



THE HONGKONG Government Gazette.

報 門 轅 港 香

Published by Authority.

No. 9. VICTORIA, SATURDAY, 26TH FEBRUARY, 1887. VOL. XXXIII.

號九第 日四初月二年亥丁 日六十二月二年七十八百八千一 簿三十三第

GOVERNMENT NOTIFICATION.—No. 73.

His Excellency the Officer Administering the Government has given his assent, in the name and on behalf of the Queen, to the following Ordinance passed by the Legislative Council:—

Ordinance No. 5 of 1887.—*An Ordinance enacted by the Governor of Hongkong, with the advice of the Legislative Council thereof, entitled An Ordinance to amend the Law respecting Defamatory Words and Libel.*

By Command,

FREDERICK STEWART,
Acting Colonial Secretary.

Colonial Secretary's Office, Hongkong, 22nd February, 1887.

(LS) W. H. MARSH.

No. 5 of 1887.

An Ordinance enacted by the Governor of Hongkong, with the advice of the Legislative Council thereof, entitled *An Ordinance to amend the Law respecting Defamatory Words and Libel.*

Title.

[22nd February, 1887.]

BE it enacted by the Governor of Hongkong, with the advice of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited for all purposes as "*The Defamation and Libel Ordinance, 1887.*"

Short title.

2. So much of Ordinance No. 3 of 1854 as relates to the Act passed in the 6th and 7th years of Her Present Majesty chapter ninety-six is hereby repealed, but such repeal shall not affect anything lawfully done or suffered thereunder.

Repeal of No. 3 of 1854 (in pt.)

3. In any action or suit for defamation it shall be lawful for the defendant (after notice in writing of his intention so to do, duly given to the plaintiff within a reasonable time before the hearing of the cause) 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 suit or as soon afterwards as he had an opportunity of doing so in case the action or suit shall have been commenced before there was an opportunity of making or offering such apology.

Offer of an apology admissible in evidence in mitigation of damages in action or suit for defamation. (6 and 7 V. c. 96 s. 1.)

4. In an action or suit for a libel contained in any public newspaper or other periodical publication it shall be competent to the defendant to set up as a defence that such libel was inserted in such newspaper or other periodical

Plea of absence of malice, &c., and of apology (6 and 7 V. c. 96 s. 2.)

publication without actual malice, and without gross negligence, and that before the commencement of the action or suit 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 or suit or that to such defence to such action or suit it shall be competent to the plaintiff to reply generally denying the whole of such defence provided always that it shall not be competent to any defendant in such action or suit to file any such defence as aforesaid without at the same time making a payment of money into Court by way of amends and every such defence so filed without such payment into Court shall be deemed a nullity and may be treated as such by the plaintiff in the action or suit.

Publishing or threatening to publish a libel or proposing to abstain from publishing any thing with intent to extort money, punishable by imprisonment and hard labour. (6 and 7 V. c. 96 s. 3.)

5. 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 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, on being convicted thereof on information shall be liable to imprisonment with or without hard labour, for any term not exceeding three years; provided always, that nothing herein contained shall in any manner alter or affect any law or Ordinance now in force in respect of the sending or delivery of threatening letters or writings.

False defamatory libel punishable by imprisonment and fine. (6 and 7 V. c. 96 s. 4.)

6. 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 imprisonment for any term not exceeding two years, and to pay such fine as the Court shall award.

Malicious defamatory libel, by imprisonment or fine. (6 and 7 V. c. 96 s. 5.)

7. 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 upon the trial of an information for a defamatory libel. (6 and 7 V. c. 96 s. 6.)

8. On the trial of any 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 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 information it shall be necessary for the defendant, in pleading to the said information, to allege the truth of the said matters charged in the manner now required in alleging a justification to any action or suit of 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 if after such plea the defendant shall be convicted on such 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 to disprove the same: provided always, that the truth of the matters charged in the alleged libel complained of by such 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 Ordinance contained shall take away or prejudice any defence under a plea of not guilty which it is now competent to the defendant to make under such plea to any information for defamatory words or libel.

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

Evidence to rebut *prima facie* case of publication by an agent. (6 and 7 V. c. 96 s. 7.)

9. Whensoever, upon the trial of any 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.

10. In the case of any information at the instance of 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 information and upon a special plea of justification to such 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 information is tried.

On prosecution for private libel defendant entitled to costs on acquittal. (6 and 7 V. c. 96 s. 8.)

11. It shall and may be lawful for any person who now is, or hereafter shall be a defendant in any civil or criminal proceedings commenced or prosecuted in any manner soever, for or on account or in respect of the publication by any such person or by his servant of any reports, papers, votes, or proceedings of the Legislative Council of the Colony by or under the authority of such Council, to bring before the Court in which such proceeding shall have been or shall be so commenced or prosecuted, or before any Judge of the same first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the Governor or the presiding member of such Council for the time being or of the Clerk of the Council stating that the report, paper, votes, or proceedings as the case may be, in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted, was published by such person or by his servant, by order or under the authority of such Council together with an affidavit verifying such certificate; and such Court or Judge shall thereupon immediately stay such civil or criminal proceeding, and the same, and every writ of process issued, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Ordinance.

Stay of civil or criminal proceedings against person for publication of papers printed by order of the Colonial Council upon certificate and affidavit of authority to publish. (3 and 4 V. c. 9 s. 1.)

12. In case of any civil or criminal proceeding hereafter to be commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes, or proceedings, it shall be lawful for the defendant at any stage of the proceedings to lay before the Court or Judge such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes, or proceedings, and the correctness of such copy, and the Court or Judge shall immediately stay such civil or criminal proceeding; and the same, and every writ of process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue of this Ordinance.

Stay of proceedings when commenced in respect of a copy of an authenticated report, &c. (3 and 4 V. c. 9 s. 2.)

13. It shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such report, paper, votes, or proceedings, to give in evidence under the general issue in criminal cases, and in civil cases in support of any allegation in defence, such report, paper, votes, or proceedings, and to show that such extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant.

In proceedings for printing any extract or abstract of a paper it may be shown such extract was *bonâ fide* made. (3 and 4 V. c. 9 s. 3.)

Newspaper Libels.

14. Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement or explanation or contradiction by or on behalf of such plaintiff or prosecutor.

Newspaper reports of certain meetings privileged. (4 and 45 V. c. 60 s. 2.)

No prosecution for newspaper libel without fiat of Attorney General. (44 and 45 V. c. 60 s. 3.)

15. No criminal prosecution shall be commenced before a Court of Summary Jurisdiction against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein, without the written fiat or allowance of the Attorney General being first had and obtained.

Ex officio informations not to be affected.

16. Nothing in this Ordinance shall apply to ex-officio informations filed by the Attorney General nor to informations by the Registrar of the Supreme Court by the direction of the Court at the instance of some private individual.

Inquiry by Magistrate as to libel being for public benefit or being true. (44 and 45 V. c. 60 s. 4.)

17. A Court of Summary Jurisdiction upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Ordinance, or otherwise, might be given in evidence by way of defence by the person charged on his trial on information, and the Court if of opinion after hearing 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.

Provision as to summary conviction for libel. (44 and 45 V. c. 60 s. 5.)

18. Notwithstanding anything to the contrary contained in Ordinance No. 16 of 1875 if the Court of Summary Jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein, is of opinion that though the person charged is shown to have been guilty, the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, such Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily such Court may summarily convict him and adjudge him to pay a fine not exceeding two hundred and fifty dollars.

Passed the Legislative Council of Hongkong, this 11th day of February, 1887.

ARATHOON SETH,
Clerk of Councils.

Assented to by His Excellency the Officer Administering the Government, the 22nd day of February, 1887.

FREDERICK STEWART,
Acting Colonial Secretary.

GOVERNMENT NOTIFICATION.—No. 74.

His Excellency the Officer Administering the Government has been pleased to appoint **NORMAN GILBERT MITCHELL-INNES**, Esquire, to be a Member of the Board of Examiners.

By Command,

FREDERICK STEWART,
Acting Colonial Secretary.

Colonial Secretary's Office, Hongkong, 21st February, 1887..

GOVERNMENT NOTIFICATION.—No. 75.

His Excellency the Officer Administering the Government has been pleased to appoint, under the provisions of Ordinance 8 of 1885, Acting Police Inspector **WILLIAM BAKER** to be an Examiner of Weights and Measures, *vice* Inspector **QUINCEY**, returned to Police duty.

By Command,

FREDERICK STEWART,
Acting Colonial Secretary.

Colonial Secretary's Office, Hongkong, 23rd February, 1887.