

## CHAPTER 4. No. 10.

## LIBEL AND DEFAMATION.

Ordinance  
Ch. 4. No. 10  
-1940.

AN ORDINANCE RESPECTING DEFAMATORY WORDS  
AND LIBEL.

Commence-  
ment.

[26th January, 1846.]

Short title.

1. This Ordinance may be cited as the Libel and Defamation Ordinance.

When action  
for  
defamation  
maintainable.

2. No action for defamation shall be maintainable in any court of justice in the Colony in respect of words spoken, except in those cases in which an action would be maintainable in respect of the same words in England.

The truth  
may be  
pleaded by  
way of  
justification.

3. 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 in England, 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  
apology  
admissible  
in mitigation  
of damages.

4. 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.

5. 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 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 as any payment into court under the rules of the Supreme Court.

Actions  
against  
newspaper

6. Words spoken and published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable: Provided that in any action for words spoken and made actionable by this section, a plaintiff shall not recover more costs than damages, unless the court shall certify that there was reasonable ground for bringing the action.

Words  
imputing  
unchastity  
to woman,  
actionable.

7. In all actions for libel or slanderous words spoken, to be sued or prosecuted by any person in the Supreme Court, if upon the trial the damages shall be found and assessed under nine dollars and sixty cents, then the plaintiff in such action shall have and recover only so much costs as the damages so given or assessed amount unto, any law, custom, or usage to the contrary notwithstanding.

Costs in  
civil actions.

8. 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 for two years and to pay such fine as the Court shall think fit to direct.

False  
defamatory  
libel.

Malicious  
defamatory  
libel.

9. If any person shall maliciously publish any defamatory libel, every such person being convicted thereof shall be liable to be imprisoned for one year, or to pay a fine, or to both such imprisonment and fine, as the Court shall think fit to direct.

Proceedings  
on trial of  
indictment  
for defama-  
tory libel.

10. 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 enquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and 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 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 that the truth of the matters charged in the alleged libel complained of by such indictment shall in no case be enquired into without such plea or 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 the plea of not guilty which is competent to the defendant to make under such plea to any action or indictment for defamatory words or libel.

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

11. Whenever, 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.

12. 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 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.

Costs in private prosecutions.

13. (1) A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.

Newspaper reports of proceedings in court privileged.

(2) It shall not be lawful to print or publish, or cause or procure to be printed or published—

Restriction on publication of reports of judicial proceedings.

(a) in relation to any judicial proceedings, any indecent matter or indecent medical, surgical or physiological details being matter or details the publication of which would be calculated to injure public morals;

(b) in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, or for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that is to say,—

(i) the names, addresses and occupations of the parties and witnesses;

(ii) a concise statement of the charges, defences and countercharges in support of which evidence has been given;

(iii) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon;

(iv) the summing-up of the Judge and the finding of the jury(if any) and the judgment of the court and observations made by the Judge in giving judgment:

Provided that nothing in this part of this subsection shall be held to permit the publication of anything contrary to the provisions of paragraph (a) of this subsection.

Penalties.

(3) If any person acts in contravention of the provisions of this section, he shall in respect of each offence be liable, on summary conviction, to imprisonment for four months, or to a fine of two thousand four hundred dollars, or to both such imprisonment and fine:

Who may be convicted.

Provided that no person, other than a proprietor, editor, master printer, or publisher, shall be liable to be convicted under this section.

Exceptions.

(4) Nothing in this section shall apply to the printing of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Court; or to the printing or publishing of any matter in any separate volume or part of any *bonâ fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character *bonâ fide* intended for circulation among members of the legal or medical professions.

Newspaper reports of proceedings of public meetings and of certain bodies and persons privileged.

14. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a council, board, or local authority formed or constituted under the provisions of any Order in Council, Letters Patent, Act of Parliament, Ordinance or of any committee appointed by any of the above-mentioned bodies; and the publication at the request of any Government office or department of any notice or report issued

by them for the information of the public shall be privileged, unless it shall be proved that such report or publication was published or made maliciously:

Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter:

Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been 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 such report or other publication, and has refused or neglected to insert the same:

Provided further, that nothing in this section contained 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.

For the purposes of this section "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance of discussion of any matter of public concern, whether the admission thereto be general or restricted.

15. It shall be competent for a Judge or the Court, 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 one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Consolidation  
of actions.

In a consolidated action under this section the Court shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant, in the same way as if the actions consolidated had been tried separately; and if the Court

shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, the Court shall proceed to apportion the amount of damages which shall have been so found between and against the said last-mentioned defendants; and the Judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

Power to defendant to give certain evidence in mitigation of damages.

**16.** At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions 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 such action has been brought.

Sanction of Attorney General required for prosecution.

**17.** No criminal prosecution shall be commenced against any proprietor, publisher, printer, editor, or any person responsible for the publication of a newspaper for any libel published therein without the sanction of the Attorney General.