

DEFAMATION ORDINANCE, 1911⁽¹⁾ (PAPUA, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF NEW GUINEA.

An Ordinance to Amend the Law Relating to Defamation.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Defamation Ordinance*, 1911.⁽¹⁾ Short title.

It shall come into operation on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.⁽²⁾

2. The Act (Queensland adopted) 11 Vic. No. 13 being “An Act to amend the Law respecting Defamatory Words and Libel” is repealed. Repeal.

3. In this Ordinance the term “periodical” includes any newspaper review magazine or other writing or print published periodically. Definition of periodical.

4. The unlawful publication of defamatory matter as defined in the Criminal Code for the time being of the Territory is an actionable wrong. Defamation actionable.
Q. 53 Vic.
No. 12, s. 9.

5. In any case other than that of words intended to be read it is a good defence to an action for defamation to prove that the publication was made on an occasion and under circumstances when the person defamed was not likely to be injured thereby. Trivial matters not in writing.
Q. *Ib.* s. 20.

(1) Particulars of this Ordinance are set out in the following Table:—

ORDINANCE OF THE TERRITORY OF PAPUA.

Short title, number and year.	Ordinance by which adopted.	Date on which adoption took effect.
<i>Defamation Ordinance</i> , 1911 (No. 14 of 1911)	<i>Laws Repeal and Adopting Ordinance</i> 1921 (No. 1 of 1921)	9.5.1921 (<i>Cwltth. Gaz.</i> of 6.5.1921)

(2) By Proclamation dated 1.12.1911 and published in *Papua Govt. Gaz.* of 6.12.1911, the *Defamation Ordinance*, 1911, was proclaimed to commence in the Territory of Papua on 1.1.1912.

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Offer of apology admissible in evidence in mitigation of damages.
Q. Ib. s. 21.

6. In an action for defamation the defendant may plead and prove in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action or if the action was commenced before there was an opportunity of making or offering such apology as soon afterwards as he had an opportunity of doing so.

In action against a periodical absence of malice and neglect may be pleaded and money paid into Court.
Q. Ib. s. 22.

7. In an action for the publication of defamatory matter in a periodical the defendant may plead that such matter was published without actual illwill to the person defamed or other improper motive and without gross negligence and that before the commencement of the action or at the earliest opportunity afterwards he inserted in such periodical a full apology for such defamation or if the periodical in which the defamatory matter appeared was ordinarily published at intervals exceeding one week offered to publish the apology in any periodical selected by the plaintiff.

The defendant must upon pleading such defence pay into court a sum of money by way of amends for the injury sustained by the publication of the defamatory matter and such payment into court shall be of the same effect in all respects as in other cases of payment into court.

Consolidation of actions.
Q. Ib. s. 23.

8. The Court or a Judge upon an application by or on behalf of two or more defendants in actions in respect of the publication of the same or substantially the same defamatory matter brought by one and the same person may 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 actions the defendant in any new action instituted in respect of the publication of the same or substantially the same defamatory matter shall also be entitled to be joined in a common action upon a joint application being made by such new defendant and the defendants in the actions already consolidated.

In an action consolidated under this section the Judge shall assess the whole amount of the damages (if any) in one sum but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately and if a verdict is given against the defendants in more than one of the actions so consolidated the Judge shall proceed to apportion the amount of damages so found between and against the lastnamed defendants; and the Judge if he awards to the plaintiff the costs of the action shall thereupon make such order as he deems just for the apportionment of such costs between and against such defendants.

Evidence in mitigation of damages.
Q. Ib. s. 24.

9. At the trial of an action for the publication of defamatory matter in a periodical the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or

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has brought actions for damages or has received or agreed to receive compensation in respect of other publications of defamatory matter to the same purport or effect as the matter for the publication of which the action is brought.

10. No person incurs any liability as for defamation by selling any number or part of a periodical unless he knows that such number or part contains defamatory matter or that defamatory matter is habitually or frequently contained in that periodical.

Protection of innocent sellers of periodicals.
Q. 53 Vic. No. 12, s. 34.

11. No person incurs any liability as for defamation by selling a book pamphlet print or writing or other thing not forming part of a periodical although it contains defamatory matter if at the time of the sale he does not know that the defamatory matter is contained therein.

Protection of innocent sellers of books, &c.
Q. Ib. s. 35.

12. The sale by a servant of a book pamphlet print or writing or other thing whether a periodical or not does not make his employer responsible in respect of defamatory matter contained therein unless it is proved that such employer authorised the sale knowing that the book pamphlet print or other thing contained defamatory matter or in the case of a number or part of a periodical that defamatory matter was habitually or frequently published therein.

Protection of employers.
Q. Ib. s. 36.

13. Upon the trial of an action for unlawfully publishing defamatory matter contained in a book or periodical the production of the book or of a number or part of the periodical containing a printed statement that it is printed or published by or for the defendant shall be *primâ facie* evidence of the publication of the book or of the number or part of the periodical by the defendant.

Imprint to be *prima facie* proof of publication of book or periodical.
Q. Ib. s. 38.

14.—(1.) The defendant in any action commenced or prosecuted in respect of the publication of any paper published by the defendant or by his servant by order or under the authority of the Legislative Council may bring before the Court in which the proceeding is pending or before any Judge thereof first giving twenty-four hours' notice of his intention so to do to the plaintiff a certificate under the hand of the Clerk of the Legislative Council stating that the paper in respect whereof such action is commenced or prosecuted was published by the defendant or by his servant by order or under the authority of the Legislative Council together with an affidavit verifying such certificate and such Court or Judge shall thereupon immediately stay such action and may order the plaintiff to pay the defendant his costs of defence.

Staying proceedings in certain cases.
Q. Ib. s. 40.

(2.) In any action commenced or prosecuted in respect of the publication of a copy of or an extract from or abstract of any such paper the defendant may at any stage of the proceedings lay before the Court or a Judge thereof an original of such paper

Q. Ib. s. 41.

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with an affidavit verifying the same and the Court or Judge may thereupon stay such action and may order the plaintiff to pay the defendant his costs of defence.

Damages may be levied out of types, &c., used in printing defamatory matter.

Q. 53 Vic., No. 12, s. 43.

15. Whenever a judgment is given against any person in an action for publishing any defamatory matter by means of printing the plaintiff in whose favour the judgment is given may under his writ of execution levy the damages penalty and costs out of any property of the defendant in like manner as in ordinary civil actions and also out of the whole of the types presses or printing materials belonging to the person whose types presses or printing materials or any part thereof were used in printing such defamatory matter to whomsoever the same may belong at the time of the levy.

Application of rules of law declared by this Ordinance and the Criminal Code.

Q. 1b. s. 44, altered.

16. The rules of law declared and enacted

(a) by this Ordinance and

(b) by the Criminal Code for the time being of the Territory as to defamation and which are not therein expressly made to relate only to criminal responsibility or prosecutions

shall be applied in all actions for defamation begun after the passing of this Ordinance.

"Slander of Title."

Q. 1b. s. 45.

17. Nothing in this Ordinance relates to the actionable wrong commonly called "Slander of Title."