

Hon. Sir F. Whitaker.

LAW OF LIBEL.

ANALYSIS.

Title.	7. Prosecution only with consent of Judge.
Preamble.	8. Not necessary to set out obscene passages in indictment, &c.
1. Short Title.	9. Husband or wife may give evidence.
2. Interpretation.	10. Court of summary jurisdiction to have power to inquire into truth, &c.
3. Report of proceedings in Court.	11. Provision as to summary jurisdiction.
4. Reports of proceedings of local bodies, Commissioners, &c.	12. Regulations where case dealt with summarily.
5. Defendant may plead other case brought.	13. Vexatious Indictments Act to apply to this Act.
6. Two or more defendants in different causes for same libel may apply to have causes amalgamated.	

A BILL INTITULED

AN ACT to amend the Law of Libel.

Title.

WHEREAS it is expedient to amend the law affecting civil actions and criminal prosecutions for libel :

Preamble.

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

1. The Short Title of this Act is “ The Law of Libel Act, 1889.”

Short Title.

10 2. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the word—

Interpretation.
44 and 45 Vict.,
c. 60, s. 1.

15 “ Newspaper ” shall mean 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.

20 Also, any 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

25 The word “ proprietor ” shall mean and include 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.

Report of proceedings in Court.
51 and 52 Vict.,
c. 64, s. 3.

3. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.

5

Reports of proceedings of local bodies, Commissioners, &c.
Ib., s. 4.

4. A fair and accurate report published in any newspaper of the proceedings of a public meeting or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a City or Borough Council, County Council, Harbour Board, or of any local body constituted under any Act of the General Assembly of New Zealand or of any Superintendent and Provincial Council of any of the late provinces, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any Commissioners authorised to act by letters patent or Act of the General Assembly of New Zealand, Select Committees of either House of Parliament, Justices of the Peace assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of State, Commissioner of Police, or Chief Constable of any notice or report issued by them for the information of the police, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: Provided also that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has 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: Provided, further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit. For the purposes of this section "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

10

15

20

25

30

35

Defendant may plead other case brought.
Ib., s. 6.

5. 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 such action has been brought.

40

Two or more defendants in different causes for same libel may apply to have causes amalgamated.
Ib., s. 6.

6. It shall be competent for a Judge of the Court, 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 shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the

45

50

defendants in the actions already consolidated. 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 said 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 shall deem just for the apportionment of such costs between and against such defendants.

7. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being 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.

Prosecution only with consent of Judge. 51 and 52 Vict., c. 64, s. 10.

8. 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.

Not necessary to set out obscene passages in indictment, &c. *Ib.*, s. 7.

9. Every person charged with the offence of libel before any 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.

Husband or wife may give evidence. *Ib.*, s. 9.

10. 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, 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.

Court of summary jurisdiction to have power to inquire into truth, &c. 44 and 45 Vict., c. 60, s. 4.

11. If 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, is 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

Provision as to summary jurisdiction. *Ib.*, s. 5.

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?" The Court may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

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

12. Where the case is dealt with summarily,—

5

- (1.) The procedure shall, until the Court assume the power to deal with the case summarily, be the same in all respects as if the case were to be dealt with throughout as an indictable offence; but when and so soon as the Court assume the power to deal with such case 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 10
- (2.) The evidence of any witness taken before the Court assuming 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 15
- (3.) The conviction for any such offence shall be of the same effect as a conviction for the offence on indictment; and 20
- (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 defendant 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. 25

Vexatious Indict-
ments Act to apply
to this Act.

13. 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. 30