

## No. 11.—1845.

## AN ORDINANCE to amend the Law respecting Defamatory Words and Libel.

(L. S.) H. MACLEOD.

No action of defamation to be maintainable in respect of words spoken, except where such action would be maintainable by the law of England.

**F**OR the assimilating the law respecting defamatory words and libel to the law of England, and for the better protection of private character, and for more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty, Be it enacted by His Excellency the Governor in and over the said Island and its dependencies, by and with the advice and consent of the Council of Government thereof, That in any of the Courts of Justice in the said Island no action for defamation shall be maintainable in respect of words spoken except in those cases in which an action would be maintainable in respect of the same words in the Courts of Common Law at Westminster.

The truth may be pleaded by way of justification in actions for defamation or libel.

2. And be it enacted, That in any action for defamation or for libel it shall be lawful for the defendant to plead the truth of the matters charged by way of justification in the same manner as he might do in any like action in any Court of Common Law at Westminster, and such plea shall be a sufficient answer in law to any such action; and if on the issue joined on such plea a verdict shall pass for the defendant, the defendant shall have final judgment and recover his costs of suit.

Offer of an apology admissible in evidence in mitigation of damages.

3. And be it enacted, That in any action for defamation, it shall be lawful for the defendant (after notice in writing of his intention so to do 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 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.

In an action against a newspaper for libel, the de-

4. And be it enacted, That in any action for a libel contained in any public newspaper or other periodical publication it shall be competent to 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, 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 shall 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 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 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 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 Ordinance entitled, "An Ordinance for the better administration of justice, and for extending the benefit of trial by jury to certain civil cases, and for assimilating the mode of proceeding in civil actions to that of the Courts of Common Law at Westminster:" and that to such plea to such action it shall be competent to the plaintiff to reply generally denying the whole of such plea.

defendant may plead that it was inserted without malice and without neglect, and may pay money into Court as amends.

5. 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 and 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 upon 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 imprisoned with or without hard labour in the Royal

Publishing or threatening to publish a libel, or proposing to abstain from publishing anything with intent to extort money, punishable by imprisonment and hard labour.

Gaol for any term not exceeding three years; Provided always that nothing herein contained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings.

False defama-  
tory libel  
punishable by  
imprisonment  
and fine.

6. 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 be imprisoned in the Royal Gaol for such term not exceeding two years, and to pay such fine, as the Court shall award.

Malicious de-  
famatory libel  
punishable by  
imprisonment  
or fine.

7. 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 or imprisonment or both, as the Court may award; such imprisonment not to exceed the term of one year.

Proceedings  
on the trial of  
an indictment  
for a defama-  
tory libel.

8. And be it enacted, That on the trial of any indictment 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 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 defence to such indictment, it shall be necessary for the defendant in pleading to the said indictment to allege the truth of the said matters charged in the manner 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 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, 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 shall in no case be inquired into without such plea or justification: Provided also that in addition to such plea it shall be competent

Double plea.

to the defendant to plead a plea of not guilty : Provided also that nothing in this Ordinance 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 for defamatory words or libel.

Proviso as to plea of not guilty in civil and criminal cases.

9. And be it enacted, That whensoever upon the trial of any indictment 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.

Evidence to rebut prima facie case of publication by an agent.

10. And be it enacted, That in the case of any indictment 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, and that upon a special plea of justification to such indictment, 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 is tried.

On prosecution for libel, defendant entitled to costs on acquittal.

11. And be it enacted, That wherever throughout this Ordinance in describing the plaintiff or the defendant, or the party affected or intended to be affected by the offence, words 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 provision, or the context of the Ordinance, shall exclude such construction.

Interpretation of Ordinance.

12. And be it enacted, That this Ordinance shall commence and take effect upon and from the day of the promulgation thereof.

Commencement of Ordinance.

Passed in Council this twenty-third day of April, one thousand eight hundred and forty-five.

JAMES PORTER,

*Acting Clerk of Council.*

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No. 14—1845.

AN ORDINANCE for the better Administration of the Estates of deceased Persons, and for the Amendment of the Law in respect of Tacit Mortgages.

(L. S.) H. MACLEOD.

Concursos  
of Creditors  
abolished,

**WHEREAS** it is expedient that provisions should be made for the better administration of the estates of deceased persons, in payment of their debts and legacies, and for the amendment of the law in respect of tacit mortgages: Be it therefore enacted, by his Excellency the Governor and Commander-in-Chief in and over the said Island and its dependencies, by and with the advice and consent of the Council of Government thereof, That from and after the commencement of this Ordinance, no proceedings by way of concurso of creditors shall be allowed in any Court of Justice in the said Island.

The Supreme  
Civil Court to  
have the same  
powers for en-  
forcing a due  
administration  
of assets as  
Courts of  
Equity in  
England.

**2.** And be it enacted, That the Supreme Civil Court, on suit to be commenced therein by bill on behalf of any creditor, legatee, heir or next of kin of any testator or intestate, shall have and exercise such and the same powers and authority to enforce a due administration of the assets, as well real as personal, of such testator or intestate in payment of his debts and legacies, and where necessary to marshal such assets as are had and exercised in the like cases by Courts of Equity in England.

Assets to be  
administered  
in the same  
order as legal

**3.** And be it enacted, That all the debts and liabilities of every testator or intestate who shall depart this life after the commencement of this Ordinance, shall be paid