



1845.

No. 2.

*By His Excellency GEORGE GIBBY, Esquire, Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies, and Vice-Admiral of the same, by and with the advice and consent of the Legislative Council.*

*AN ORDINANCE for adopting certain Acts passed in the Imperial Parliament which was held in the 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.*

**W**HEREAS certain Acts were passed in the Imperial Parliament which was held in the Sixth and Seventh Years of the Reign of Her present Majesty Queen Victoria, intituled respectively "An Act for improving the Law of Evidence," and "An Act to amend the Law respecting defamatory words and libel": And whereas it is expedient to adopt and apply the said recited Acts of Parliament in the administration of justice in South Australia:

Preamble.

6 & 7 Vict., c. 85.

6 & 7 Vict., c. 96.

**BE IT THEREFORE ENACTED BY HIS EXCELLENCY THE GOVERNOR of South Australia, with the advice and consent of the Legislative Council thereof: That the said recited Acts of Parliament shall be**

Adopted and applied in South Australia.

be

be and the same are hereby adopted and shall be applied in the administration of justice in the said Province and its Dependencies in like manner as other Laws of England are therein applied.

Commencement of Ordinance.

II. And be it enacted, that this Ordinance shall commence and take effect from and after the passing hereof except as to offences and other matters heretofore committed or done which shall be dealt with and punished as if this Ordinance had not been passed.

G. GREY,  
Governor and Commander-in-Chief.

*Passed the Legislative Council this First  
day of July, One Thousand Eight  
Hundred and Forty-five.*

W. L. O'HALLORAN,  
Clerk of Council.

## ANNO SEXTO ET SEPTIMO VICTORIÆ REGINÆ.

## CAP. 5.

*AN ACT for improving the Law of Evidence*

WHEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by the present Law and it is desirable that full information as to the facts in issue both in criminal and civil cases should be laid before the persons who are appointed to decide upon them and that such persons should exercise their judgment on the credit of the witnesses adduced and on the truth of their testimony :

Now, therefore, be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same: That no person offered as a witness shall hereafter be excluded by means of incapacity from crime or interest from giving evidence either in person or by deposition according to the practice of the Court on the trial of any issue joined or of any matter or question, or on any inquiry arising on any civil action or proceeding, civil or criminal, in any Court, or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer, or person having by Law, or by consent of parties authority to hear, receive, and examine evidence, but, that every person so offered may and shall be admitted to give evidence on oath or solemn affirmation in those cases wherein affirmation is by Law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence: Provided that this Act shall not render competent any party to any suit, action, or proceeding individually named in the record, or any lessor of the Plaintiff or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any Defendant in replevin may make cognizance, or any person in whose immediate or individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such person respectively: Provided also, that this Act shall not repeal any provisions

Witnesses not to be excluded from giving evidence by incapacity from crime or interest.

Proviso as to parties to suits.

Not to repeal any provision in 7 W. 4, & 1 Vict., c. 26.

provisions in a certain Act passed in the Session of Parliament, holden on the Ninth Year of the Reign of His late Majesty, and on the First Year of the Reign of Her present Majesty, intituled "An Act for the Amendment of the Law with respect to Wills:" Provided that in Courts of Equity any Defendant to any cause, pending in any such Court may be examined as a witness on the behalf of the Plaintiff, or of any co-Defendant in any such cause, saving just exceptions, and that any interest which such Defendant to be examined may have in the matter in question in the cause shall not be deemed a just exception to the testimony of such Defendant, but shall only be considered as affecting or tending to affect the credit of such Defendant as a witness.

In Courts of Equity Defendant may be examined on behalf of the Plaintiff or any co-Defendant, &c.

Not necessary to state in setting out legal proceedings that Jurors had made affirmation.

II. And be it enacted, that wherever in any legal proceedings, whatsoever legal proceedings may be set out, it shall not be necessary to specify that any particular persons who acted as Jurors had made affirmation instead of oath, but it may be stated that they served as Jurymen in the same manner as if no Act had passed for enabling persons to serve as Jurymen without oath.

As to previous suits.

III. And be it enacted, that nothing in this Act shall apply to or affect any suit, action, or proceeding, brought or commenced before the passing of this Act.

Not to extend to Scotland.

IV. And be it enacted, that nothing in this Act shall extend to Scotland.

## ANNO SEXTO ET SEPTIMO VICTORIÆ REGINÆ.

## CAP. 96.

*AN ACT to amend the Law respecting Defamatory Words and Libel.*

FOR the better protection of private character and for effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same: That 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 that he made or offered an apology to the Plaintiff for such defamation before the commencement of the action, or so 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.

Offer of an apology  
admissible in evi-  
dence in mitigation  
of damages.

II. And be it enacted, that in an action for 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 next paper 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, and offered to publish the said apology in any newspaper or periodical publication to be selected by the Plaintiff in such action, and that 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 and be subject to the same rules and regulations as to payment of costs, and the form of pleading, except so far as regards the pleading of such additional facts hereinbefore required to be pleaded by such defendant as if actions of libel had not been accepted from the personal actions in which it is lawful to pay  
money

In an action for a  
libel in a newspaper,  
the Defendant may  
plead that it was in-  
serted without malice  
and without gross  
negligence, and may  
pay money into Court  
as amends.

money into Court under an act passed in the Session of Parliament held in the Fourth year of His late Majesty, entitled "An Act for the further amendment of the Law, and the better advancement of justice," and that to such plea to such action it shall be competent to the plaintiff to reply generally denying the whole of such plea.

Publishing or threatening to publish a libel, &c., with intent to extort money, imprisonment for three years.

III. And be it enacted, that 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, or shall directly or indirectly offer to prevent the printing or publishing of 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, any such offender on being convicted thereof, shall be liable to be imprisoned with or without hard labor in the Common Gaol or House of Correction for any time not exceeding three years: Provided always, that nothing herein contained shall in any manner alter or affect the Law now in force in respect of the sending or delivery of threatening letters.

Punishment for publishing any defamatory libel, knowing the same to be false, imprisonment not exceeding two years, and fine.

IV. And be it enacted, that 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 in the Common Gaol or House of Correction for any time not exceeding two years, and to pay such fine as the Court shall award.

Punishment for publishing any defamatory libel, fine or imprisonment, or both, the imprisonment not to exceed one year.

V. And be it enacted, that 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 indictment, &c., for libel, the truth of the matters charged may be inquired into, if pleaded to be published for the public benefit.

VI. And be it enacted, that on the trial of any indictment or information for a defamatory libel, the Defendant having pleaded such plea as herein is beforementioned, 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 enable the Defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the Defendant in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege

allege that 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 that if after such plea the Defendant shall be convicted on such indictment or information, it shall be competent to the Court in pronouncing sentence to consider whether the guilt of the Defendant is aggravated or mitigated by such plea, and by the evidence given to prove or disprove the same: Provided always, that the truth of such matters charged in the alledged libel complained of by such indictment or 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 Act contained shall take away or prejudice any defence under the plea of not guilty, which is now competent to the Defendant to make under such plea to any action or indictment or information for defamatory words or libel.

Double plea.  
Plea of not guilty.

VII. And be it enacted, that whensoever upon the trial of any indictment or 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.

In case of publication by Agent, Defendant may show that the publication was without his authority, &c.

VIII. And be it enacted, that in case of any indictment or information 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 or information, and that upon a special plea of justification to such indictment or 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 indictment or information is tried.

On prosecution for private libel Defendant entitled to costs on acquittal.

As to costs of plea of justification.

IX. And be it enacted, that wherever throughout this Act in describing the Plaintiff or Defendant, or the party affected or intended to be affected by the offence, words are used importing the singular number or the masculine gender only, yet they shall be understood to include several persons as well as one person, and

Interpretation of Act.

and females as well as males, unless where the nature of the provisions or the context of the Act shall exclude such construction.

Commencement and  
extent of Act.

X. And be it enacted, that this Act shall take effect from the first day of November next, and that nothing in this Act shall extend to Scotland.