

Laws of Her Majesty's Province of Upper Canada, passed in the year 1850. Toronto: Stewart Derbshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 60

An Act to amend the Law relating to Slander and Libel. 24th July, 1850.

Whereas it is expedient and necessary to alter and amend the Law relating to Slander and Libel: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That from and after the passing of this Act, it shall and 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 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 publication 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: 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 opinion and directions to the jury on the matter in issue, as in other cases: And provided also, that the jury may 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 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 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 opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology.

III. 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 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, be 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.

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.

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 Goal for a period not exceeding one year.

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 imprisonment, or both, as the Court may award, so as such fine do not exceed the sum of Twenty-five Pounds, 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.

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.

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 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 Superior Courts of Common Law, or of any Judge of the County Court in the county in which such indictment or information 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 returnable in either of the Superior Courts of Common Law as in other cases of Attachment, and on its return, such proceedings 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.

X. And be it enacted, That this Act shall be in force in Upper Canada only.