

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
7th July, 1893.

Hon. Sir P. A. Buckley.

LIBEL.

ANALYSIS.

- | | |
|---|--|
| <p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p style="text-align: center;"><i>Privileged Matters.</i></p> <p>3. Publication of matters of public interest. (1.) Proceedings of Parliament. (2.) Parliamentary papers. (3.) Proceedings of Courts. (4.) Proceedings of official inquiries. (5.) Public notifications by Government. (6.) Proceedings of local authorities. (7.) Public meetings.</p> <p>4. Definition of publication in good faith for the information of the public.</p> <p>5. Retraction of libel. Retraction invalid in certain cases.</p> <p>6. Proceedings for publishing parliamentary paper may be stayed.</p> <p>7. Stay of proceedings after action commenced.</p> <p>8. Telegraph operator not liable for transmitting libellous telegram. Transmission of telegrams not deemed publication.</p> <p style="text-align: center;"><i>Actions for Slander and Libel.</i></p> <p>9. Imputing unchastity to woman, actionable.</p> <p>10. Offer of an apology for slander admissible in evidence in mitigation of damages.</p> <p>11. In an action for libel defendant may plead absence of malice, and may pay money into Court as amends.</p> <p>12. Evidence in mitigation of damages.</p> <p>13. Consolidation of actions.</p> <p>14. In action for libel in the Supreme Court security for costs may be required. Action may be remitted for trial to a Resident Magistrate's Court. Powers and jurisdiction of Resident Magistrate's Court. Costs.</p> | <p>15. District Courts to have jurisdiction in slander or libel.</p> <p style="text-align: center;"><i>Criminal Liability.</i></p> <p>16. False defamatory libel punishable by imprisonment and fine.</p> <p>17. Malicious defamatory libel by imprisonment or fine.</p> <p>18. Publishing or threatening to publish a libel, &c., with intent to extort money.</p> <p>19. Order of a Judge for prosecution of newspaper proprietor.</p> <p>20. Court of summary jurisdiction may inquire into truth, &c., and may dismiss trivial case.</p> <p>21. Regulations where case dealt with summarily.</p> <p style="text-align: center;"><i>Pleadings. Evidence.</i></p> <p>22. Plea of justification to be specially pleaded.</p> <p>23. Evidence to rebut <i>prima facie</i> case of publication by an agent.</p> <p>24. Not necessary to set out obscene passages in indictment, &c.</p> <p>25. Defendant and husband or wife competent witnesses.</p> <p>26. Jury may give general verdict.</p> <p>27. (1.) On private prosecution defendant entitled to costs on acquittal. (2.) Costs when truth pleaded.</p> <p style="text-align: center;"><i>Operation of Act.</i></p> <p>28. Vexatious Indictments Act to apply to this Act.</p> <p>29. Saving.</p> <p>30. Repeal Schedule.</p> |
|---|--|

A BILL INTITULED

Title.

AN ACT to amend the Law respecting Defamatory Words and Libel.

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

Short Title.

1. The Short Title of this Act is "The Libel Act, 1893."

Interpretation.

2. In this Act, if not inconsistent with the context,—

"Newspaper" means any paper containing public news, intelligence, or occurrences, or any remarks or observations therein, printed for sale, and published in New Zealand periodically or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers; 10

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: and 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. 20 25

Privileged Matters.

Publication of matters of public interest.

3. It is lawful to publish in good faith, in any newspaper, for the information of the public,—

Proceedings of Parliament.

(1.) A fair report of the proceedings of either House of Parliament, or of any Committee thereof; 30

Parliamentary papers.

(2.) A copy of, or an extract from or abstract of, any paper published by order or under the authority of either House of Parliament;

Proceedings of Courts.

(3.) A fair and accurate report of proceedings publicly heard before any Court exercising judicial authority, published contemporaneously therewith, whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless in the case of proceedings which are not final the publication has been prohibited by the Court; 35 40

51 and 52 Vict., c. 64, ss. 3, 4.

Proceedings of official inquiries.

(4.) A fair and accurate report of the proceedings of any inquiry held under the authority of any statute, or under the authority of Her Majesty, 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; 45

Public notifications by Government.

(5.) A copy, published at the request of any Government office or department, officer of State, or officer of police, of any notice or report issued by such office, department, or officer for the information of the public;

717

5 (6.) A fair and accurate report of the proceedings of any meeting (except where neither the public nor any newspaper reporter is admitted) of any local authority, Board, or body of trustees or persons, duly constituted under the provisions of any Act or Provincial Ordinance for the discharge of public functions, so far as the matter published relates to matters of public concern ;

Proceedings of local authorities.

10 (7.) A fair and accurate report of the proceedings of any public meeting, published without malice in due course, so far as the publication of such proceedings is for the public benefit.

Public meetings.

15 The term "public meeting" means a meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of a matter of public concern, whether the admission to the meeting was general or restricted.

20 4. 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.

5. The protection intended to be afforded by section *three* shall not be available as a defence in any proceedings for libel—

Retraction of libel.

25 (1.) If it shall be proved that the defendant had 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 or explanation of such report or other publication, and has refused or neglected to insert the same :

30 (2.) In the case of any libel against any candidate for a public office or position in the colony, unless the retraction of the charge is made editorially in a conspicuous manner at least five days before the election.

Retraction invalid in certain cases.

35 6. The defendant in any action or prosecution commenced or prosecuted in respect of the publication of any papers, report, votes, or proceedings published by the defendant, or by his servant, by order or under the authority of either House of Parliament, may bring before the Court in which the proceeding is pending, or before any Judge thereof, first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor, a certificate under the hand of the Speaker of the Legislative Council, or of the House of Representatives, as the case may be, stating that the papers, report, votes, or proceedings in respect whereof such action or prosecution is commenced or prosecuted was published by the defendant, or by his servant, by order or under the authority of the Council or House, together with an affidavit verifying such certificate ; and such Court or Judge shall thereupon immediately stay such action or prosecution, and the same and every writ or process issued therein shall be and be deemed to be finally put an end to, determined, and superseded by virtue of this Act.

Proceedings for publishing parliamentary paper may be stayed.
N.Z. Act, 1865, No. 13, s. 7.

50 7. In any action or prosecution commenced or prosecuted in respect of the publication of any copy of, or an extract from or abstract of, any such papers, report, votes, or proceedings, the defendant may, at any stage of the proceedings, lay before the Court

Stay of proceedings after action commenced.
N.Z. Act, 1865, No. 13, s. 8.

or a Judge thereof such papers, report, votes, or proceedings, and such copy, extract, or abstract, with an affidavit verifying such papers, report, votes, or proceedings, and the correctness of such copy or extract or abstract, and the Court or Judge shall immediately stay such action or prosecution, and the same and every writ and process issued therein shall be and be deemed to be finally put an end to, determined, and superseded by virtue of this Act. 5

Telegraph operator not liable for transmitting libellous telegram.

N.Z. Act, 1884, No. 32, s. 26.

Transmission of telegrams not deemed publication. *Ib.*, s. 27.

8. No officer or other person employed in or about the working of any telegraph is liable to any indictment, information, or other criminal proceedings, or to any action or suit for damages, by reason of his having, as such officer or other person, transmitted or conveyed, or taken part in transmitting or conveying, by any such telegraph any defamatory libel. 10

Any communication transmitted by telegraph, which would be deemed a privileged communication if published only to the person to whom it is addressed, is not, by reason of its having been published to any officer or other person employed as aforesaid for the purpose of being transmitted by such telegraph to the person to whom it is addressed, to be deemed to have been maliciously published. 15

Actions for Slander and Libel.

Imputing unchastity to woman, actionable. 54 and 55 Vict., c. 51.

9. Words spoken and published after the passing of this Act which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable: 20

Provided that, in any action for words spoken and made actionable by this section, a plaintiff shall not recover more costs than damages, unless the Judge shall certify that there was reasonable ground for bringing the action. 25

Offer of an apology for slander admissible in evidence in mitigation of damages. 6 and 7 Vict., c. 96, s. 1.

10. In an action for defamation the defendant may, after 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 action, or, if the action was commenced before there was an opportunity of making or offering such apology, as soon afterwards as he had an opportunity of doing so. 30

In an action for libel defendant may plead absence of malice, and may pay money into Court as amends.

Ib., s. 2.

8 and 9 Vict., c. 75, s. 2.

11. In an action for the publication of a libel in a newspaper or other periodical, the defendant may plead that such libel was inserted without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or periodical a full apology for such libel, or, if the newspaper or periodical in which the said libel appeared was ordinarily published at intervals exceeding one week, had offered to publish the apology in any newspaper or periodical to be selected by the plaintiff. 35 40

The defendant, upon filing such plea, shall be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel, and such payment into Court shall be of the same effect in all respects as in other cases of payment into Court; but if such payment into Court is not made at the time of filing the plea such plea shall be deemed a nullity, and may be treated as such by the plaintiff in the action. 45 50

719

12. At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to 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 the action is brought.

Evidence in mitigation of damages. 51 and 52 Vict., c. 64, s. 6.

13. The Court or a Judge, upon an application by or on behalf of two or more defendants in actions in respect of the publication of the same, or substantially the same, libel brought by one and the same person, may 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 of the publication of 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. *Ib.*, s. 5.

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 jury shall have found 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 shall have so found between and against the last-mentioned 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 such costs between and against such defendants.

14. If any person against whom an action for libel may be brought in the Supreme Court shall satisfy a Judge of the said Court, by affidavit or otherwise, that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, then such Judge shall have power to make an order that unless the plaintiff within a time to be therein mentioned give security for the defendant's costs to an amount not exceeding twenty-five pounds to the satisfaction of the Registrar of the Supreme Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the Supreme Court, all proceedings shall be stayed.

In action for libel in the Supreme Court security for costs may be required.

In the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, the Judge may order that the cause be remitted for trial before a Resident Magistrate's Court therein named, and thereupon the plaintiff shall lodge the original writ and order with the Clerk of the said Resident Magistrate's Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post, as a registered letter or otherwise, to both parties or their solicitors.

Action may be remitted for trial to a Resident Magistrate's Court.

The Resident Magistrate's Court so named shall have all the same powers and jurisdiction to try the cause in like manner as if the same were a matter within the extended jurisdiction of such Court, and had been duly commenced in the said Court in any case within its ordinary jurisdiction, and may award damages not exceeding one hundred pounds, with or without costs.

Powers and jurisdiction of Resident Magistrate's Court.

Costs.

The costs of the proceedings in the Supreme Court shall be allowed according to the scale in use in that Court, and of the proceedings in the Resident Magistrate's Court according to the scale in use in that Court.

District Courts to have jurisdiction in slander or libel.

15. Notwithstanding anything contained in this Act, or "The District Courts Act, 1858," every District Court shall have and may exercise both civil and criminal jurisdiction in cases of libel and slander. 5

Criminal Liability.

False defamatory libel punishable by imprisonment and fine. 6 and 7 Vict., c. 96, s. 4.

16. Any person who maliciously publishes any defamatory libel knowing it to be false is liable, upon conviction, to be imprisoned for any term not exceeding *two* years, with or without hard labour, and to pay such fine as the Court may award. 10

Malicious defamatory libel by imprisonment or fine. *Ib.*, s. 5.

17. Any person who maliciously publishes any defamatory libel is liable, upon conviction, to fine or imprisonment, or both, as the Court may award, such imprisonment not to exceed *one* year. 15

Publishing or threatening to publish a libel, &c., with intent to extort money. *Ib.*, s. 3.

18. Any person who publishes, or threatens to publish, any libel upon any other person, 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 other person with intent to extort any money, or security for money, or any valuable thing, from such person or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, is liable, upon conviction, to be imprisoned for any term not exceeding *three* years, with or without hard labour. 20

Nothing herein contained shall alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings. 30

Order of a Judge for prosecution of newspaper proprietor. 51 and 52 Vict., c. 64, s. 8.

19. No criminal prosecution shall be commenced against the proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein, without the order of a Judge of the Supreme Court in Chambers. 35

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application. 35

Court of summary jurisdiction may inquire into truth, &c., and may dismiss trivial case. 44 and 45 Vict., c. 60, s. 4.

20. A Court of summary jurisdiction, 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,—

(1.) May receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, 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 on his trial on indictment; and the Court, 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: 40 45

721

(2.) If the Court shall be 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 Court 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 Court may summarily convict him and adjudge him to pay a fine not exceeding *fifty* pounds.

44 and 45 Vict.,
c. 60, s. 5.

21. Where an indictable offence under this Act is dealt with summarily,—

Regulations where
case dealt with
summarily.
42 and 43 Vict.,
c. 49, s. 27.

(1.) The procedure shall, until the Court assume the power to deal with such offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence; but, when and so soon as the Court assumes the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of "The Justices of the Peace Act, 1882," shall apply accordingly; and

(2.) The evidence of any witness taken before the Court assumed the said power need not be taken again, but every such witness shall, if the defendant so require it, be recalled for the purpose of cross-examination; and

(3.) The conviction for any such offence shall be of the same effect as a conviction for the offence on indictment; and

(4.) Where the Court have assumed the power to deal with the case summarily and dismiss the information, they shall, if required, deliver to the person charged a copy, certified under their hands, of the order of such dismissal, and such dismissal shall have the same effect as an acquittal on a trial on indictment for the offence.

Pleadings. Evidence.

22. (1.) On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as herein-after 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 charged should be published; and

Plea of justification
to be specially
pleaded.
6 and 7 Vict.,
c. 96, s. 6.

(2.) To entitle the defendant to give evidence of the truth of such matters charged 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 charged in the manner now 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 charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and

(3.) If after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or disprove the same. 5

(4.) The truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided always that, in addition to such plea, it shall be competent to the defendant to plead a plea of not guilty. 10

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

Evidence to rebut *prima facie* case of publication by an agent.

6 and 7 Vict.,
c. 96, s. 7.

23. Whosoever, upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence is given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to 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. 15 20

Not necessary to set out obscene passages in indictment, &c.

51 and 52 Vict.,
c. 64, s. 7.

24. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other judicial 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 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 judicial proceeding. 25 30

Defendant and husband or wife competent witnesses.

51 and 52 Vict.,
c. 64, s. 9.

Jury may give general verdict.

32 Geo. III., c. 60.

25. Every person charged with the offence of libel before a Court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent but not compellable witnesses on every hearing at every stage of such charge. 35

26. Upon the trial of an indictment or information for the making or publishing of any libel, the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed, by the Court or Judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information; or the jury may find a special verdict, in their discretion, in like manner as in other criminal cases. 40 45

On private prosecution defendant entitled to costs on acquittal.

6 and 7 Vict.,
c. 96, s. 8.

27. In the case of any indictment or information by a private prosecutor for the publication of a defamatory libel,—

(1.) If judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information: 50

- (2.) Upon a special plea of justification to such indictment or information, if the issue is found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea :
- 5 (3.) Such costs so to be recovered by the defendant or prosecutor respectively shall be taxed by the proper officer of the Court before which the indictment or information is tried.

Costs when truth pleaded.

Operation of Act.

10 28. Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of "The Vexatious Indictments Act, 1870," so far as the provisions of the said Act are applicable thereto.

Vexatious Indictments Act to apply to this Act. 44 and 45 Vict., c. 60, s. 6.

29. Nothing in this Act contained shall be construed—

- 15 (1.) To limit or abridge any privilege now by law existing ; or
- (2.) To protect the publication of any matter not of public concern, and the publication of which is not for the public benefit ; or
- (3.) To authorise the publication of any blasphemous or seditious or obscene matter.

Saving. 51 and 52 Vict., c. 64, ss. 3, 4.

20 30. The Acts and enactments specified in the Schedule are hereby repealed. But such repeal shall not affect any right of action accrued before the passing of this Act and now pending.

Repeal.

SCHEDULE.

Schedule.

ENACTMENTS REPEALED.

Imperial Acts.

- 32 Geo. III., c. 60.—"An Act to remove Doubts respecting the Functions of Juries in Cases of Libel."
- 6 and 7 Vict., c. 96.—"An Act to amend the Law respecting Defamatory Words and Libel."

Ordinance of the general Legislative Council of New Zealand.

- 1845, Sess. V., No. 8.—"An Ordinance for bringing into Operation within the Colony certain Acts of the Imperial Parliament." *In part—namely,* so much thereof as declares to be in force within the colony the Imperial Act of 6 and 7 Vict., c. 96, hereby repealed.

In part.

Acts of the General Assembly of New Zealand.

- 1865, No. 13.—"The Parliamentary Privileges Act, 1865." *In part—namely,* sections 7, 8, and 9.
- 1884, No. 32.—"The Electric Lines Act, 1884." *In part—namely,* sections 26 and 27.
- 1888, No. 22.—"The District Courts Acts Amendment Act, 1888." *In part—namely,* the words "or for any libel or slander" in section 3.

In part.

In part.

In part.

By Authority: SAMUEL COSTALL, Government Printer, Wellington.—1893.