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2nd Session, 3rd Parliament, 12 Victoria, 1849

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## **BILL.**

An Act to amend the Law respecting  
Libel.

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Received and Read a first time, Monday, January 22, 1849

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**Mr. GUY.**

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**B I L L.**

An Act to amend the Law respecting Libel.

**F**OR the better protection of private Preamble. character, and for more effectually securing the Liberty of the Press, and for better preventing abuses in exercising the said  
5 Liberty: Be it enacted, &c.

And it is hereby enacted by the authority of Defendant in Actions for Defamation may plead that he offered an apology &c. the same, That in any Action for Defamation it shall be lawful for the Defendant (after notice in writing of his intention so to do,  
10 duly given to the Plaintiff at the time of filing, or 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  
15 commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology.

20 II. And be it enacted, That in an action for Libel contained in any public newspaper or other periodical publication, it shall be competent for the defendant to plead that such Libel was inserted in such newspaper  
25 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  
30 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 peri-

odical publication to be selected by the plaintiff in such action; and that every such defendant shall upon filing 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 in Upper Canada 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 the 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 an Act of the Legislature of Upper Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *"An Act for the amendment of the Law, and the better advancement of Justice,"* and that to such plea to each action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

On filing such plea, Defendant may pay money into Court as amends

Act of U C 7 Wm 4, c. 3 cited

If money is not paid into Court with any such plea, Plaintiff may consider it as a nullity

Punishment of persons threatening to publish or offering not to publish with intent to extort money

III. And be it enacted, That it shall not be competent to any defendant in any such action, to file any such plea without making at the same time a payment of money into Court by way of amends, as provided by this Act, but every such plea filed without payment of money into Court, shall be deemed a nullity, and may be treated as such by the plaintiff in the action.

IV. And be it enacted, That if any person shall publish or threaten to publish any Libel upon any other person, or shall directly or indirectly threaten to 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  
 5 on being convicted thereof, shall be liable to be imprisoned, with or without hard labor, in the Common Gaol, or House of Correction, for any term not exceeding three years: Provided always, that nothing herein con-  
 10 tained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings.

V. And be it enacted, That if any per-  
 15 son shall maliciously publish any defamatory Libel, knowing the same to be false, every such person being, convicted thereof, shall be liable to be imprisoned in the Com-  
 20 mon Gaol or House of Correction, for any term not exceeding two years, and to pay such fine as the Court shall award.

Punishment of persons wilfully publishing any libel, knowing it to be false

VI. And be it enacted, That if any per-  
 25 son shall maliciously publish any defamatory Libel, every such person being con-  
 victed thereof shall be liable to fine or imprisonment, or both, as the Court may award, such imprisonment not exceeding the term of one year.

And if without such know-ledge

VII. And be it enacted, That when and  
 30 so often as any person shall be assailed in any newspaper or periodical publication, he shall be entitled to answer any charge directly or indirectly made against him, or to the  
 35 prejudice of his character in such newspaper or periodical publication, and that any answer written and presented for publication in such newspaper or periodical publication at the usual place of printing the same, shall be inserted in the issue of the same which  
 40 shall be next after the expiration of twenty-four hours from the time of such presentation, and in all the copies of such issue which shall be printed, without any remark

Persons assailed in newspapers, &c, entitled to answer charges in such newspaper.

relative thereto in the issue containing such answer: Provided always, that the answer so presented shall not contain any libellous matter, and shall not extend to more than four times the number of words in the article containing the charge which it is intended to answer. 5

Penalty on proprietor of newspaper, &c not inserting such answer

VIII. And be it enacted, That if any such answer as aforesaid, being presented as hereinbefore provided, shall not be inserted 10 as hereinbefore required, in the issue of such paper or periodical publication in which it ought to be inserted, the proprietor of such newspaper or periodical publication shall forfeit and pay to the party presenting 15 such answer for insertion, the sum of

to be recovered in any Court having jurisdiction in civil cases to the amount; and a like penalty shall be incurred for each repetition of the offence, 20 that is for each occasion on which such answer shall be presented as aforesaid for insertion, and shall not be inserted as hereinbefore required in the issue in which, under this Act, it ought to be inserted: Provided 25 always, that it shall be a good defence to any action for the said penalty that the answer alleged to have been presented for insertion contained libellous matter, but such defence shall be specially pleaded, and the 30 plea by which the same shall be made shall distinctly and precisely set forth the libellous matter contained in such answer, and shall shew in what manner the same is libellous.

Proviso

Truth of the matter charged may be inquired into after certain pleas.

IX. And be it enacted, That on the trial 35 of any indictment or 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 40 was for the public benefit that the said matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged as a de-

fence to such indictment or information, it shall be necessary for the defendant in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for 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 such matters charged should be published; to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof: And that if after such plea the defendant shall be convicted on such indictment or 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, and by the evidence given to prove or disprove the same: Provided always, that the truth of the matters charged in the alleged Libel complained of by such indictment or 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 indictment or information for defamatory words or Libel.

Court on conviction may consider whether the guilt is aggravated or mitigated by such plea and evidence on it

Proviso

Proviso

Proviso

X. And be it enacted, That whensoever upon the trial of any indictment of information for the publication of a Libel, under a plea of Not Guilty, evidence shall have been given which shall establish 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

In certain cases Defendant may prove that publication was made without his consent.

that the said publication did not arise from want of due care or caution on his part.

Defendant may recover costs from private prosecutor

XI. And be it enacted, That in the case of any indictment or information by a private prosecutor for the publication of any defamatory Libel, if judgment shall be given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information, and that upon a special plea of justification to such indictment or 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 indictment or information is tried. 5 10 15

Prosecutor may recover costs on plea of justification

In newspapers, &c., the names of the printers and publishers shall be inserted

XII. And be it enacted, That in some part of every newspaper, or other paper containing public news or intelligence, or serving the purpose of a newspaper, there shall be printed the true and real name and names, addition and additions, and place and places of abode of the printer and printers and publisher and publishers of the same, and also a true description of the place where the same is printed; and in case any person or persons shall knowingly and wilfully print or publish or cause to be printed or published, any such newspaper or other paper, or handbill or advertisement as aforesaid, not containing the particulars aforesaid, and every of them, every such person shall forfeit and lose the sum of £50 to be recovered by action of debt, bill, plaint or information in Her Majesty's Court of Queen's Bench; one moiety of the said forfeiture, when recovered, shall be for the use of Our Sovereign Lady the Queen, Her Heirs and Successors, and the other moiety thereof to and for the use of such person who shall inform or sue for the same. 20 25 30 35 40

Penalty for not inserting the same

£50

How recovered and applied



XIII. And be it enacted, That whenever <sup>Interpretation</sup> throughout this Act, in describing the plain- <sup>clause</sup> tiff or defendant, or the party affected or intended to be affected by the offence, words 5 are used importing the singular number or the masculine gender only, yet they shall be understood to include several persons as well as one person, and females as well as males, unless when the nature of the provi- 10 sion or the context of the Act shall exclude such construction.