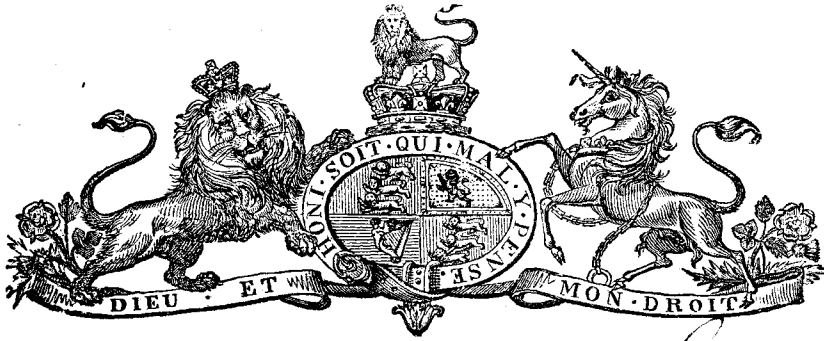


T A S M A N I A.



1857.

*English Act  
6 & 7. Vic. ch. 96.*

ANNO VICESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 7.

*Repealed by 59 Vic. No. 11.*

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AN ACT to amend the Law respecting Defamatory Words and Libel. [4 December, 1857.]

WHEREAS it is expedient to amend the Law relating to Defamatory Words and Libel: Be it therefore enacted by His Excellency the Governor of *Tasmania*, with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

**1** No action or information shall be maintainable against the Proprietor or Publisher of any newspaper or other publication for a faithful and accurate report of proceedings in any Court of Justice, of Petty Sessions, or before a Magistrate or Coroner: Provided always, that it shall not be lawful to publish any matter of an obscene or blasphemous nature, nor any proceedings in any Court which may not be concluded, and which the Judge, Magistrate, Coroner, or other Presiding Officer may pronounce it improper to publish at their then stage.

No action maintainable against a newspaper for faithfully reporting.

*6 & 7 Vic. ch. 96. sec 1.*

**2** 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 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 has been commenced before there was an opportunity of making or offering such apology.

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

*vide Barrett  
v. Long. 3. H of  
L. Cases 395.  
414.*

647 Vic. c. 96. s. 2

In an Action against a newspaper for Libel the Defendant may plead that it was inserted without malice and without neglect, and may pay money into Court as amends.

**3** 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 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 every such Defendant shall, before pleading 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 *The Common Law Procedure Act*, and that to such plea to such Action it shall be competent to the Plaintiff to reply generally denying the whole of such plea.

*Do. Sec 3.*

Publishing or threatening to publish a Libel, or proposing to abstain from publishing anything with intent to extort money, punishable by imprisonment and hard labour.

**4** If any person shall publish or threaten to publish any Libel upon any other person, or shall directly or indirectly 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 labour, 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 of the sending or delivery of threatening letters or writings.

*Do. Sec 4*

False Defamatory Libel punishable by imprisonment and fine.

**5** 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 for any term not exceeding two years, and to pay such fine as the Court shall award.

*Do. Sec 5*

Malicious Defamatory Libel punishable by imprisonment or fine.

**6** 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.

*Do. Sec 6.*

Proceedings upon the trial of an information for a Defamatory Libel.

**7** On the trial of any 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 to entitle the Defendant to give evidence of the truth of such matters charged as a defence to such information, it shall be necessary for the Defendant in pleading to the said information to allege the truth of the said matters charged in the same manner as in pleading a justification to an action of 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 if after such plea the Defendant shall be convicted on such 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, or 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 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 also 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 information for Defamatory Words or Libel.

*Sec 7.*

**8** If upon the trial of any information for the publication of a Libel evidence is given, under the plea of not guilty, establishing 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.

*Sec 8.*

**9** In case of any information by a private prosecutor for the publication of any Defamatory Libel, if judgment is given for the Defendant he shall be entitled to recover from the prosecutor the costs sustained by the said Defendant by reason of such information; and upon a special plea of justification to such 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 information is tried.

**10** No Criminal Prosecution by a private Prosecutor for the publication of a Defamatory Libel shall be instituted otherwise than by a Criminal Information exhibited by leave of the Supreme Court.

**11** It shall be lawful for the Court, if it thinks fit so to do, to grant leave to exhibit such Information, notwithstanding the person applying for the same does not in his affidavit deny the truth of the matter charged in the alleged Libel, if it appears to the Court that the Libel was maliciously published, and that it was not for the public benefit that the matters charged therein should be published.

Double plea.

Proviso as to plea of not guilty in civil and criminal proceedings.

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

*vide Luccu v. Holbrook  
Hors. 4. 2. Bench. 21  
L.R. p. 42.*

On prosecution for private Libel Defendant entitled to costs on dismissal.

Private Prosecutions only by leave of Court.

Court may grant Information, without affidavit denying truth, if Libel malicious and not for public benefit.

