

No. XIII.

SLANDER AND
LIBEL.

An Act to amend the Law respecting defamatory words and Libel. [24th August, 1847.]

Preamble.

Right of action for written slander extended to oral slander.

FOR the better protection of private character and for the more effectually securing the liberty of the press and for better preventing abuses in exercising the said liberty Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That the right of action for oral slander shall extend to all defamatory words for which an action might now be maintained if the same were reduced into writing and that all the rules now in force relating to actions for written slander shall so far as they are applicable and are not altered by this Act be deemed applicable to all actions for such defamatory words.

Proviso where plaintiff's character not likely to be injured thereby.

2. Provided always and be it enacted That on the trial of any action for defamatory words not imputing an indictable offence it shall be competent to the jury under the plea of not guilty to consider whether the words set forth in the declaration were spoken on an occasion when the plaintiff's character was likely to be injured thereby and if the jury shall be of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby to find a verdict for defendant.

Offer of an apology admissible in evidence in mitigation of damages.

3. And be it enacted That in any action for defamation it shall be lawful for the defendant (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) to give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology.

Truth of matters charged no defence unless for the public benefit that such matters should be published.

4. And be it enacted That in any action for defamation whether oral or otherwise the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters charged should be published and that where the truth of such matters charged shall be relied upon as a defence to such action it shall be necessary for the defendant in his plea of justification to allege that it was for the public benefit that the said matters 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 and that unless the said allegation shall be made out to the satisfaction of the jury as well as the truth of the said matters charged the plaintiff shall be entitled to recover a verdict with such damages as the jury shall think proper.

Actions not maintainable against newspapers unless in certain cases.

5. And be it enacted That no action indictment or information shall be maintainable against any newspaper or other publication for a faithful and accurate report of any judicial proceedings the same not being of a preliminary nature Provided always that it shall not be lawful for any newspaper or other periodical publication to publish any matter of an obscene or blasphemous nature nor any judicial proceedings which may not be concluded and which the presiding Judge may pronounce it improper to publish at their then stage.

Proviso as to obscenity or blasphemy and judicial proceedings.

In an action against a newspaper for libel the defendant may plead that it was

6. And be it enacted That in an action for a libel contained in any public newspaper or other periodical publication it shall be competent to the defendant to plead that such libel was inserted in such newspaper

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newspaper or other periodical publication 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 other periodical publication a full apology for the said libel or if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action and that every such defendant shall upon filing such plea be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel and such payment into Court shall be of the same effect and be available in the same manner and to the same extent and be subject to the same rules and regulations as to payment of costs and the form of pleading except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under an Act of the Governor and Legislative Council of New South Wales passed in the fifth year of the reign of Her Majesty Queen Victoria intituled "*An Act for the further amendment of the Law and the better advancement of Justice*" and that to such plea to such action it shall be competent to the plaintiff to reply generally denying the whole of such plea.

inserted without malice and without neglect and may pay money into Court as amends.

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7. And be it enacted That if any person shall publish or threaten to publish any libel upon any other person or shall directly or indirectly threaten to print or publish or shall directly or indirectly propose to abstain from printing or publishing or shall directly or indirectly offer 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 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 every such offender on being convicted thereof shall be liable to be imprisoned with or without hard labor in the common gaol or house of correction for any term not exceeding three years. Provided always that nothing herein contained shall in any manner alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings.

Publishing or threatening to publish a libel &c. with intent to extort money punishable by imprisonment and hard labor.

8. And be it enacted That if any person shall maliciously publish any defamatory libel knowing the same to be false every such person being convicted thereof shall be liable to be imprisoned in the common gaol or house of correction for any term not exceeding two years and to pay such fine as the Court shall award.

Punishment of false defamatory libel

9. And be it enacted That if any person shall maliciously publish any defamatory libel every such person being convicted thereof shall be liable to fine or imprisonment or both as the Court may award such imprisonment not to exceed the term of one year.

and of malicious defamatory libel.

10. And be it enacted That on the trial of any indictment or information for a defamatory libel the defendant having pleaded such plea as hereinafter mentioned the truth of the matters charged may be inquired into but shall not amount to a defence unless it was for the public benefit that the said matters charged should be published and that 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

Proceedings upon the trial of an indictment or information for a defamatory libel.

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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 that 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 to disprove the same Provided always that 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 also that in addition to such plea it shall be competent to the defendant to plead a plea of not guilty Provided likewise that 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.

Double plea.

Plea of not guilty in civil and criminal proceedings.

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

On prosecution for private libel defendant entitled to costs on acquittal.

Plaintiff having obtained judgment may levy costs &c. out of types &c. used in printing defamatory article as well as out of the property of the defendant on the record.

Persons liable for penalties for printing any blasphemous seditious or defamatory libel not relieved from such liability by any Act for relief of insolvent debtors or for abolition of imprisonment for debt.

Benefits of this Act not to extend to any defendant who shall not have complied with all the requirements of the laws for regulating the printing and publication of newspapers &c.

11. And be it enacted That wheresoever upon the trial of any indictment or information for the publication of a libel under the plea of not guilty evidence shall have been 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.

12. And be it enacted That in case of any indictment or information by a private prosecutor for the publication of any defamatory libel 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 and that upon a special plea of justification to such indictment or information if the issue be found for the prosecutor he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea such costs so to be recovered by the defendant or prosecutor respectively to be taxed by the proper officer of the Court before which the said indictment or information is tried.

13. And be it enacted That whenever any person shall be convicted either in a civil or criminal proceeding of printing or publishing a defamatory article the plaintiff or prosecutor in whose favor judgment shall have been given shall be at liberty under his writ of execution to levy the costs damages penalty and expenses named therein out of the whole of the types presses or printing materials whatsoever belonging to the person whose types presses or printing materials or any part thereof may have been used in printing such defamatory article as well as out of the property of the defendant on the record.

14. And be it enacted That from and after the passing of this Act no law which is now or may hereafter be in force in the said Colony for the relief of insolvent debtors or for the abolition of imprisonment for debt shall extend or be construed to extend to affect or discharge from his liability any person who shall be indebted for any penalty damages or costs adjudged against him in any proceeding either civil or criminal for the printing or publishing of any blasphemous seditious or defamatory words or libel.

15. And be it enacted That no defendant in any proceeding civil or criminal 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 article complained of if it be a printed article 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

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to such a work as that in which such article may be printed shall have been complied with but such defendant shall nevertheless be bound by the other parts of this Act and any specified non-compliances with the law shall be a good answer to any pleading under this Act.

16. And be it enacted That wherever throughout this Act in describing the plaintiff or defendant or the party affected or intended to be affected by the offence words are used importing the singular number or the masculine gender only yet they shall be understood to include several persons as well as one person and females as well as males unless when the nature of the provision or the context of the Act shall exclude such construction.
