

[AS REPORTED FROM THE STATUTES REVISION
COMMITTEE]

House of Representatives, 19 August 1954

Words struck out by Statutes Revision Committee are shown in italics within bold brackets; words added are shown in black or in roman with rule down side.

Hon. Mr Webb

DEFAMATION

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A BILL INTITULED

AN ACT to amend the law relating to libel and slander Title.
and other malicious falsehoods.

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

No. 45—2

- Short Title. 1. This Act may be cited as the Defamation Act 1954.
- Interpretation. 2. (1) In this Act, unless the context otherwise requires,—
- 1910, No. 83, s. 12
- Cf. Defamation Act 1952, ss. 7 (5), 9 (3), 16 (1), (2) (U.K.)
- 1936, No. 15
- See Reprint of Statutes, Vol. VI, p. 854
- “Broadcasting station” means any station operated by the Minister under the Broadcasting Act 1936 or licensed as a broadcasting station under the Post and Telegraph Act 1928:
- “Newspaper” means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published, in New Zealand or elsewhere, periodically at intervals not exceeding three months:
- References to words shall be construed as including references to pictures, visual images, gestures, and other methods of signifying meaning.
- (2) The provisions of Part III of the *First* Schedule to this Act shall have effect for the purposes of the interpretation of that Schedule.
- Application of Act. Cf. Defamation Act 1952, s. 17 (1) (U.K.)
3. Except as otherwise provided in sections *four* and *five* of this Act, this Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose or the offence was committed, but does not affect any proceedings begun before the commencement of this Act.

PART I

CIVIL PROCEEDINGS

- Libel and slander actionable without proof of special damage.
4. (1) In any action for defamation (whether libel or slander), it shall not be necessary to allege or prove special damage.
- (2) This section applies for the purposes of any proceedings where the cause of action has arisen after the commencement of this Act, but does not affect any proceedings where the cause of action arose before the commencement of this Act, whenever the proceedings were commenced.

5. (1) In an action for slander of title, slander of goods, or other malicious falsehood, it shall not be necessary to allege or prove special damage if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff.

Slander of title, etc.
Cf. Defamation Act 1952, s. 3
(U.K.)

(2) This section applies for the purposes of any proceedings where the cause of action has arisen after the commencement of this Act, but does not affect any proceedings where the cause of action arose before the commencement of this Act, whenever the proceedings were commenced.

6. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section; and in any such case—

Unintentional defamation.
Cf. Defamation Act 1952, s. 4
(U.K.)

(a) If the offer is accepted by the party aggrieved and is duly performed, no action for defamation shall be commenced or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication):

(b) If the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any action by him for defamation against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) Paragraph (b) of subsection one of this section shall not apply in relation to the publication by any person of any words of which he is not the author unless he proves—

(a) That the author did not intend to write or publish them of and concerning the party aggrieved, and did not know of circumstances by virtue of which they might be understood to refer to him; or

(b) That the words were not defamatory on the face of them, and the author did not know of circumstances by virtue of which they might be understood to be defamatory of the party aggrieved,—

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and that in either case the author exercised all reasonable care in relation to the matter.

(3) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection one of this section no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

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(4) An offer of amends under this section shall be understood to mean an offer—

(a) In any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words:

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(b) Where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

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(5) Where an offer of amends under this section is accepted by the party aggrieved—

(a) Any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the [Supreme] Court, whose decision thereon shall be final:

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(b) The power of the Court to make orders as to costs in any action by the party aggrieved against the person making the offer in respect of the publication in question, or in any proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the person making the offer to the party aggrieved of

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costs on an indemnity basis and any expenses reasonably incurred by that party in consequence of the publication in question,—

5 and, if no such action or proceedings as aforesaid are taken, the [*Supreme*] Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in any such action or proceedings.

10 (6) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

15 (a) That the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or

20 (b) That the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,—

and in either case the publisher exercised all reasonable care in relation to the publication; and any reference 25 in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

New

30 (7) For the purposes of this section the term “Court”, in relation to the publication of any words, means the Court in which any action in respect of the publication has been taken, and, if no such action has been taken, means the Supreme Court.

35 6A. In an action for defamation in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the 40 remaining charges.

45 6B. In an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

Justification.
Cf. Defamation
Act 1952, s. 5
(U.K.)

Fair comment.
Cf. Defamation
Act 1952, s. 6
(U.K.)

Actions in respect of publication in different newspapers of same defamatory matter.
1910, No. 83, s. 4

7. (1) When an action has been commenced by any person in respect of the publication of defamatory matter in a newspaper, no other action shall thereafter be commenced by the same person in respect of the publication at any time before the commencement of the first-mentioned action of the same or substantially the same defamatory matter in any other newspaper, unless that other action is commenced on or within thirty days after the date of the commencement of the first-mentioned action.

(2) When any action is commenced in breach of the provisions of this section, it shall not be necessary for the defendant to plead this matter by way of defence, but the same may be given in evidence as a defence on the trial of the action.

(3) In determining for the purposes of this section the date of the publication of defamatory matter in a newspaper, the defamatory matter shall be deemed to have been published on the date of issue of that newspaper, and at no subsequent time.

Plaintiff to give notice of such actions to each defendant.
1910, No. 83, s. 5

8. (1) When two or more actions have been commenced by the same person in respect of the publication of the same or substantially the same defamatory matter in different newspapers, the plaintiff shall as soon as practicable give to the defendant in each of the actions such notice of the existence of the other actions as is reasonably sufficient to enable each defendant to make application for the consolidation of the actions under the provisions hereinafter contained.

(2) If the plaintiff makes default in giving notice as aforesaid to any defendant, that defendant may apply to the Court to dismiss or stay the action, and the Court may, if in its discretion it thinks fit to do so, dismiss or stay the action accordingly.

Consolidation of actions on application of defendants.
1910, No. 83, s. 6
Cf. Law of Libel Amendment Act 1888, s. 5; Defamation Act 1952, s. 13 (U.K.)

9. (1) The Supreme Court [*or any Judge thereof*], upon the application of the defendants in two or more actions brought in that Court **or in a Magistrate's Court** by one and the same person in respect of the publication of the same or substantially the same defamatory matter, may make an order for the consolidation of those actions so that they shall be tried together; and after any such order has been made, and before the trial of the actions, the defendant in any other action brought in respect 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 that defendant and the defendants in the actions already consolidated.

New

5 (1A) Every action consolidated under this section shall be heard and determined in the Supreme Court. If any of the actions consolidated was commenced in a Magistrate's Court the order consolidating it shall be deemed to be also an order for its removal into the
10 Supreme Court.

(2) In an action consolidated under the provisions of 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
15 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
20 against those 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 those costs between and against those defendants.

25 (3) Every action consolidated under the provisions of this section shall be heard at such time and place as the Supreme Court [*or a Judge thereof*] may order.

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

35 11. In an action for defamation the defendant may prove in mitigation of damages that the plaintiff has already recovered damages, or has brought an action for damages, or has received or agreed to receive compensation, in respect of any other publication by the same
40 or any other person of the same or substantially the same defamatory matter.

Public apology
in mitigation
of damages.
1910, No. 83,
s. 7

Cf. Libel Act
1843, s. 1
(U.K.)

Other evidence
in mitigation
of damages.
1910, No. 83,
s. 8

Cf. Defamation
Act 1952, s. 12
(U.K.)

Agreements for indemnity.

Cf. Defamation Act 1952, s. 11 (U.K.)

12. An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe that there is a good defence to any action brought upon it. 5

PART II

CRIMINAL PROCEEDINGS

Powers of Magistrate in prosecutions for defamatory libel or criminal defamation.

1910, No. 83, s. 10

13. (1) A Magistrate, upon the hearing of a charge of the publication of a defamatory libel, may receive evidence as to the publication being for the public benefit, and as to the truth of the defamatory statement, and as to any other matter which might be given in evidence by way of defence by the person charged on his trial on indictment; and the Magistrate, if he is of opinion, after hearing any 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. 10 15

(2) This section shall extend and apply, with the necessary modifications, to the hearing by a Magistrate of a charge of criminal defamation. 20

Offences punishable summarily.

1910, No. 83, s. 11

See Reprint of Statutes, Vol. II, p. 247

14. (1) The indictable offence of publishing a defamatory libel or of criminal defamation within the meaning of the Crimes Act 1908 shall also be an offence punishable on summary conviction before a Magistrate by a fine not exceeding one hundred pounds or by imprisonment for a term not exceeding three months. 25

(2) In any such summary proceedings it shall be a good defence that the defamatory matter published by the person charged was true, and that the publication thereof was for the public benefit; but no evidence of the truth of that matter shall be admissible until and unless the person charged proves that, assuming the matter so published to be true, the publication thereof was for the public benefit. 30 35

(3) An information for any offence punishable on summary conviction under this section shall be taken and heard before a Magistrate only, and no such prosecution shall be commenced without the order of a Magistrate; and notice of the intention to apply for such an order shall be given to the person to be charged, who shall have an opportunity of being heard against the application. 40

PART III

GENERAL

5 15. (1) Subject to the provisions of this section, the publication of any such report or other matter as is mentioned in the *First* Schedule to this Act shall be privileged in any civil or criminal proceeding unless the publication is proved to be made with malice.

10 (2) In an action for defamation in respect of the publication in a newspaper, or as part of any programme or service provided by means of a broadcasting station, of any such report or matter as is mentioned in Part II of the *First* Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish
15 in the manner in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

20 (3) Nothing in this section shall be construed as protecting the publication—

(a) Of any report or other matter the publication of which is prohibited by law, or by [*order of any Court*] **any lawful order**, in New Zealand or in the other territory (if any) in which the subject-matter of the report or other matter arose:

25 (b) Of any such report or other matter as is mentioned in Part II of the *First* Schedule to this Act which is not of public concern or the publication of which is not for the public benefit.

30 (4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section two of the Law of Libel Amendment Act 1910) immediately before the commencement of this Act.

Qualified privilege for certain reports.

1910, No. 83, ss. 2, 3

1933, No. 47, s. 2

1948, No. 77, s. 26

Cf. Defamation Act 1952, ss. 7, 9 (2),

(3) (U.K.)

See Reprint of Statutes, Vol. IV, p. 1099

Stay of proceedings for publication of reports, etc., by order of Parliament.

1908, No. 101, s. 254

1950, No. 3, s. 2 (4)

Cf.

Parliamentary Papers Act 1840, s. 1 (U.K.)

Stay of proceedings in respect of copy of parliamentary report, etc.

1908, No. 101, s. 255

Cf.

Parliamentary Papers Act 1840, s. 2 (U.K.)

Publication of extract from parliamentary report, etc., in good faith and without malice.

1908, No. 101, s. 256

Cf.

Parliamentary Papers Act 1840, s. 3

Defamation Act 1952, s. 9 (1) (U.K.)

16. (1) Any person who is a defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication of any report, paper, votes, or proceedings by that person, or by his servant, by or under the authority of the House of Representatives, may bring before the Court in which the proceeding is so commenced or prosecuted [*or before any Judge of the Court*] (first giving twenty-four hours notice of his intention to do so to the plaintiff or prosecutor in the proceeding or to his solicitor) a certificate under the hand of the Speaker of the House stating that the report, paper, votes, or proceedings, as the case may be, in respect of which the proceeding is commenced or prosecuted were published by that person, or by his servant, by order or under the authority of the House of Representatives.

(2) Every such certificate shall be accompanied by an affidavit verifying the certificate.

(3) The Court [*or Judge*] shall thereupon immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

17. Where any civil or criminal proceeding is commenced or prosecuted in respect of the publication of any copy of any such report, paper, votes, or proceedings as are referred to in section *sixteen* of this Act, any defendant may, at any stage of the proceeding, lay before the Court [*or Judge*] the report, paper, votes, or proceedings, and the copy, with an affidavit verifying the report, paper, votes, or proceedings, and the correctness of the copy, and thereupon the Court [*or Judge*] shall immediately stay the proceeding, and the proceeding shall be deemed to be finally determined by virtue of this section.

18. In any civil or criminal proceeding commenced or prosecuted in respect of the publication of any extract from or abstract of any such report, paper, votes, or proceedings as are referred to in section *sixteen* of this Act, the defendant may give in evidence the report, paper, votes, or proceedings, and show that the extract or abstract was published in good faith and without malice; and if that is the opinion of the jury a verdict of not guilty shall be entered for the defendant.

19. Upon the trial of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter in any book or printed document, or in any number or part of a newspaper or other periodical, any printed statement contained in the book, document, number, or part that the same is published or printed by the defendant shall, in the absence of proof to the contrary, be evidence of the truth of that statement.
20. Upon the trial before a jury of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter, the jury may give a general verdict for or against the defendant upon the whole matter put in issue, and shall not be required or directed by the Judge to give a verdict against any defendant merely on proof of the publication by that defendant of the matter alleged to be defamatory and on proof of the sense ascribed to it in the statement of claim or indictment:
- Provided that on every such trial the Judge shall, according to his discretion, give his opinion and directions to the jury on the matter in issue between the plaintiff or Her Majesty and the defendant in like manner as in other cases:
- Provided further that nothing in this section shall be construed to prevent the jury from finding a special verdict, in their discretion, as in other cases:
- Provided also that nothing in this section shall be construed to prevent any defendant against whom a verdict has been given from moving in arrest of judgment on such ground and in such manner as if this section had not been passed.
21. (1) The enactments specified in the *Second* Schedule to this Act are hereby repealed.
- (2) The Libel Act 1792, of the Parliament of Great Britain, shall at the commencement of this Act cease to have effect in New Zealand.

Evidence as to publisher or printer. 1910, No. 83, s. 9

Jury may give a general verdict in civil or criminal cases. Cf. Libel Act 1792 (U.K.)

Repeals.

32 Geo. III, ch. 60

Schedules.

Sections 2 (2),
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SCHEDULES

FIRST SCHEDULE

STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I

Statements Privileged Without Explanation or Contradiction

1. A fair and accurate report of the proceedings of the House of Representatives or of any Committee thereof.

2. A fair and accurate report of the proceedings of any Court of justice in New Zealand, whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

PART II

Statements Privileged Subject, in the case of a Newspaper or a Broadcasting Station, to Explanation or Contradiction

3. A fair and accurate report of the proceedings of the legislature of any territory outside New Zealand or of any Committee of any such legislature.

4. A fair and accurate report of the proceedings of any Court of justice outside New Zealand, whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

5. A fair and accurate report of the proceedings in any inquiry held under the authority of the Government or legislature of New Zealand or of any territory outside New Zealand, or a true copy of or a fair and accurate extract from or abstract of any official report made by the person by whom the inquiry was held.

6. A fair and accurate report of the proceedings of any international organization of which New Zealand or any other territory within the Commonwealth, or the Government of New Zealand or any such territory, is a member, or of any international conference to which the Government of New Zealand or any other territory within the Commonwealth sends a representative.

7. A fair and accurate copy of or extract from any register kept in pursuance of any Act which is open to inspection by the public, or of any other document which is required by the law of New Zealand to be open to inspection by the public.

8. A notice or advertisement published by or on the authority of any Court of justice, whether within New Zealand or elsewhere, or any Judge or officer of such a Court.

9. A fair and accurate report of the proceedings at any meeting or sitting in any part of New Zealand of—

(a) Any local authority or committee of a local authority or local authorities:

FIRST SCHEDULE—*continued*

- (b) Any person or body appointed or constituted by or under, and exercising functions under, any Act (not being a Court of justice or a person holding an inquiry to which clause 5 of this Schedule relates),—

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

10. A fair and accurate report of the proceedings, or of the result of the proceedings, in any inquiry held in accordance with the rules of any association formed for the purpose of—

- (a) Promoting or safeguarding the interests of any game, sport, or pastime to the playing or exercise of which members of the public are invited or admitted; or
- (b) Promoting or safeguarding the interests of any trade, business, industry, or profession, or of the persons carrying on or engaged in any trade, business, industry, or profession; or
- (c) Promoting or encouraging the exercise of or interest in any art, science, religion, or learning,—

being an inquiry relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

11. A fair and accurate report of the proceedings at any public meeting held in New Zealand, that is to say, a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

12. A fair and accurate report of the proceedings at a general meeting of any company or association constituted or registered by or under any Act or of any other incorporated company or association operating in New Zealand, [*not being a private company within the meaning of the Companies Act 1933*] (**other than a private company within the meaning of the Companies Act 1933**), not being a meeting admission to which is denied to representatives of newspapers and other members of the public.

13. A copy or fair and accurate report or summary of any statement, notice, or other matter issued for the information of the public by or on behalf of the Government or any department or officer thereof, or any local authority or any member or officer thereof.

PART III

Interpretation

14. In this Schedule, unless the context otherwise requires,—

“Court of justice” includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States:

“Government”, in relation to any territory outside New Zealand which is subject to a central and a local Government, means either of those Governments:

FIRST SCHEDULE—continued

“Legislature”, in relation to any territory outside New Zealand which is subject to a central and a local legislature, means either of those legislatures:

“Local authority” means a local authority within the meaning of the Local Government Loans Board Act 1926, whether by virtue of section two of that Act or of any Order in Council thereunder or by virtue of any other Act.

Section 21

SECOND SCHEDULE

ENACTMENTS REPEALED

1908, No. 89—

The Judicature Act 1908: Section 101. (Reprint of Statutes, Vol. II, p. 89.)

1908, No. 101—

The Legislature Act 1908: Sections 254, 255, and 256. (Reprint of Statutes, Vol. VI, p. 454.)

1910, No. 83—

The Law of Libel Amendment Act 1910. (Reprint of Statutes, Vol. IV, p. 1099.)

1933, No. 47—

The Law of Libel Amendment Act 1933.

1948, No. 77—

The Statutes Amendment Act 1948: Section 26.