No. 265.

AN ACT

To authorize civil actions for the recovery of damages arising from newspaper publications negligently made; defining the character of such damages; and requiring every newspaper published in this Commonwealth to print, in a conspicuous place in each issue, the names of the owners, proprietors or publishers, and the managing editors of the same; and making a violation of this act a misdemeanor, and fixing a penalty therefor.

Civil actions may be brought to recover damages resulting from negligent publication.

Section 1. Be it enacted, &c., That from and after the passage of this act, civil actions may be brought against the proprietor, owner, publisher, or managing editor of any newspaper published in this Common-

wealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, to recover damages resulting from negligence on the part of such owner, proprietor or managing editor in the ascertainment of facts and in making publications affecting the character, reputation or business of citizens.

Section 2. In all civil actions which may be hereafter brought against the proprietor, owner, publisher or managing editor of any newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly, or daily, and whether such owner be an individual, partnership, limited partnership, joint-stock company, or corporation, if it shall be shown that the publication complained of resulted from negligence on the part of such owner, proprietor, manager or editor, in the ascertainment of the facts or in the publication thereof, compensatory damages may be recovered for injuries to business and reputation resulting from such publication, as well as damages for the physical and mental suffering endured by the injured party or parties; and whenever in any such action it shall be shown that the matter complained of is libelous, and that such libelous matter has been given special prominence by the use of pictures, cartoons, head-lines, displayed type, or any other matter calculated to specially attract attention, the jury shall have the right to award punitive damages against the defendant or defendants.

Compensatory damages.

Libelous matter.

Punitive damages.

Section 3. That from and after the passage of this act, each and every newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, shall publish in every copy of every issue, on the editorial page, in a conspicuous position, at the top of reading matter, the name of the owner, owners, proprietor or proprietors of such newspapers, together with the names of the managing editor thereof; and if said newspaper or newspapers shall be owned or published by a corporation, then the name of the corporation shall be published, together with the names of the president, secretary, treasurer, and managing editor thereof; and if the said newspaper or newspapers shall be owned or published by a partnership or partnership limited, then the names of the partners, or officers and managers, of said partnership or partnership limited, shall be published in like manner.

Publication of names or owner, proprietor and managing editor.

Section 4. In the event of any change being made in the proprietor, owner, publisher or managing editor of any newspaper, or in the office of president, secretary or treasurer of any corporation owning and publishing said newspaper, or any change in the name of the copartners, the said change or changes shall be duly set forth in the next edition, or issue, of said newspaper, following said change or changes.

Change of ownership, etc.

Section 5. Any person, firm, limited partnership or corporation, publishing a newspaper in Pennsylvania, which omits, fails or neglects to carry out the provisions of sections three and four of this act, and make the publication required by the preceding sections, shall be guilty of a misdemeanor; and upon conviction thereof shall be fined not less than five hundred dollars, nor more than one thousand dollars. Misdemeanor.

Section 6. All acts or parts of acts inconsistent herewith be and the same are hereby repealed. Repeal.

Approved—The 12th day of May, A. D. 1903. The questions raised by Senate bill No. 690 are of very grave importance. They affect large business interests, the freedom of speech and the press, the right of the citizen to be informed concerning current affairs and the conduct of government, as well as his right to protect his reputation and home from the injuries that result from careless or negligent, as well as malicious false report. They are of importance for the further reason that, whichever way decided, the fact that they are raised indicates a widespread dissatisfaction with existing conditions, and their correct decision is likely to have an effect within and without the Commonwealth. They are deserving, therefore, of the most careful consideration, and the conclusion, unaffected by any personal feeling and unswayed by any fear of personal consequences, ought to be reached upon the high plane of what will be for the good of the people.

Few persons have read or have had the opportunity of reading the provisions of this bill. In order that the opportunity may be given, I quote the language in full as follows:

"That from and after the passage of this act, civil actions may be brought against the proprietor, owner, publisher or managing editor of any newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly, or daily to recover damages resulting from negligence on the part of such owner, proprietor or managing editor in the ascertainment of facts and in making publications affecting the character, reputation or business of citizens.

"Section 2. In all civil actions which may be hereafter brought against the proprietor, owner, publisher or managing editor of any newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, and whether such owner be an individual, partnership, limited partnership, joint stock company or corporation, if it shall be shown that the publication complained of resulted from negligence on the part of such owner, proprietor, manager or editor, in the ascertainment of the facts or in the publication thereof, compensatory damages may be recovered for injuries to business and reputation resulting from such publication, as well as damages for the physical and mental suffering endured by the injured party or parties; and whenever in any such action it shall be shown that the matter complained of is libelous, and that such libelous matter has been given special prominence by the use of pictures, cartoons, headlines, displayed type, or any other matter calculated to specially attract attention, the jury shall have the right to award punitive damages against the defendant or defendants.

"Section 3. That from and after the passage of this act each and every newspaper published in this Commonwealth, whether the same be published monthly, bi-weekly, semi-weekly or daily, shall publish in every copy of every issue, on the editorial page, in a conspicuous position at the top of reading matter, the name of the owner, owners, proprietor or proprietors of such newspapers, together with the names of the managing editor thereof; and if said newspaper or newspapers shall be owned or published by a corporation, then the name of the corporation shall be published, together with the names of the president, secretary, treasurer and managing editor thereof; and if the said newspaper or newspapers shall be owned or published by a partnership or partnership limited, then the names of the partners, or officers and managers, of said partnership or partnership limited, shall be published in like manner.

"Section 4. In the event of any change being made in the proprietor, owner, publisher or managing editor of any newspaper, or in the office of president, secretary or treasurer of any corporation owning and publishing said newspaper, or any change in the name of the co-partners, the said change or changes shall be duly set forth in the next edition, or issue, of said newspaper following said change or changes.

"Section 5. Any person, firm, limited partnership or corporation, publishing a newspaper in Pennsylvania, which omits, fails or neglects to carry out the provisions of sections three and four of this act, and make the publication required by the preceding sections, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars.

"Section 6. All acts or parts of acts inconsistent herewith be and the same are hereby repealed."

There is nothing in the terms of the bill which prevents any newspaper from making such comments upon legislative measures or upon the official acts of State, municipal, county or public officers as are proper for the information of the public or are in the line of legitimate public discussion. There are no inhibitions in the bill. It subjects all preliminary inquiries as to facts and their subsequent publication to the test of care. The doctrines of the law of negligence are well known and apparently easy of application. Haste and recklessness in the ascertainment of facts prior to publication, or in the manner of publication, amounting in the judgment of a court to negligence or the want of that degree of care which a man of ordinary prudence would exercise under the circumstances, will, if proved, give a ground of action for such damages as result from injuries to business and reputation. There is no interference with "privileged communications."

The bill in its application is not confined to officials, but affects as well the citizen or business man, whose conduct constitutes no part of the right of the public to information. The corporation officer who has been falsely charged with crime; the manufacturer who has been falsely accused of being a drunken brawler; the woman whose domestic griefs have been unfeelingly paraded, or whose chastity is improperly suspected; the student who has been falsely accused of murder; the clergyman who has been cruelly maligned; the quiet citizen whose peace of mind has been destroyed

by the publication of evil gossip; the merchant whose credit has been affected by groundless rumors; the sufferers from reckless but not necessarily malicious publications, are given the right, not to prohibit publication, but to recover the damages which they have sustained, provided they prove negligence or lack of care on the part of the publishing newspaper. All of these are instances of what has in fact recently occurred.

Within a few days, in a leading article on the first page of a daily journal, under large headlines, upon a rumor of unknown source as to the name of a suggested appointee to the position of Prothonotary of the Supreme Court, when no appointment had been made and no utterance, official or otherwise, had emanated from any member of that court, that high tribunal was subjected to a covert assault under the words "Machine After Control of the Supreme Court."

A mayor of our chief city has been called a traitor, a senator of the United States has been denounced as a yokel with sodden brain, and within the last quarter of a century, two Presidents of the United States have been murdered, and in each instance the cause was easily traceable to inflammatory and careless newspaper utterance. A cartoon in a daily journal of May 2nd defines the question with entire precision. An ugly little dwarf, representing the Governor of the Commonwealth, stands on a crude stool. The stool is subordinate to and placed alongside of a huge printing press with wheels as large as those of an ox-team, and all are so arranged as to give the idea that when the press starts the stool and its occupant will be thrown to the ground. Put into words, the cartoon asserts to the world that the press is above the law and greater in strength than the government. No self-respecting people will permit such an attitude to be long maintained. In England a century ago the offender would have been drawn and quartered and his head stuck upon a pole without the gates. In America to-day this is the kind of arrogance which "goeth before a fall."

If such abuse of the privileges allowed to the press is to go unpunished, if such tales are permitted to be poured into the ears of men, and to be profitable, it is idle to contend that reputable newspapers can maintain their purity. Evil communications corrupt good manners. One rotten apple will ere long spoil all in the barrel. The flaring headlines, the meretricious art, the sensational devices and the disregard of truth, in time will creep over them all. Men are affected by proximity and professional sympathy. When recently a verdict of $25,000 was rendered against a journal

for libel, this entirely proper item of news only reached the public by the methods of a hundred years ago. It was unpublished, and each man whispered the fact to his neighbor. It is equally idle to contend that untrue statements and vicious assaults produce no effect and that the upright are unharmed. A whole generation of young men are being trained to a familiarity with crime and to disrespect for government. Even the Legislature recently, by an act which passed both Houses, held the threat of imprisonment over justices of the peace for what would have been at most only a neglect of duty. Bishops, too, hurry into print without investigation, and with only such information as comes from muddy sources, to express their disregard for those whom the people have entrusted with authority. Both incidents indicate a tone which is already too prevalent and is being steadily cultivated to the public detriment. Were a stranger from Mars by some accident to read our daily press, he would conclude that the world is inhabited by criminals and governed by scoundrels. It is sad to reflect that some historian of five hundred years hence, misled by what he reads, will probably study the statesman whom we know to be able and strong, generous and kindly, keeping his promises and paying his debts, and depict him with the features of an owl and the propensities of a Nero or Caligula. The motive which leads to the degradation of the press is very plain and by no means unusual. It is the same motive which causes men to put deleterious chemicals into food, weak iron into the boilers of engines, and wood into the flues of houses,—the desire to produce cheaply in order that there may be a profitable sale. There is no animosity toward the poor creature who may take copperas into his stomach or scandal into his mind, but the willingness to do injury for a reward needs the supervision and restraint of the law in each instance alike. Where the conscience of the individual is too hardened to prevent him from going astray, where trade associations have become a bond of sympathy rather than a curb for wrong conduct, and injuries are inflicted upon others, then the law ought to lay its heavy hand upon those who offend, whether they be weak or whether they be strong. It is not the individual attacked who is alone concerned. The Commonwealth is interested that those who render her service should be treated with deference and respect, so that when they go forth in the performance of her functions those to whom they are sent may feel that they are vested with authority. Let there be no mistake about it. In the long run, society always finds a way to protect itself. For continual, persistent public violation of the law, the

publication so offending may be abated by the courts as a public nuisance. When, during the war of the Rebellion, a New York journal forged a proclamation with the name of the President attached to it, to the great injury of the nation then in the midst of a struggle for life, Mr. Lincoln promptly suppressed the publication. The liberty of the press to scatter injurious falsehood no more bound him than the withes bound Samson. He established a precedent which no doubt will be followed in the future should a like occasion demand it. The existence and growth of the evil is recognized by all observing men, has been pointed out in repeated warnings by the Supreme Court, and was frankly acknowledged by the representatives of the press at the hearing upon the present bill. I listened in vain to hear any remedy they might be able to suggest. Many years experience on the Bench has led me to the conclusion that crimes are widely propagated not by the malice but by the recklessness of the press, and that in certain classes of cases, among them murder, the accused were at times convicted or acquitted before they reached the court room. But for the unfortunate decision that the Legislature could limit the courts in imposing punishment for contempt to acts occurring within the court room, as though violation of an order had some relation to doors and windows, the courts could have prevented this interference with the performance of their functions and this aggression upon personal liberty. Such a condition of things is much to be deplored and it ought to be prevented if possible. The bill offers as a remedy for these ills, or some of them, the application of the principles of the law of negligence to the publication of newspapers. All that this means is that they shall exercise "reasonable care" in the ascertainment of facts and the announcement of comment which may injuriously affect the reputation or business of other people. It is a law of almost universal application in the affairs of men. When we walk the streets or drive a horse, or light a fire or make a shoe or build a house, we must take care that we do not cause harm to others. It applies to the gatherer of garbage. Why should it not apply to the gatherer of news? It applies to the lawyer, the doctor and the dentist, in the exercise of his profession. Why should it not apply to the editor? It is impossible to give any logical reason which will bear examination why they should be exempt. The damages provided for by the bill follow the ordinary rule of damages for want of reasonable care. When a man is bitten by a dog or gored by a bull, or cut or burned, or overturned or is run over by a hand cart or street car, through negligence, he may recover compensation for physical

and mental suffering. This measure of damage is peculiarly applicable and in fact essential in the cases of injuries intended to be guarded against by the bill. When a woman is falsely called a strumpet, it does not break her arm or rob her of her wardrobe. It hurts her feelings, and if she cannot get compensation for her mental suffering she can get nothing. If malicious untruth is emphasized by picture and headline, punitive damages are awarded. Is there any good reason to the contrary? If a man gouges out the eyes or rubs pepper into the wounds of his adversary, or cuts the tongue out of his neighbor's horse, the damages are always left to the discretion of a jury.

An upright and worthy gentleman, trained to the law, who has worn a sword in the service of his country, and who bears a name honored in Pennsylvania for more than two hundred years because of its connection with an impressive and heroic event, is sent by the people to the Legislature, and in the performance of his duty and upon the responsibility of his oath introduces a proper bill which is not agreeable to the press. It is not shown that the bill would be harmful or unwise. The policy is not confronted with argument pointing out its error or weakness. But some outcast is hired to pervert his name from Pusey into "pussy" and to draw contorted cats which are scattered broadcast over the land in the hope that the vile and vulgar will snicker at his wife and children when they pass. Could the most just and kindly of judges, could any friend of the press meaning to be fair, say that should he bring suit against the newspapers which committed this outrage and indecency he ought not to be permitted to recover what a jury shall regard as compensation?

The bill provides, under penalty, that the names of the owner, proprietor, publisher and managing editor shall be printed with each issue. The purpose of the provision is that it may be known who is responsible for the publication. Every business man prints upon his bills and letterheads and puts in front of his store, his name. Every doctor and every lawyer puts his name on his office door. The law provides that a record shall be made, open to the public, of those who compose partnerships and limited partnerships. And yet every day pages of material are printed purporting to be a record of the current affairs of the world, and claiming the right to sit in supervision upon the courtesies of the parlor and the doings of public officials, and no one knows what their origin, whence they come, who is he who writes them or who is responsible for them. If the vendor of a horse were to insist upon wearing a mask so as to escape identification, who would buy of him? The Veiled Prophet, though

preaching about piety and virtue, was so veiled because both hideous in appearance and libertine in conduct. No harm and much good may come from requiring such publicity. These are all of the provisions of the bill, and no one of them would seem to be uncalled for, unjust or unduly harsh.

Since the Constitution of this State, in its declaration concerning liberty of the press, directs that there shall be responsibilty "for the abuse of that liberty," and since the test is that publications shall not be "maliciously or negligently made," it would appear to be in entire accord with that instrument that newspapers should be held accountable in damages for negligence. Some technical objections are made to the bill. It is urged that since weekly newspapers are nowhere mentioned, it offends against that provision of the Constitution which prevents special legislation. A careful examination shows that the enacting clauses are in general words, "each and every newspaper" and "any newspaper," and that the enumeration of the different kinds of newspapers is mere description and unessential. The omission of the word "weekly" was unwise but in no sense fatal. If hereafter a newspaper should be issued every other day or twice a day, and thus not be included in the descriptive words used, it would, as well as the journals published weekly, be covered by the general enacting words, and be subject to the provisions of the bill. All of the provisions relate to one general subject and appear to be sufficiently described in the title. It is further urged that the bill ought not to become a law because not read upon three several days in the House of Representatives before its final passage. If it was not so read, then undoubtedly there was a failure upon the part of the House to perform its duty. Whenever, however, the bill is signed by the President of the Senate and the Speaker of the House, it is an official certificate that it has been passed in accordance with the constitutional requirements and the rules governing the action of those bodies. But little thought is needed to see that the Governor has no responsibility for, and can exercise no supervision over, the manner of the deliberations of the Legislature. He has no part or parcel in them, he has no place on the floor, and save by report and unofficially has no knowledge of what occurs there, except as they give it to him. The two houses constitute a separate branch of the government, and were he to interfere it would be an encroachment and lead to untold commotions. He can no more dispute their certifications than could they inquire into his motives for signing a bill or withholding his approval. If they should assert that it was properly passed and he should as-

sert to the contrary, who is to decide the disputed question of fact, he who officially knows nothing about it, or they who are given the power? If it is proper legislation in correct form, how could he justify himself in disapproving it on the ground that the motives were impure or the manner of passing it informal? In the case of Kilgore vs. Magee, 85 Penna. 412, where it was alleged that the bill had not been read three times, the Supreme Court said that the duty of seeing that this mandate was observed was solely that of the members, and further: "In regard to the passage of the law and the alleged disregard of the forms of legislation required by the Constitution, we think the subject is not within the pale of judicial inquiry." This furnishes a safe rule to follow. The purpose of the reading upon three different days is not to allow time for those interested to impress their views upon the legislators, but to insure that the legislators have the opportunity for hearing and voting advisedly. In the present case there was more than the usual opportunity given for preliminary discussion by the people. Some such legislation was recommended in the Inaugural address. A bill concerning cartoons was introduced early in the session and widely published. This bill was read three times in the Senate and once in the House. A similar bill had been read twice in the House when the present bill was substituted, so that if the allegation of irregularity be correct, at least we can be assured that the action taken was preceded by numerous forewarnings.

The proposed legislation has been regarded by a large proportion of the reputable press with great misgivings. It is natural that this should be the case. The future is ever uncertain, and the easy way to avoid the dangers ahead is to stand still. This is nevertheless not a wise course. The boy conscious of many lapses, who is invited by a stern father into a private room, enters with a vague dread, and yet the purpose may only be to arrange for the coming holidays. When the gardener comes with his hoe into the garden which has been left to run wild, it is safe to say that it is the mullein and not the pea which is likely to suffer.

This bill may not be the best possible legislation, but the purpose is commendable, and should experience show it to be defective, something better may be devised. It ought to be cordially and cheerfully accepted by the reputable press, for they have a special interest in its becoming a law. Where the tares occupy the ground, the wheat perishes. It threatens them with no danger. Seeking to utter the truth and not the falsehood, what have they to fear? Into our courts where learned judges administer the law with

fidelity and juries are drawn from the masses of the people well fitted to determine who is the wrongdoer, they are not likely to be summoned, or if summoned they may go with entire safety. This much is certain. Since the laws of God and nature are immutable and inexorable, unless means are found to uproot some of the tendencies of modern journalism confidence already badly shaken will be utterly lost, and the influence of the press, which has been so potent an agent in the development of civilization and in securing civil liberty, will be gone forever.

With a serious sense that the event is of more than ordinary moment, with full knowledge of the importance of the press and of its value to mankind through all past struggles, and with the hope and belief that the greater care and larger measure of responsibility brought about by this law, tending to elevate the meritorious and repress the unworthy, will promote its welfare while benefiting the community, I approve the bill.

SAML. W. PENNYPACKER.