

Mr. Feldwick.

DEFAMATION.

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## A BILL INTITULED

Title.	AN ACT to declare and amend the Law relating to Defamation.	
Preamble.	WHEREAS it is desirable to declare and amend the law relating to defamation :	
	BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—	5
Short Title.	1. The Short Title of this Act is “ The Defamation Act, 1890.”	
Repeal. Saving.	2. All enactments heretofore passed and in force relating to libel or slander are hereby repealed. But such repeal shall not affect any right of action accrued before the passing of this Act and now pending.	10
Definition of periodical.	3. In this Act the term “ periodical ” includes any newspaper, review, magazine, or other writing or print published periodically.	
	DEFAMATION.	
Definition of defamatory matter.	4. Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter.	15
	The imputation may be expressed either directly, or by insinuation or irony.	
Functions of Judge and jury.	5. The question whether any matter is or is not defamatory is a question of fact.	25
	The question whether any matter alleged to be defamatory is or is not capable of bearing a defamatory meaning is a question of law.	
Definition of defamation.	6. Any person who, by words either spoken or intended to be read, or by signs or visible representations, publishes any defamatory imputation concerning any person is said to defame that person.	30
Publication.	7. Publication is, in the case of words spoken, the speaking of such words in the presence and hearing of any other person than the person defamed, and, in the case of other defamatory matter, the exhibiting of it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen, by any other person than the person defamed.	35
Publication of defamatory matter is <i>prima facie</i> unlawful.	8. It is unlawful to publish defamatory matter, unless such publication is protected, or justified, or excused by law.	
Defamation actionable.	9. The unlawful publication of defamatory matter is an actionable wrong.	40
	ABSOLUTE PROTECTION.	
Privilege of Parliament.	10. (1.) A member of either House of Parliament does not incur any liability as for defamation by the publication of any defamatory matter in the course of a speech made by him in Parliament.	
Petitions.	(2.) A person who presents a petition to either House of Parliament does not incur any liability as for defamation by the publication to that House of Parliament of any defamatory matter contained in the petition.	45

(3.) No person incurs any liability as for defamation by publishing, by order or under the authority of either House of Parliament, any paper containing defamatory matter.

Parliamentary papers.

5 11. No person incurs any liability as for defamation by publishing, in the course of any proceeding held before or under the authority of any Court of Justice, or in the course of any inquiry made under the authority of any statute, or under the authority of Her Majesty, or of the Governor in Council, or of either House of Parliament, any defamatory matter.

Privileges of Judges, witnesses, and others in Courts of Justice.

10 12. A person appointed under the authority of any statute, or by or under the authority of Her Majesty, or the Governor in Council, to hold any inquiry, does not incur any liability as for defamation by publishing any defamatory matter in any official report made by him of the result of such inquiry.

Reports of official inquiries.

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REPORTS OF MATTERS OF PUBLIC INTEREST.

13. It is lawful—

Publication of matters of public interest.

(1.) To publish in good faith, for the information of the public, a fair report of the proceedings of either House of Parliament, or of any Committee thereof;

Proceedings of Parliament.

20 (2.) To publish in good faith, for the information of the public, a copy of, or an extract from or abstract of, any paper published by order or under the authority of either House of Parliament;

Parliamentary papers.

25 (3.) To publish in good faith, for the information of the public, a fair report of the public proceedings of any Court of Justice, whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless in the case of proceedings which are not final the publication has been prohibited by the Court, or unless the matter published is blasphemous or obscene;

Proceedings of Courts of Justice. 51 and 52 Vict., c. 64, s. 4. (Comp. 11 Vict., No. 18, s. 5.)

30 (4.) To publish in good faith, for the information of the public, a fair report of the proceedings of any inquiry held under the authority of any statute, or under the authority of Her Majesty, 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;

Proceedings of official inquiries. Ibid.

35 (5.) To publish in good faith, for the information of the public, at the request of any Government office or department, officer of State, or officer of Police, any notice or report issued by such office, department, or officer for the information of the public;

Public notifications by Government. Ibid.

40 (6.) To publish in good faith, for the information of the public, a fair report of the proceedings of any local authority, Board, or body of trustees or persons, duly constituted under the provisions of any statute for the discharge of public functions, so far as the matter published relates to matters of public concern;

Proceedings of local authorities. Ibid.

45 (7.) To publish in good faith, for the information of the public, a fair report of the proceedings of any public meeting, so far as the matter published relates to matters of public

Public meetings. Ibid.

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concern. The term "public meeting" means a meeting lawfully held for a lawful purpose, and for the *bona fide* furtherance or discussion of a matter of public concern, or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted. 5

Definition of publication in good faith for the information of the public.

A publication is said to be made in good faith, for the information of the public, if the person 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. 10

Exception. Ibid.

In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of a want of good faith if the proprietor, publisher, or editor has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same. 15

#### FAIR COMMENT.

Fair comment. Public proceedings.

14. It is lawful—

(1.) To publish a fair comment respecting any of the matters with respect to which the publication of a fair report in good faith for the information of the public is by the last preceding section declared to be lawful; 20

Public conduct of public men.

(2.) To publish a fair comment respecting the public conduct of any person who takes part in public affairs, or respecting the character of any such person, so far as his character appears in that conduct; 25

Public conduct of public officers.

(3.) To publish a fair comment respecting the conduct of any public officer or public servant in the discharge of his public functions, or respecting the character of any such person, so far as his character appears in that conduct; 30

Proceedings in Courts of Justice.

(4.) To publish a fair comment respecting the merits of any case, civil or criminal, that has been decided by any Court of Justice, or respecting the conduct of any person as a judge, party, witness, counsel, solicitor, or officer of the Court, in any such case, or respecting the character of any such person, so far as his character appears in that conduct; 35

Books.

(5.) To publish a fair comment respecting any published book or other literary production, or respecting the character of the author, so far as his character appears by such book or production; 40

Public exhibitions or performances.

(6.) To publish a fair comment respecting any composition or work of art or performance publicly exhibited, or respecting the character of the author or performer or exhibitor, so far as his character appears from the matter exhibited; 45

Public entertainments.

(7.) To publish a fair comment respecting any public entertainment or sports, or respecting the character of any person conducting or taking part therein, so far as his character appears from the matter of the entertainment or sports, or the manner of conducting the same; 50

(8.) To publish a fair comment respecting any communication made to the public on any subject. Communications to the public.

15. Whether a comment is or is not fair is a question of fact. Fairness of comment is for the jury.  
If it is not fair, and is defamatory, the publication of it is unlawful.

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TRUTH.

16. It is lawful to publish defamatory matter if the matter is true, and if it is for the public benefit that the publication complained of should be made. Truth published for the public benefit. 11 Vict., No. 13, s. 4.

QUALIFIED PROTECTION—EXCUSE.

10 17. It is a lawful excuse for the publication of defamatory matter— Excuse on personal grounds.

(1.) If the publication is made in good faith by a person having over another any lawful authority in the course of a censure passed by him on the conduct of that other in matters to which such lawful authority relates ; Censure by person in authority.

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(2.) If the publication is made in good faith for the purpose of seeking remedy or redress for some private or public wrong or grievance from a person who has, or is reasonably believed by the person making the publication to have, authority over the person defamed with respect to the subject-matter of such wrong or grievance ; Seeking redress.

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(3.) If the publication is made in good faith for the protection of the interests of the person making the publication, or of some other person, or for the public good ; Interest.

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(4.) If the publication is made in good faith in answer to an inquiry made of the person making the publication relating to some subject as to which the person by whom or on whose behalf the inquiry is made has, or is reasonably believed by the person making the publication to have, an interest in knowing the truth ; Answer to inquiries.

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(5.) If the publication is made in good faith for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has, or is reasonably believed by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances ; Information.

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(6.) If the publication is made in good faith on the invitation or challenge of the person defamed ; Challenge.

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(7.) If the publication is made in good faith in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person ; Defence.

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(8.) If the publication is made in good faith in the course of, or for the purpose of, the discussion of some subject of public interest the public discussion of which is for the public benefit. Public discussion.

For the purposes of this section, publication is said to be made in good faith if the matter published is relevant to the matters the existence of which may excuse the publication in good faith of Definition of good faith.

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defamatory matter; if the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion; and if the person by whom it is made is not actuated by ill-will to the person defamed, or by any other improper motive, and does not believe the defamatory matter to be untrue.

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## GOOD FAITH.

Burden of proof of good faith.

18. When any question arises whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made under circumstances which would afford lawful excuse for the publication if it was made in good faith, the burden of proof of the absence of good faith lies upon the party alleging such absence.

Relevancy and public benefit questions of fact.

19. Whether any defamatory matter is or is not relevant to any other matter, and whether the public discussion of any subject is or is not for the public benefit, are questions of fact.

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## ORAL DEFAMATION.

Trivial matters not in writing. (Comp. 11 Vict., No. 13. s. 2.)

20. In any case other than that of words intended to be read, it is a good defence to an action or prosecution for defamation to prove that the publication was made on an occasion and under circumstances when the person defamed was not likely to be injured thereby.

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## PROVISIONS IN RESPECT OF ACTIONS FOR DEFAMATION.

Offer of an apology admissible in evidence in mitigation of damages. 31 Vict., No. 5, s. 52.

21. In an action for defamation the defendant may plead and prove in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, as soon afterwards as he had an opportunity of doing so.

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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. Ib., s. 53.

22. In an action for the publication of defamatory matter in a periodical, the defendant may plead that such matter was published without actual ill-will to the person defamed or other improper motive, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such periodical a full apology for such defamation, or, if the periodical in which the defamatory matter appeared was ordinarily published at intervals exceeding one week, offered to publish the apology in any periodical to be selected by the plaintiff.

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The defendant must, upon pleading such defence, pay into Court a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, and such payment into Court shall be of the same effect in all respects as in other cases of payment into Court.

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Consolidation of actions. 51 and 52 Vict., c. 64, s. 5.

23. The Court or a Judge, upon an application by or on behalf of two or more defendants in actions in respect of the publication of the same, or substantially the same, defamatory matter brought by one and the same person, may 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 actions, the defendant in any new action instituted in respect of the publication of the same, or substantially the same, defamatory matter shall also be entitled to be joined in a common action upon a joint application being made by

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such new defendant and the defendants in the actions already consolidated.

In an action consolidated under this section the Judge or jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately; and, if a verdict is given against the defendants in more than one of the actions so consolidated, the Judge or jury shall proceed to apportion the amount of damages so found between and against the 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 deems just for the apportionment of such costs between and against such defendants.

24. At the trial of an action for the publication of defamatory matter in a periodical 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 other publications of defamatory matter to the same purport or effect as the matter for the publication of which the action is brought.

Evidence in mitigation of damages. 51 and 52 Vict., c. 64, s. 6.

#### CRIMINAL LIABILITY.

25. Any person who unlawfully publishes any defamatory matter knowing it to be false is guilty of a misdemeanour, and is liable, upon conviction, to be imprisoned for any term not exceeding two years, with or without hard labour, and to be fined in any sum not exceeding five hundred pounds.

Publication of defamatory matter known to be false. 11 Vict., No. 13, s. 8.

26. Any person not being a member of either House of Parliament, who unlawfully publishes any false or scandalous defamatory matter touching the conduct of any member or members of either House of Parliament as such member or members, is guilty of a misdemeanour, and is liable, upon conviction, to be imprisoned for any term not exceeding two years, with or without hard labour, and to be fined in any sum not exceeding five hundred pounds.

Defamation of members of Parliament by strangers. 31 Vict., No. 38, s. 51.

27. Any person who unlawfully publishes any defamatory matter is guilty of a misdemeanour, and is liable, upon conviction, to be imprisoned for any period not exceeding twelve months, and to be fined in any sum not exceeding three hundred pounds.

Publication of matter not known to be false. 11 Vict., No. 13, s. 9.

28. If upon the hearing of a charge of publication of defamatory matter the Justices are of opinion that a *prima facie* case has been made out against the defendant, but that the case is of a trivial nature, they may ask the defendant the following question: "Do you claim to be tried by a jury, or do you consent to the case being dealt with summarily?" And if the defendant consents to the case being dealt with summarily, the Justices may summarily convict him and adjudge him to pay a fine not exceeding fifty pounds.

Summary jurisdiction in trivial cases. 44 and 45 Vict., c. 60, s. 5.

29. Any person charged before a Court of criminal jurisdiction with the unlawful publication of defamatory matter who sets up as a defence that the defamatory matter is true, and that it was for the public benefit that the publication complained of should be made, must plead that matter specially, either with or without the general plea of "Not guilty."

Defence of truth to be specially pleaded. 11 Vict., No. 13, s. 4.

Defendant competent witness.  
51 and 52 Vict.,  
c. 64, s. 9.

Jury may give general verdict.  
32 Geo. III., c. 60  
(Fox's Libel Act).

Publishing or threatening to publish a libel, &c., with intent to extort money.  
11 Vict., No. 13, s. 6.

Liability of proprietor, publisher, and editor of periodicals.

Protection of innocent sellers of periodicals.

Protection of innocent sellers of books.

Protection of servants.

30. Any person charged before a Court of criminal jurisdiction with the unlawful publication of defamatory matter, and the husband or wife of the person so charged, shall be competent but not compellable witnesses at any stage of the charge.

31. Upon the trial of any person for the unlawful publication of defamatory matter, the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue, in like manner as in other criminal cases. 5

32. Any person who publishes, or threatens to publish, any defamatory matter concerning any other person, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publishing, of any defamatory matter concerning any other person with intent to extort any money, or security for money, or any valuable thing, from such person, 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, is guilty of a misdemeanour, and is liable, upon conviction, to be imprisoned for any term not exceeding three years, with or without hard labour. 10 15

Nothing herein contained shall alter or affect any law now in force in respect to the sending or delivery of threatening letters or writings. 20

PROVISIONS WITH RESPECT TO PUBLISHERS AND SELLERS OF PERIODICALS  
AND SELLERS OF BOOKS.

33. A proprietor, publisher, or editor of a periodical is not criminally responsible for defamatory matter published therein if he shows that the matter complained of was inserted without his knowledge and without negligence on his part. 25

General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert therein what in his discretion he thinks fit, is not negligence within the meaning of this section, unless it is proved that the proprietor or publisher or editor when giving such general authority meant that it should extend to and authorise the unlawful publication of defamatory matter, or continued such general authority knowing that it had been exercised by unlawfully publishing defamatory matter in any number or part of the periodical. 30 35

34. No person incurs any liability as for defamation by selling any number or part of a periodical unless he knows that such number or part contains defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical. 40

35. No person incurs any liability as for defamation by selling a book, pamphlet, print, or writing, or other thing not forming part of a periodical, although it contains defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained therein. 45

36. The sale by a servant of a book, pamphlet, print, or writing or other thing, whether a periodical or not, does not make his employer responsible in respect of defamatory matter contained therein, unless it is proved that such employer authorised the sale knowing that the book, pamphlet, print, writing, or other thing contained 55



defamatory matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently published therein.

37. No criminal prosecution shall be instituted against the proprietor or publisher or editor, or any person responsible for the publication, of any periodical, for any defamatory matter published therein, without the order of a Judge of the Supreme Court, made after notice to the person accused, and after that person has had an opportunity of being heard in opposition to the application for the order.

Prosecution of newspapers to be by sanction of a Judge after notice.  
51 and 52 Vict., c. 64, s. 8.

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## EVIDENCE.

38. Upon the trial of an action for unlawfully publishing defamatory matter contained in a book or periodical, the production of the book, or of a number or part of the periodical, containing a printed statement that it is printed or published by or for the defendant, shall be *prima facie* evidence of the publication of the book, or of the number or part of the periodical, by the defendant.

Imprimatur to be *prima facie* evidence of publication of book or periodical

39. Upon the trial of an action or prosecution for unlawfully publishing defamatory matter contained in a periodical, after evidence sufficient in the opinion of the Court has been given of the publication by the defendant of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical formerly or subsequently published, and containing a printed statement that they were published by or for the defendant, shall be admissible in evidence on either side, without further proof of publication of them.

Evidence.

## STAYING PROCEEDINGS.

40. The defendant in any action or prosecution commenced or prosecuted in respect of the publication of any paper published by the defendant, or by his servant, by order or under the authority of either House of Parliament, may bring before the Court in which the proceeding is pending, or before any Judge thereof, first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor, a certificate under the hand of the Speaker or Clerk of the Legislative Council, or Speaker or Clerk of the House of Representatives, as the case may be, stating that the paper in respect whereof such action or prosecution is commenced or prosecuted was published by the defendant, or by his servant, by order or under the authority of the Council or House, together with an affidavit verifying such certificate, and such Court or Judge shall thereupon immediately stay such action or prosecution, and may order the plaintiff or prosecutor to pay the defendant his costs of defence.

Proceedings for publication of parliamentary paper to be stayed.  
31 Vict., No. 38, s. 54.

41. In any action or prosecution commenced or prosecuted in respect of the publication of a copy of, or an extract from or abstract of, any such paper, the defendant may, at any stage of the proceedings, lay before the Court or a Judge thereof an original of such paper, with an affidavit verifying the same, and the Court or Judge may thereupon stay such action or prosecution, and may order the plaintiff or prosecutor to pay the defendant his costs of defence.

Proceedings to be stayed when commenced in respect of the publication of a copy of the authenticated report, &c., on affidavit verifying such copy being laid before the Court.  
Ib., s. 55.

## REMEDY FOR COSTS AND DAMAGES.

On private prosecution defendant entitled to costs on acquittal.  
11 Vict., No. 13, s. 12.

42. (1.) In the case of a prosecution of any person on the complaint of a private prosecutor for the publication of defamatory matter, if the defendant is acquitted he shall be entitled to recover from the prosecutor the costs sustained by him by reason of such prosecution. 5

Costs when truth pleaded.

(2.) In the case of a prosecution of any person on the complaint of a private prosecutor for the publication of defamatory matter, if the defendant pleads the truth of the matter published, and that the publication was for the public benefit, then, if the issue is found for the Crown, the prosecutor shall be entitled to recover from the defendant the costs sustained by reason of such plea. 10

(3.) Such costs so to be recovered by the defendant or prosecutor respectively shall be taxed by the proper officer of the Court before which the information is tried. 15

Plaintiff having obtained judgment may levy damages, &c., out of types, &c., used in printing defamatory matter as well as out of the property of the defendant on the record.  
Ib., s. 13.

43. Whenever any person is convicted, either in an action or prosecution, of publishing any defamatory matter by means of printing, the plaintiff or prosecutor in whose favour judgment is given may under his writ of execution levy the damages, penalty, and costs out of any property of the defendant in like manner as in ordinary civil actions, and also out of the whole of the types, presses, or printing materials belonging to the person whose types, presses, or printing materials, or any part thereof, were used in printing such defamatory matter, to whomsoever the same may belong at the time of the levy. 20

## PRODUCTION OF TELEGRAMS IN EVIDENCE, ETC. 25

Telegraphic communications.

44. Any communication transmitted by any telegraph which would be deemed a privileged communication if published only to the person to whom it is addressed, is not, by reason of its having been published to any officer or other person employed for the purpose of being transmitted by such telegraph to the person to whom it is addressed, deemed to have been maliciously published. 30

Publication of telegrams.

45. Any communication transmitted by telegraph, which would be deemed a privileged communication if published only to the person to whom it is addressed, is not by reason of its having been published to any officer or other person employed as aforesaid for the purpose of being transmitted by such telegraph to the person to whom it is addressed, deemed to have been maliciously published. 35

## OPERATION OF ACT.

Application of rules declared by Act.

46. The rules of law declared and enacted by this Act shall be applied in all actions and prosecutions for defamation begun after the passing of this Act. 40

Saving.

47. Nothing in this Act shall be construed to limit or abridge any protection or privilege now by law existing.

Act not to apply to slander of title or to blasphemous or seditious or obscene libels.

48. Nothing in this Act relates to the actionable wrong commonly called "slander of title," or to the misdemeanour of publishing a blasphemous or seditious or obscene libel. 45