necessary modifications, to the hearing by a Magistrate of a charge of criminal defamation.

Offences punishable summarily. 1910, No. 83, s. 11
See Reprint of Statutes, Vol. II, p. 247

14. (1) The indictable offence of publishing a defamatory libel or of criminal defamation within the meaning of the Crimes Act 1908 shall also be an offence punishable on summary conviction before a Magistrate by a fine not exceeding one hundred pounds or by imprisonment for a term not exceeding three months. 5

(2) In any such summary proceedings it shall be a good defence that the defamatory matter published by the person charged was true, and that the publication thereof was for the public benefit; but no evidence of the truth of that matter shall be admissible until and unless the person charged proves that, assuming the matter so published to be true, the publication thereof was for the public benefit. 10 15

(3) An information for any offence punishable on summary conviction under this section shall be taken and heard before a Magistrate only, and no such prosecution shall be commenced without the order of a Magistrate; and notice of the intention to apply for such an order shall be given to the person to be charged, who shall have an opportunity of being heard against the application. 20 25

PART III

GENERAL

Qualified privilege for certain reports. 1910, No. 83, ss. 2, 3
1933, No. 47, s. 2
1948, No. 77, s. 26
Cf. Defamation Act 1952, ss. 7, 9 (2), (3) (U.K.)

15. (1) Subject to the provisions of this section, the publication of any such report or other matter as is mentioned in the *First* Schedule to this Act shall be privileged in any civil or criminal proceeding unless the publication is proved to be made with malice. 30

(2) In an action for defamation in respect of the publication in a newspaper, or as part of any programme or service provided by means of a broadcasting station, of any such report or matter as is mentioned in Part II of the *First* Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the manner in which the original publication was 35 40

made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

5 (3) Nothing in this section shall be construed as protecting the publication—

(a) Of any report or other matter the publication of which is prohibited by law, or by order of any Court, in New Zealand or in the other
10 territory (if any) in which the subject-matter of the report or other matter arose:

(b) Of any such report or other matter as is mentioned in Part II of the *First* Schedule to this Act which is not of public concern or the
15 publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section two of the Law of Libel
20 Amendment Act 1910) immediately before the commencement of this Act.

16. (1) Any person who is a defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication of any report, paper, votes,
25 or proceedings by that person, or by his servant, by or under the authority of the House of Representatives, may bring before the Court in which the proceeding is so commenced or prosecuted or before any Judge of the Court (first giving twenty-four hours' notice of his
30 intention to do so to the plaintiff or prosecutor in the proceeding or to his solicitor) a certificate under the hand of the Speaker of the House stating that the report, paper, votes, or proceedings, as the case may be, in respect of which the proceeding is commenced or
35 prosecuted were published by that person, or by his servant, by order or under the authority of the House of Representatives.

(2) Every such certificate shall be accompanied by an affidavit verifying the certificate.

40 (3) The Court or Judge shall thereupon immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

See Reprint
of Statutes,
Vol. IV,
p. 1099

Stay of
proceedings for
publication of
reports, etc.,
by order of
Parliament.

1908, No. 101,
s. 254

1950, No. 3,
s. 2 (4)

Cf.
Parliamentary
Papers Act
1840, s. 1
(U.K.)

Stay of proceedings in respect of copy of parliamentary report, etc.

1908, No. 101, s. 255

Cf.

Parliamentary Papers Act 1840, s. 2 (U.K.)

Publication of extract from parliamentary report, etc., in good faith and without malice.

1908, No. 101, s. 256

Cf.

Parliamentary Papers Act 1840, s. 3

Defamation Act 1952, s. 9 (1) (U.K.)

Evidence as to publisher or printer.

1910, No. 83, s. 9

Jury may give a general verdict in civil or criminal cases.

Cf. Libel Act 1792 (U.K.)

17. Where any civil or criminal proceeding is commenced or prosecuted in respect of the publication of any copy of any such report, paper, votes, or proceedings as are referred to in section *sixteen* of this Act, any defendant may, at any stage of the proceeding, lay before the Court or Judge the report, paper, votes, or proceedings, and the copy, with an affidavit verifying the report, paper, votes, or proceedings, and the correctness of the copy, and thereupon the Court or Judge shall immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section. 5 10

18. In any civil or criminal proceeding commenced or prosecuted in respect of the publication of any extract from or abstract of any such report, paper, votes, or proceedings as are referred to in section *sixteen* of this Act, the defendant may give in evidence the report, paper, votes, or proceedings, and show that the extract or abstract was published in good faith and without malice; and if that is the opinion of the jury a verdict of not guilty shall be entered for the defendant. 15 20

19. Upon the trial of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter in any book or printed document, or in any number or part of a newspaper or other periodical, any printed statement contained in the book, document, number, or part that the same is published or printed by the defendant shall, in the absence of proof to the contrary, be evidence of the truth of that statement. 25

20. Upon the trial before a jury of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter, the jury may give a general verdict for or against the defendant upon the whole matter put in issue, and shall not be required or directed by the Judge to give a verdict against any defendant merely on proof of the publication by that defendant of the matter alleged to be defamatory and on proof of the sense ascribed to it in the statement of claim or indictment: 30 35

5 Provided that on every such trial the Judge shall, according to his discretion, give his opinion and directions to the jury on the matter in issue between the plaintiff or Her Majesty and the defendant in like manner as in other cases:

Provided further that nothing in this section shall be construed to prevent the jury from finding a special verdict, in their discretion, as in other cases:

10 Provided also that nothing in this section shall be construed to prevent any defendant against whom a verdict has been given from moving in arrest of judgment on such ground and in such manner as if this section had not been passed.

15 21. (1) The enactments specified in the *Second* Schedule to this Act are hereby repealed. *Repeals.*

(2) The Libel Act 1792, of the Parliament of Great Britain, shall at the commencement of this Act cease to have effect in New Zealand. *32 Geo. III, ch. 60*

SCHEDULES

Schedules.

FIRST SCHEDULE

Sections 2 (2), 15

STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I

Statements Privileged Without Explanation or Contradiction

1. A fair and accurate report of the proceedings of the House of Representatives or of any Committee thereof.

2. A fair and accurate report of the proceedings of any Court of justice in New Zealand, whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

PART II

Statements Privileged Subject, in the case of a Newspaper or a Broadcasting Station, to Explanation or Contradiction

3. A fair and accurate report of the proceedings of the legislature of any territory outside New Zealand or of any Committee of any such legislature.

4. A fair and accurate report of the proceedings of any Court of justice outside New Zealand, whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

5. A fair and accurate report of the proceedings in any inquiry held under the authority of the Government or legislature of New Zealand or of any territory outside New Zealand, or a true copy of or a fair and accurate extract from or abstract of any official report made by the person by whom the inquiry was held.

FIRST SCHEDULE—*continued*

6. A fair and accurate report of the proceedings of any international organization of which New Zealand or any other territory within the Commonwealth, or the Government of New Zealand or any such territory, is a member, or of any international conference to which the Government of New Zealand or any other territory within the Commonwealth sends a representative.

7. A fair and accurate copy of or extract from any register kept in pursuance of any Act which is open to inspection by the public, or of any other document which is required by the law of New Zealand to be open to inspection by the public.

8. A notice or advertisement published by or on the authority of any Court of justice, whether within New Zealand or elsewhere, or any Judge or officer of such a Court.

9. A fair and accurate report of the proceedings at any meeting or sitting in any part of New Zealand of—

- (a) Any local authority or committee of a local authority or local authorities;
- (b) Any person or body appointed or constituted by or under, and exercising functions under, any Act (not being a Court of justice or a person holding an inquiry to which clause 5 of this Schedule relates),—

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

10. A fair and accurate report of the proceedings, or of the result of the proceedings, in any inquiry held in accordance with the rules of any association formed for the purpose of—

- (a) Promoting or safeguarding the interests of any game, sport, or pastime to the playing or exercise of which members of the public are invited or admitted; or
- (b) Promoting or safeguarding the interests of any trade, business, industry, or profession, or of the persons carrying on or engaged in any trade, business, industry, or profession; or
- (c) Promoting or encouraging the exercise of or interest in any art, science, religion, or learning,—

being an inquiry relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

11. A fair and accurate report of the proceedings at any public meeting held in New Zealand, that is to say, a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

12. A fair and accurate report of the proceedings at a general meeting of any company or association constituted or registered by or under any Act or of any other incorporated company or association operating in New Zealand, not being a private company within the meaning of the Companies Act 1933.

FIRST SCHEDULE—*continued*

13. A copy or fair and accurate report or summary of any statement, notice, or other matter issued for the information of the public by or on behalf of the Government or any department or officer thereof, or any local authority or any member or officer thereof.

PART III

Interpretation

14. In this Schedule, unless the context otherwise requires,—

“Court of justice” includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States:

“Government”, in relation to any territory outside New Zealand which is subject to a central and a local Government, means either of those Governments:

“Legislature”, in relation to any territory outside New Zealand which is subject to a central and a local legislature, means either of those legislatures:

“Local authority” means a local authority within the meaning of the Local Government Loans Board Act 1926, whether by virtue of section two of that Act or of any Order in Council thereunder or by virtue of any other Act.

SECOND SCHEDULE

Section 21

ENACTMENTS REPEALED

1908, No. 89—

The Judicature Act 1908: Section 101. (Reprint of Statutes, Vol. II, p. 89.)

1908, No. 101—

The Legislature Act 1908: Sections 254, 255, and 256. (Reprint of Statutes, Vol. VI, p. 454.)

1910, No. 83—

The Law of Libel Amendment Act 1910. (Reprint of Statutes, Vol. IV, p. 1099.)

1933, No. 47—

The Law of Libel Amendment Act 1933.

1948, No. 77—

The Statutes Amendment Act 1948: Section 26.