

Defamation.

Act No. 22, 1901.

An Act to consolidate the Statutes relating to DEFAMATION.
Defamation. [26th October, 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 :—

PART I.

Preliminary.

1. This Act may be cited as the "Defamation Act, 1901," and is divided into Parts, as follows :—

PART I.—*Preliminary*—ss. 1, 2.

PART II.—*Civil proceedings*—ss. 3-9.

PART III.—*Criminal proceedings*—ss. 10-18.

PART IV.—*Privileged publications*—ss. 19-22.

PART V.—*Remedies of judgment creditors*—ss. 23, 24.

PART VI.—*Miscellaneous*—ss. 25, 26.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed.

PART II.

Civil proceedings.

3. (1) The right of action for oral slander shall extend to all defamatory words for which an action might have been maintained before the twenty-fourth day of August, one thousand eight hundred and forty-seven, being the date of the passing of the Act eleventh Victoria number thirteen, if such words had been reduced into writing. Right of action for oral slander.
11 Vic. No. 13, s. 1.

(2) Subject to the provisions of this Act, all the rules in force relating to actions for written slander, so far as they are applicable, shall be deemed to apply to actions for such defamatory words.

4. (1) On the trial of any action for defamatory words not imputing an indictable offence, the jury under the plea of not guilty may consider whether the words set forth in the declaration were spoken on an occasion when the plaintiff's character was likely to be injured thereby. Proviso where plaintiff's character not likely to be injured.
Ibid. s. 2.

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(2) If the jury are of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, they may find a verdict for the defendant.

Evidence of apology
admissible in
mitigation of
damages.

11 Vic. No. 13, s. 3.

5. In any 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 as soon afterwards as he had an opportunity of doing so in case the action has been commenced before there was an opportunity of making or offering such apology.

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

Ibid. s. 4.

6. (1) 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 should be published.

(2) Where the truth of the said matters is relied upon as a defence to such action it shall be necessary for the defendant in his plea of justification to allege that it was for the public benefit that the said matters should be published, and the particular fact or facts by reason whereof it was for the public benefit that they should be published.

(3) Unless the said allegation is made out to the satisfaction of the jury as well as the truth of the said matters, the plaintiff shall be entitled to recover a verdict with such damages as the jury think proper.

Payment into Court.

50 Vic. No. 26, s. 2.

7. 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.

Plea of apology and
payment into court
in certain cases.

11 Vic. No. 13, s. 6.

8. (1) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that such libel was inserted in such newspaper or 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 publication a full apology for the said libel, or (if such newspaper or publication is 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.

(2) The defendant upon filing such plea may pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel.

(3) 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

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to the same rules and regulations as to payment of costs and the form of pleading, as payment into Court before the passing of this Act under the sixth section of the Act eleventh Victoria number thirteen.

(4) To such plea the plaintiff may reply generally denying the whole thereof.

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

Costs on verdict for less than forty shillings.
50 Vic. No. 26, s. 1.

PART III.

Criminal proceedings.

10. (1) Whosoever—

(a) publishes or threatens to publish any libel upon any other person, or

(b) 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—

(i) to extort any money or security for money, or any valuable thing from such or any other person, or

(ii) to induce any person to confer upon or procure for any person any appointment or office of profit or trust,

shall be liable to imprisonment for any term not exceeding three years.

(2) 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.

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

Penalty for publishing a false defamatory libel.
Ibid. s. 8.

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

Penalty for publishing a defamatory libel.
Ibid. s. 9.

13. (1) On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as is 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 should be published.

Plea of truth and that publication was for public benefit.
Ibid. s. 10.

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(2) To entitle the defendant to give evidence of the truth of the said matters as a defence to such indictment or information, it shall be necessary for the defendant in pleading to the said indictment or information to allege—

- (a) the truth of the said matters in the manner now required in pleading a justification to an action for defamation, and
- (b) that it was for the public benefit that the said matters should be published, and
- (c) the particular fact or facts by reason whereof it was for the public benefit that the said matters should be published.

(3) To such plea the prosecutor may reply generally denying the whole thereof.

Court may consider whether guilt aggravated or mitigated by plea.
11 Vic. No. 13, s. 10.

14. If after such plea, the defendant is convicted on such indictment or information, the Court in pronouncing sentence may 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.

Truth not to be inquired into without such plea.
Ibid.

15. The truth of the matters charged in the alleged libel shall in no case be inquired into without such plea of justification.

Not guilty may also be pleaded.
Ibid.

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

Evidence to rebut prima facie case of publication by an agent.
Ibid. s. 11.

17. Where, upon the trial of any indictment or information for the publication of a libel, evidence has been given under the plea of not guilty which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and did not arise from want of due care or caution on his part.

Costs on prosecution for private libel.
Ibid. s. 12.

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

- (a) if judgment is given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information;
- (b) if, upon a special plea of justification to such indictment or information, 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 to be taxed by the proper officer of the Court before which the said indictment or information is tried.

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PART IV.

Privileged publications.

19. (1) 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. Reports of judicial proceedings. 11 Vic. No. 13, s. 5.

(2) Provided that it shall not be lawful for any newspaper or other periodical publication to publish—

- (a) any matter of an obscene or blasphemous nature ; or
- (b) any judicial proceedings which may not be concluded, and which the presiding Judge may pronounce it improper to publish at their then stage.

20. If any defendant in any civil or criminal proceeding commenced or prosecuted in any manner soever, for or on account or in respect of the publication by such defendant or by his servants of any reports, papers, votes, or proceedings of the Legislative Council or of the Legislative Assembly, brings before the Court in which such proceeding has been so commenced or prosecuted, or before any Judge of the same, first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the President of the Legislative Council or the Speaker of the Legislative Assembly, or the Clerk of such Council or Assembly, stating that such report, paper, votes, or proceedings, as the case may be, was or were published by the defendant or his servants by or under the authority of the said Council or of the said Assembly, as the case may be, or of a committee thereof, together with an affidavit verifying such certificate, such Court or Judge shall immediately stay such proceeding, and the same and every writ or process issued therein shall thereupon be finally put an end to, determined, and superseded. Papers and proceedings published by authority of Parliament. 13 Vic. No. 16, s. 7.

21. If any defendant in any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes, or proceedings, brings before the Court or Judge at any stage of the proceeding such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes, or proceedings, and the correctness of such copy, the Court or Judge shall immediately stay such proceeding, and the same and every writ or process issued therein shall thereupon be finally put an end to, determined and superseded. Copies of same. Ibid. s. 8.

22. In any civil or criminal proceeding commenced or prosecuted for printing any extract from or abstract of such report, paper, votes, or proceedings, the defendant may give in evidence under the general issue such report, paper, votes, or proceedings, and show that such Extracts from and abstracts of same. Ibid. s. 9.

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such extract or abstract was published *bonâ fide* and without malice; and if such be the opinion of the jury, they shall find a verdict of not guilty.

PART V.

Remedies of judgment creditors.

Execution against
types, presses, and
printing materials.
11 Vic. No. 13, s. 13.

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

Defendant not
relieved by
bankruptcy or law
abolishing imprison-
ment for debt;
Ibid. s. 14.

24. (1) No law now or hereafter in force for the relief of insolvent debtors, or for the abolition of imprisonment for debt, shall be construed to extend to affect or discharge from his liability any defendant 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.

But to be entitled to
discharge from
custody after twelve
months upon
sequestration of
estate.
37 Vic. No. 11, s. 4.

(2) Provided that any such defendant who has been for a period of twelve months in the custody of the sheriff, or of any gaoler or officer in execution of any judgment obtained under this Act, shall be entitled to his discharge from such custody, and shall be forthwith discharged therefrom after sequestration of his estate (made at any time whilst he has been in custody on such execution), on the order of the Judge in Bankruptcy directed to such gaoler or officer.

(3) No such sheriff, gaoler, or officer shall incur any liability whatsoever in respect of such discharge to any judgment creditor or other person for anything done by him under this section.

PART VI.

Miscellaneous.

Defences under plea
of not guilty
preserved.
11 Vic. No. 13, s. 10.

25. Nothing in this Act 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.

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26. (1) 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 to such a work as that in which such article is printed, have been complied with.

Benefits of Act not to extend to defendants if laws regulating printing, &c., have not been complied with.

11 Vic. No. 13, s. 15.

(2) Any specified non-compliance with any such provision shall be a good answer to any pleading under this Act.

(3) Such defendant shall nevertheless be bound by the other parts of this Act.

(4) This section shall not apply to sections twenty, twenty-one, twenty-two, and twenty-four of this Act.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
11 Vic. No. 13 ...	An Act to amend the law respecting defamatory words and libel.	The whole.
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 6, 7, 8, and 9.
37 Vic. No. 11 ...	An Act to amend the law of arrest and imprisonment on civil process.	Section 4, except so much of the proviso as refers to section 5.
50 Vic. No. 26 ...	An Act to amend the law relating to libel and slander.	The whole.