

DEFAMATION ORDINANCE 1938.*

487

Amended 76/63 = 51/64.

An Ordinance relating to Defamation.

1. This Ordinance may be cited as the *Defamation Ordinance* 1938.* Short title.

2. The Ordinance and Acts of South Australia, in their application to the Northern Territory, which are specified in the Schedule to this Ordinance, shall, to the extent therein expressed, cease to apply to the Northern Territory. Repeal.

3. In this Ordinance, unless the contrary intention appears— Definitions.

“newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale and published in the Territory, periodically or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two such papers, parts or numbers;

“the judge,” in relation to proceedings in the Supreme Court, means the Judge of the Northern Territory and, in relation to proceedings in a Local Court, means the Judge of the Northern Territory or a Special Magistrate.

4 Words spoken and published of any woman imputing to her a want of chastity, shall be and shall be deemed to be slander, and an action shall be sustainable for such words in the same manner and to the same extent as for words charging an indictable offence. Words imputing want of chastity to a woman.

5 A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with the proceedings, be privileged: Privilege of newspaper reports of legal proceedings.

Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

6.—(1.) A fair and accurate report published in any newspaper of the proceedings of— Privilege of newspaper reports of proceedings of public meetings and of certain bodies and persons.

(a) a public meeting;

(b) any meeting (not being a meeting to which neither the public nor any newspaper reporter is admitted) of a municipal or district council,

* No. 10, 1938; notified in *Commonwealth Gazette* and commenced on 7th July, 1938.

Defamation Ordinance 1938.

school committee or board of advice, board of health, board or local authority formed or constituted under the provisions of any law in force in the Territory, or of any committee appointed by any of the above-mentioned bodies;

- (c) a meeting in the Territory of any royal commission or select committee of either House of the Parliament of the Commonwealth; or
- (d) a meeting of shareholders in any bank or incorporated company,

and the publication at the request of any Government office or department, or at the request of the Minister, the Administrator or the Commissioner of Police, of any notice or report issued by it or him for the information of the public, shall be privileged unless it is proved that the report or publication was published or made maliciously:

Provided that—

- (a) nothing in this section shall authorize the publication of any blasphemous or indecent matter;
- (b) the protection afforded by this section shall not be available as a defence in any proceedings if it is proved that the defendant was requested to insert, in the newspaper in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other publication, and refused or neglected to insert the letter or statement;
- (c) nothing in this section shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

(2.) For the purposes of this section, "public meeting" means any meeting bona fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

7.—(1.) If any unfair and inaccurate report of any matter mentioned in either of the last two preceding sections is published in any newspaper, every person responsible for the publication of the newspaper shall be guilty of an offence against

this Ordinance, punishable on complaint of any person aggrieved, by a fine not exceeding Ten pounds or by imprisonment not exceeding two months:

Provided that the punishment shall be by fine only if it is proved that the defendant, as soon as practicable after being informed of the unfairness and inaccuracy of the report, published in the newspaper a correction of the report, giving to the correction at least equal prominence to that which was given to the original report.

(2.) Any person making a complaint under this section shall be deemed to have waived all other remedies, both civil and criminal, against the same defendant in respect of the same report.

8. In any action for defamation, the defendant may, after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the defence in the action, give in evidence in mitigation of damages, that he made or offered an apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering an apology for the defamation, as soon afterwards as he had an opportunity of doing so.

Offer of an apology.

9.—(1.) In an action for a libel contained in any public newspaper or other periodical publication, the defendant may plead that the libel was inserted in the 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 the newspaper or other periodical publication, a full apology for the libel, or if the newspaper or periodical publication in which the libel appeared was ordinarily published at intervals exceeding one week, offered to publish such an apology in any newspaper or periodical publication to be selected by the plaintiff in the action.

Defence in action against a newspaper for libel.

(2.) The defendant upon filing such defence may pay into court a sum of money by way of amends for the injury sustained by the publication of the libel.

(3.) To such a defence the plaintiff may reply generally denying the whole of the defence.

10. At the trial of an action for a libel contained in any newspaper, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought an action for damages, or has received or agreed to receive compensation, in respect of a libel or libels to the same purport or effect as the libel for which the action has been brought.

Evidence in mitigation of damages.

Consolidation
actions.

11.—(1.) The judge or the court may, upon an application by or on behalf of two or more defendants in actions in respect of the same or substantially the same libel, brought by the same person, make an order for the consolidation of the actions.

(2.) After the making of the order, and before the trial of the actions, the defendants in any new actions brought in respect of the same or substantially the same libel, shall, upon a joint application being made by the new defendants and the defendants in the actions already consolidated, be entitled to be joined in a common action.

(3.) Any actions so consolidated shall be tried together.

Evidence as to
publication,
matters
charged, &c.

12. A court of summary jurisdiction may, upon the hearing of a charge against any person in respect of a libel published in a newspaper, 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 any law in force in the Territory or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment; and if, after hearing that evidence, the court is of opinion that there is a strong or probable presumption which would result in the acquittal of the person charged, it may dismiss the charge.

Obscene matter.

13. In any indictment or other judicial proceeding instituted against the publisher of an obscene libel, it shall not be necessary to set out the obscene passage, but it shall be sufficient to deposit the book, newspaper or other documents containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns and lines, in what part of the book, newspaper or other document the alleged libel is to be found, and these particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

Proof of
publication of
newspaper or
book.

14. Upon the trial of an action or prosecution in respect of a libel contained in a newspaper or book, the production of the newspaper or book containing a printed statement that it is printed or published by or for the defendant shall be *prima facie* evidence of the publication of the newspaper or book by the defendant.

15 Upon the trial of an action or prosecution in respect of a libel contained in a newspaper, after evidence sufficient in the opinion of the court has been given of the publication by the defendant of the newspaper containing the libel, other prints purporting to be other numbers or parts of the same newspaper formerly or subsequently published, and containing a printed statement that they were published by or for the defendant, shall be admissible in evidence on either side without further proof of publication of them.

Proof of copies of newspaper.

THE SCHEDULE.

Section 2.

Description of Act or Ordinance.	Extent of Repeal.
An Ordinance for adopting certain Acts passed in the Imperial Parliament which was held in Sixth and Seventh Years of the Reign of Her Majesty Queen Victoria, in the Administration of Justice in South Australia, in like manner as other Laws of England are applied therein (No. 17 of 1846)	So much of the Ordinance as adopts sections 1, 2, 9 and 10 of the Act intituled "An Act to amend the Law respecting Defamatory Words and Libel" (6 & 7 Vict., c. 96)
An Act to amend the Law of Slander (No. 7 of 1865) . . . "The Law of Libel Amendment Act, 1895" (No. 646 of 1895)	The whole The whole