

Act No. 32, 1912.

DEFAMATION. — An Act to consolidate the Statutes relating to
Defamation. [26th November, 1912.]

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.

Short title and
division.

1. This Act may be cited as the "Defamation Act, 1912,"
and is divided into Parts, as follows :—

PART I.—

Preliminary—ss. 1, 2.

Interpretation—s. 3.

PART II.—*Civil proceedings—ss. 4-12.*

PART III.—*Criminal proceedings—ss. 13-25.*

PART

Defamation.

PART IV.—

DIVISION 1.—*Privileged publications*—ss. 26, 27.

DIVISION 2.—*Qualified privilege*—ss. 28–30.

PART V.—*Remedies of judgment creditors*—ss. 31, 32.

PART VI.—*Miscellaneous*—ss. 33, 34.

2. The Acts mentioned in the Schedule to this Act are hereby repealed.

3. In this Act, unless the context otherwise requires,—
 “Jury” includes a District Court Judge sitting for the determination of questions of fact in an action in a district court. Interpretation.
No 22, 1909, s. 2.

“Newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale, and published in New South Wales, periodically, or in parts or numbers, at intervals not exceeding one month between the publication of any two such papers, parts, or numbers. *Ibid.*

Also any paper printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding one month, containing only or principally advertisements.

“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. *Ibid.*

PART II.

Civil proceedings.

4. (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.
No. 22, 1901, s. 3.

(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.

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

No. 22, 1901, s. 4.

5. (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.

(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.

Ibid. s. 5.

6. (1) 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.

(2) At the trial of an action for a libel the defendant may give in evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought actions for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Compensation in other actions admissible in mitigation of damages.

No. 22, 1909, s. 7.

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

No. 22, 1901, s. 6.

7. (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.

Ibid. s. 7.

8. 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.

Ibid. s. 8.

9. (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

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

10. 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.
No. 22, 1901, s. 9.

Consolidation of actions.

11. It shall be competent for the court or a judge, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel may be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

No. 22, 1909, s. 10.

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 find a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they have so found between and against the said last-mentioned defendants; and the judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as he may deem just for the apportionment of such costs between and against such defendants.

Disclosing name of writer of article.

12. The proprietor of any newspaper may upon the written request of any person who has commenced an action in respect of any defamatory article, letter, report, or writing in any newspaper supply to

Ibid. s. 11.

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

PART III.

Criminal proceedings.

Penalty for publishing or threatening to publish a libel, &c., with intent to extort money, &c.
No. 22, 1901, s. 10.

- 13.** (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.

Penalty for publishing a false defamatory libel.
Ibid. s. 11.

14. 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 defamatory libel.
Ibid. s. 12.

15. 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.

Obscene or blasphemous matter need not be set out.
No. 22, 1909 s. 3.

16. It shall not be necessary to set out in any information, indictment, or criminal proceeding instituted against the publisher of any obscene or blasphemous libel the obscene or blasphemous passages, but it shall be sufficient to deposit the book, newspaper, or other document

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document containing the alleged libel with the information, indictment, or criminal proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document, the alleged libel is to be found, and such particulars shall 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 information, indictment, or proceeding.

17. (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. No. 22, 1901, s. 13.

(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.

18. 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.

Court may consider whether guilt aggravated or mitigated by plea. *Ibid.* s. 14.

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

Truth not to be inquired into without such plea. *Ibid.* s. 15.

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

Not guilty may also be pleaded. *Ibid.* s. 16.

21. 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.

Evidence to rebut prima facie case of publication by an agent. *Ibid.* s. 17.

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

Costs on prosecution for private libel. *Ibid.* s. 18.

- (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)

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(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.

Summary proceedings.

Evidence admissible
in inquiry by court
of summary
jurisdiction.

No. 22, 1909, s. 8.

23. Where criminal proceedings are commenced against any person in respect of the printing or publishing of a libel, the court may receive evidence as to any matter which under this or any other Act or otherwise might be given in evidence by way of defence by the person charged on his trial on information or indictment; and such 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.

Summary conviction
for libel.

Ibid. s. 9.

24. If the court is, upon the hearing of a criminal proceeding against any person for the publication of a libel, 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, such court shall cause the charge to be reduced into writing and read to the person charged, and shall then address a question to him to the following effect, "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" and if such person consents to the case being dealt with summarily, such court may summarily convict him, and adjudge him to pay a fine not exceeding fifty pounds. In this and the last preceding section "court" means stipendiary magistrate or police magistrate.

Order of judge required for prosecution.

Ibid. s. 4.

25. No criminal prosecution shall be commenced against any person for the publication of any libel without the order of a Judge of the Supreme Court or of a District Court first had and obtained.

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

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PART IV.

DIVISION 1.—*Privileged publications.*

26. 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.
No. 22, 1901, s. 20.

27. 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. 21.

DIVISION 2.—*Qualified privilege.*

28. In any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any extract from or abstract of such report, paper, votes, or proceedings, as is or are referred to in section twenty-six of this Act, the defendant may give in evidence under the general issue such report, paper, votes, or proceedings, and show that such extract or abstract was published bona fide and without malice; and if such be the opinion of the jury, they shall find a verdict of not guilty.

Extracts from and abstracts of proceedings published by authority of Parliament.
Ibid. s. 22.

29. (1) No criminal proceeding or civil action shall be maintainable against any person or corporation in respect of the printing or publishing in good faith for the information of the public in any newspaper

Publication by newspapers of matters of public interest.
No. 22, 1909, s. 5.

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newspaper of any of the following matters, provided they are not blasphemous, seditious, or obscene—

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| Proceedings of Parliament. | (a) a fair and accurate report of the proceedings of either House of Parliament of the Commonwealth, or of the Parliament of any State of the Commonwealth, or |
| Parliamentary papers. | (b) a fair and accurate report of the proceedings of any Committee of any such House; |
| Proceedings of courts of justice. | (c) a copy of, or an extract from or abstract of, any report, paper, votes, or proceedings published by order or under the authority of either House of any such Parliament as aforesaid; |
| Proceedings of official inquiries. | (d) a fair and accurate report of the public proceedings of any court of justice, whether such proceedings are preliminary or interlocutory or final, unless, in the case of proceedings which are not final, the publication has been prohibited by the court: Provided that matter of a defamatory nature ruled to be inadmissible by the court shall not be deemed to be part of the public proceedings of such court as aforesaid; |
| Public notifications by Government. | (e) a copy or an abstract of any judgment, or of the entries relative to any judgment, which are recorded in any books kept in the office of any court of justice; |
| Proceedings of local authorities. | (f) a fair and accurate report of the proceedings of any inquiry held under the authority of any Act, or under the authority of His Majesty, or of the Governor-General-in-Council, 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; |
| Definition of publication in good faith for the information of the public. | (g) any notice or report issued by any Government office or department, officer of State or officer of police, for the information of the public, published with the consent of such office, department, or officer; |
| | (h) a fair and accurate report of the proceedings of any local authority, board, or body of trustees, or other persons, duly constituted under the provisions of any Act for the discharge of public functions, so far as the matter published relates to matters of public concern, except where neither the public nor any newspaper reporter is admitted. |

A publication is said to be made in good faith for the information of the public if the person or corporation 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.

In the case of the publication of a report of proceedings referred to in paragraphs (b) (f) (g) and (h), it is evidence of a want of

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of good faith if the proprietor, publisher, or editor has been requested by the person defamed to publish in the newspaper a reasonable letter or statement, by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

(2) In any civil action in respect of the printing or publishing in any newspaper of any defamatory matter, any matter of defence under this section may be pleaded specially with a plea of not guilty, or any other plea, without the leave of a judge.

How defendant may plead.

30. In any criminal proceedings or civil action against any person or corporation in respect of the publication of any matter, the publication may be deemed to be privileged, notwithstanding that such publication is made in pursuance of a contract whereby such person or corporation undertakes for valuable consideration to supply information to the person to whom such publication is made, if—

Publication under contract does not take away privilege. No. 22, 1909, s. 6.

- (a) the publication is in answer to an inquiry made in pursuance of such contract;
- (b) the matter published is relevant to the subject of the inquiry;
- (c) the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion;
- (d) the person making the publication is not actuated by ill-will to the person defamed, or by any other improper motive;
- (e) the person making the publication has reasonable ground to believe the matter published to be true.

PART V.

Remedies of judgment creditors.

31. 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.

Execution against types, presses, and printing materials. No. 22, 1901, s. 23.

32. (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.

Defendant not relieved by bankruptcy or law abolishing imprisonment for debt.

Ibid. s. 24.

(2)

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But to be entitled to discharge from custody after twelve months upon sequestration of estate.
No. 22, 1901, s. 24.

(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, or any Act hereby repealed, 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.
Ibid. s. 25.

33. 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.

Benefits of Act not to extend to defendants if laws regulating printing, &c., have not been complied with.
Ibid. s. 26.

34. (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.

(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-six, twenty-seven, twenty-eight, and thirty-two of this Act.

Act No. 33, 1912.

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Small Debts Recovery.

SCHEDULE.

Reference to Act.	Title or short title.
No. 22, 1901 	Defamation Act, 1901.
No. 22, 1909 	Defamation (Amendment) Act, 1909.