

No. 5.

3d Session, 3d Parliament, 19 Victoria, 1850.

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An Act to amend the Law relating to
Slander and Libel.

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May, 1850.

Second Reading, Tuesday, 28th May, 1850.

Hon. Mr. CAMERON, (of Cornwall.)

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BILL.

An Act to amend the Law relating to Slander and Libel.

WHEREAS it is expedient and necessary to alter Preamble.
and amend the Law relating to Slander and Libel:
—Be it therefore enacted, &c.

And it is hereby enacted by the authority of the same,
5 That from and after the passing of this Act, it shall and Jury not to be required or directed to return a verdict of guilty on the mere proof of the publication, and of the sense ascribed.
may be lawful on the trial of any action, indictment or information, for the making or publishing any libel, on the plea of *not guilty* pleaded, that the jury sworn to try that issue may give a general verdict of guilty or not
10 guilty upon the whole matter put in issue in such action, or upon such indictment or information, and shall not be required or directed by the Court or Judge before whom such action, indictment or information, shall be tried, to find the defendant guilty merely on the proof of publica-
15 tion by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action, indictment or information: Provido. Provided always, that the Court or Judge before whom such trial shall be had, shall, according to their or his discretion, give their or his
20 opinion and directions to the jury on the matter in issue, as in other cases: And provided also, that the jury may Provido.
on such issue find a special verdict, if they shall think fit so to do, and that the defendant, if found guilty, may move in arrest of judgment on such ground and in such
25 manner, as he might have done before the passing of this Act.

II. And be it enacted, That in any action for defamation it shall be lawful for the defendant, when he has
30 pleaded *not guilty* only, or has suffered judgment by default, or judgment has been given against him on demurrer, to give in evidence in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such defamation, before the commencement of the action or as soon afterwards as he had an
35 opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology. Defendant may prove in mitigation of damages, that he offered a written apology.

III. And be it enacted, That in an action for libel contained in any public newspaper or other periodical pub-
40 lication, it shall be competent for the defendant to plead that such libel was inserted in such newspaper or other Defendant may plead that the libel was inserted in any newspaper, &c. without malice.

or gross negligence, and that he offered to publish an apology. 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 that any 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 be of the same effect, and be available to the same extent and in the same manner, 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 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 Parliament of Upper Canada, passed in the Session held in the seventh year of the reign of his late Majesty, intituled, "*An Act for the further amendment of the Law and the better advancement of Justice,*" and that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

And may pay money into Court as amends.

Notwithstanding the exception in Act of U. C. 7 W. 4 c. 3.

Reply to such plea may be general.

Punishment for extorting money by threatening to publish, or promising to prevent the publication of a libel.

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 or concerning 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 fined any sum not exceeding *one hundred pounds*, and imprisoned in the common gaol for a period not exceeding two years.

Punishment for publishing a libel knowing it to be false.

V. And be it enacted, That 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 a fine of not more than *fifty pounds*, and to be imprisoned in the common gaol for a period not exceeding one year.

Punishment for publishing any libel.

VI. And be it enacted, That if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine and im-
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sonment or both; as the Court may award, so as such fine do not exceed the sum of £25, nor such imprisonment the period of six calendar months:

VII. And be it enacted, That on the trial 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 was for the public benefit that such matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged as a defence 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, 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 for the defendant to plead *not guilty*, and that no defence shall be taken away or prejudiced under the plea of *not guilty*, which the defendant can now make under such plea to any indictment or information for a defamatory libel.

Truth being pleaded, may be inquired into, but shall not amount to a defence, except in certain cases.

Reply may be general.

As to aggravation or mitigation of offence by such plea.

Proviso.

Proviso.

VIII. And be it enacted, That whenever upon the trial of any indictment or information for the publication of a libel, under the 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 that the said publication did not arise from want of due care or caution on his part.

In certain cases Defendant may prove that publication was made without his authority. &c.

IX. 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 be given against the defendant, he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information; and if judgment be given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by

Private prosecutor if successful entitled to costs, and so of Defendant.

How recover-
able. reason of such indictment or information, such costs
so to be recovered by the prosecutor or defendant
respectively, to be taxed by the Clerks of the Courts
of Queen's Bench or Common Pleas in Toronto, or their
respective deputies in the counties where such trial shall
be had, at the option of the party in whose favor such
costs are to be taxed; such costs to be recoverable by
writ of attachment on the order of any Judge of the Super- 5
ior Courts of Common Law or of any judge of the County
Court in the county in which such indictment or informa- 10
tion shall have been tried, and all proceedings for the
recovery of such costs shall be entitled in the Court of
Oyer and Terminer for the County in which such trial
has been had, and such writ of attachment shall be return-
able in either of the Superior Courts of Common Law as 15
in other cases of attachment, and on its return, such pro-
ceedings shall be had thereon as may now be had in any
case of attachment for non-payment of costs pursuant to
any order or rule of either of the said Superior Courts.

Proceedings
for recovery,
how entitled. . . . X. And be it enacted, That this Act shall be in force 20
Act to apply
to U. C. only. in Upper Canada only.