Act reprinted pursuant to the Amendments Incorporation Act, 1937

---

# POLICE OFFENCES ACT, 1953-1960

---

With notes of judicial decisions affecting sections of the reprinted Acts

# POLICE OFFENCES ACT, 1953-1960.

BEING

POLICE OFFENCES ACT, 1953, No. 55 OF 1953
[ASSENTED TO 17TH DECEMBER, 1953.]

AS AMENDED BY

POLICE OFFENCES ACT AMENDMENT ACT, 1956, No. 51 OF 1956
[ASSENTED TO 29TH NOVEMBER, 1956.]

POLICE OFFENCES ACT AMENDMENT ACT, 1957, No. 39 OF 1957
[ASSENTED TO 14TH NOVEMBER, 1957.]

POLICE OFFENCES ACT AMENDMENT ACT, 1958, No. 22 OF 1958
[ASSENTED TO 30TH OCTOBER, 1958.]

POLICE OFFENCES ACT AMENDMENT ACT, 1960, No. 1 OF 1960
[ASSENTED TO 12TH MAY, 1960.]

POLICE OFFENCES ACT AMENDMENT ACT (No. 2), 1960, No. 61 OF 1960
[ASSENTED TO 24TH NOVEMBER, 1960.]

AND

POLICE OFFENCES ACT AMENDMENT ACT (No. 3), 1960, No. 62 OF 1960
[ASSENTED TO 24TH NOVEMBER, 1960.]

An Act to consolidate and amend certain enactments relating to offences against public order and other offences punishable in courts of summary jurisdiction, and certain enactments relating to the powers of members of the Police Force, to repeal certain provisions of the Police Act, 1936-1951, and for other purposes incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**1.** This Act may be cited as the "Police Offences Act, 1953-1960". **Short title.**

**2.** This Act shall commence on a day to be fixed by proclamation. **Commencement of Act.**

**3.** The following sections of the Police Act, 1936-1951, are repealed, namely sections 21, 56 to 134 (inclusive), and 139 to 151 (inclusive). **Repeals.**

Interpretation. cf. 2280, 1936, s. 4.

**4.** (1) In this Act, unless the context otherwise requires or some other meaning is clearly intended—

"the Commissioner" means the Commissioner of Police or the person for the time being acting in the office of Commissioner of Police:

"public place" includes—

(*a*) every place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and

(*b*) every place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and

(*c*) every road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley, or thoroughfare, is on private property.

(2) In any proceedings for an offence, in which the court is authorized by this Act to award damages or compensation or to order the forfeiture of any property or the doing of any act, such damages or compensation may be awarded, or such order made in addition to the penalty (if any) imposed by the court.

Proof of lawful authority and other matters.

**5.** Where this Act declares that any act done without lawful authority, or without reasonable cause, or without reasonable excuse, or without lawful excuse, or without consent, shall be an offence, the prosecution need not prove the absence of such lawful authority, reasonable cause, reasonable excuse, lawful excuse or consent, and the onus shall be upon the defendant to prove any such authority, cause, excuse or consent upon which he relies: Provided that the foregoing provision shall not apply to the offence of being in or on any premises or part of premises without lawful excuse.

*Assaulting and Hindering Members of the Police Force.*

Assaulting and hindering police. cf. 2280, 1936, s. 21.

**6.** (1) Any person who assaults any member of the police force in the execution of his duty shall be guilty of an offence.

s. 6. MILLER v. NOBLET (1927) S.A.S.R. 385. Where police constables, whilst carrying out their duty, unlawfully seized certain bottles (which might have been used as evidence of the commission of an offence) and were assaulted by a person endeavouring to seize and break the bottles, and had not abandoned their general duties at the time of the assault, held that the constables were assaulted while acting in the execution of their duty.

Penalty: One hundred pounds, or imprisonment for twelve months, or both such fine and imprisonment.

(2) Any person who hinders or resists any member of the police force in the execution of his duty shall be guilty of an offence.

Penalty: Fifty pounds, or imprisonment for six months, or both such fine and imprisonment.

(3) Upon convicting a person for an offence against this section the court may order him to pay to the member of the police force against whom the offence was committed such sum as the court deems just as compensation for—

(*a*) damage caused by the defendant to any property belonging to the said member or to the Crown:

(*b*) bodily injury caused by the defendant to the said member.

(4) Any compensation so awarded in respect of damage to property of the Crown shall be paid by the member of the police force to the Treasurer in aid of the general revenue of the State.

(5) In this section—

"hinder" includes "disturb":

"member of the police force" includes a special constable.

(6) Where in the hearing of a member of the police force engaged in the execution of his duty a person uses offensive or abusive language to or concerning such member, he shall be deemed to have hindered such member in the execution of his duty.

---

s. 6. (*contd.*) LENTHALL v. CURRAN (1933) S.A.S.R. 248. To warn persons, suspected of being engaged in illegal betting, of the approach of the police amounts to the offence of hindering the police in the execution of their duty; and it is not necessary to show that any offence (of illegal betting) had been committed.

PLUNKETT v. KROEMER (1934) S.A.S.R. 124. A constable is hindered by any obstruction or interference making his duty more difficult of performance.

SYMONS v. KOEHNE (1946) S.A.S.R. 77. In relation to charges under the section, a court of summary jurisdiction is given a wide discretion as to the nature and quantum of the punishment to be awarded and, in exercising such a discretion, is justified in taking into account the menace inherent in the incident, and in such circumstances to award imprisonment rather than a fine, and to make terms of imprisonment cumulative.

BALFOUR v. WESCOMBE (1960) S.A.S.R. 165. Where a police officer went to the door of a dwelling to inquire about the ownership of a motor vehicle parked nearby so as to obstruct a right of way and after being ordered off by the occupant of the dwelling was assaulted by him, held that the police officer was acting in the execution of his duty at the time of the assault and that the occupant was guilty of an offence under section 6 (1).

## *Offences Against Public Order.*

Disorderly and offensive conduct and language.

cf. 2280,1936, ss. 75, 76, 83 (c).

**7.** (1) Any person who in a public place or a police station—

(*a*) behaves in a disorderly or offensive manner; or

(*b*) fights with any other person; or

(*c*) uses offensive language,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) Any person who disturbs the public peace shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(3) In this section—

''disorderly'' includes riotous:

''offensive'' includes threatening abusive or insulting:

''public place'' includes, in addition to the places mentioned in section 4 of this Act, any ship or other vessel (not being a ship or vessel of the navy of any country) in any harbour port dock or river, and any premises licensed under the Licensing Act, 1932-1949, or any part of such premises.

---

s. 7. BRADY v. LENTHALL (1930) S.A.S.R. 314. Offensive words spoken in a public place, frequented by a large number of people, may without any other act be offensive behaviour.

CARROLL v. WOODS (1922) S.A.S.R. 458. Held, on the particular facts, that the office of a district council was not a public place within the meaning of section 63 of the Police Act, 1916.

BARRINGTON v. AUSTIN AND OTHERS (1939) S.A.S.R. 130. The words ''disorderly behaviour'' in section 75 of the Police Act, 1936, refer to any substantial breach of decorum which tends to disturb the peace or to interfere with the comfort of other people who may be in or in the vicinity of a street or public place. It is a question of fact and degree whether the conduct amounts to a nuisance. Where disorderly behaviour consists in the use of obscene language it is not necessary to prove that the individual defendant used any of the words to which the witnesses depose. It is sufficient if the defendant were present and encouraging others to use such language.

RICE v. HUDSON (1940) S.A.S.R. 290. On a charge of disorderly behaviour the evidence showed that the appellant was one of a group of young men in a public street, one of whom used obscene language; apparently he was with the party only when it was on the point of breaking up, but previously had been in the vicinity. There was no evidence that the appellant had taken part in any disorderly conduct or, otherwise than by his presence, encouraged such conduct, nor was there any evidence of any common object or design. Held, on the evidence, that the defendant could not be convicted.

DENSLEY v. MERTIN (1943) S.A.S.R. 144. To turn off the lights as a practical joke in a public hall where a dance is being held is offensive behaviour.

GEBERT v. INNOCENZI (1947) S.A.S.R. 172. Held that the words ''If you keep on going like this you will end up in Yatala'' used in an acrimonious dispute over rent were in the circumstances not insulting words within the meaning of the section.

O'SULLIVAN v. BRADY (1954) S.A.S.R. 140. Held that a women's lavatory in a city office building and provided for use by the female staff of tenants of the building was not a ''public place'' within the meaning of section 75 of the Police Act, 1936.

**8.** (1) Any person who—

Challenges to fight, and prize fights. cf. 2280. 1936, s. 84.

(*a*) sends or accepts, whether by oral or written words, any challenge to fight for money; or

(*b*) engages in any prize fight,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) Nothing in subsection (1) of this section shall apply to—

(*a*) any challenge to engage in a boxing contest to be conducted in accordance with any rules commonly accepted in Australia as being rules of boxing:

(*b*) any boxing contest conducted in accordance with such rules.

(3) The court before which a person is convicted of an offence against this section may, in addition to imposing a penalty, order that person to find sureties for keeping the peace.

**9.** (1) Any person who is drunk in any public place shall be guilty of an offence.

Being drunk in public place. cf. 2280. 1936, s. 74.

Penalty: For a first or second offence, five pounds or imprisonment for fourteen days:

For a third or subsequent offence, ten pounds or imprisonment for three months.

(2) The court by which a person is convicted of an offence against this section on the complaint of a member of the police force may, on the application of the complainant, order that the defendant pay to the complainant a reasonable sum to cover the expenses of doing all or any of the following things:

(*a*) apprehending the defendant:

(*b*) conveying him to a police station:

(*c*) keeping him in custody until trial:

s. 9. RICHTER v. O'SULLIVAN (1947) S.A.S.R. 160. In sentencing a defendant for the offence of being drunk in a public place, circumstances of aggravation of the drunkenness (such as violence or bad language) may be taken into account, but the court must be careful to punish the defendant for aggravated drunkenness, and not for some other offence which it may be possible to attribute to the aggravating circumstances and with which he has not been charged.

O'SULLIVAN v. FISHER (1954) S.A.S.R. 33. Upon a charge of being drunk in a public place, contrary to section 74 (1) of the Police Act, 1936, it is not necessary for the prosecution to prove that the defendant intended to get drunk, or that he intended to be in the public place, or that he knew where he was; nor is the defence of honest and reasonable mistake open to the defendant. Effect of duress as a defence considered.

(*d*) medically examining him.

(3) Any amount received by a complainant under subsection (2) of this section shall, unless the court otherwise orders, be paid by him to the Treasurer in aid of the general revenue of the State.

Sale and consumption of methylated spirits. Inserted by 61, 1960, s. 3.

**9a.** (1) Any person who is found drinking or to have been drinking methylated spirits or any liquid containing methylated spirits shall be guilty of an offence.

Penalty: For a first or second offence, five pounds or imprisonment for fourteen days:

For a third or subsequent offence, ten pounds or imprisonment for three months.

(2) The court by which a person is convicted of an offence against subsection (1) of this section on the complaint of a member of the police force may, on the application of the complainant, order that the defendant pay to the complainant a reasonable sum to cover the expenses of doing all or any of the following things:—

(*a*) apprehending the defendant;

(*b*) conveying him to a police station;

(*c*) keeping him in custody until trial;

(*d*) medically examining him.

(3) Any amount received by a complainant under subsection (2) of this section shall, unless the court otherwise orders, be paid by him to the Treasurer in aid of the general revenue of the State.

(4) Any person knowing or having reason to suspect that methylated spirits or any liquid containing methylated spirits is intended to be drunk who supplies or permits to be supplied to any person any such methylated spirits or liquid containing methylated spirits shall be guilty of an offence.

Penalty: For a first offence, twenty pounds:

For a second or subsequent offence, fifty pounds or imprisonment for three months.

(5) A person shall not sell or supply methylated spirits or any liquid containing methylated spirits at any time between six o'clock in the afternoon on any Saturday and the hour of 9 o'clock in the morning on the following Monday or at any time on a public holiday: Provided, however, that a registered pharmaceutical chemist shall

be deemed not to commit an offence against this section if he believes on reasonable grounds that the said methylated spirits or liquid containing methylated spirits is required for external medicinal use.

Penalty: Ten pounds.

(6) In this section "methylated spirits" means industrial spirit or commercial methylated spirit, that is to say ethyl alcohol which has been denatured by the addition thereto of methyl alcohol, benzene, pyridine or any other methylating or denaturing substance or agent.

Insufficient or no lawful means of support.
cf. 2280, 1936, s. 85 (1) (*a*).

**10.** (1) Any person who has no lawful means of support, or insufficient lawful means of support shall be guilty of an offence.

Penalty: Imprisonment for twelve months.

(2) If it is proved that the defendant had no visible lawful means of support that fact shall be *prima facie* evidence that he had no lawful means of support.

(3) If it is proved that the defendant had insufficient visible lawful means of support that fact shall be *prima facie* evidence that he had insufficient lawful means of support.

(4) The fact that the defendant possessed money or other property at the time of the alleged offence shall be no defence to a charge under subsection (1) of this section unless it is also proved that he obtained that money or property lawfully.

s. 10. CLENDINNEN v. MITCHELL (1910) S.A.L.R. 96; 5 Austn. Digest 951; 12 Austn. Digest 1096. Held that a police constable was justified in arresting as an idle and disorderly person a minor who for 18 months had made a living by investing on the totalizator (such investments being illegal).

VALLENDER v. SLATER (1926) S.A.S.R. 28. The onus of proving insufficient lawful means of support under section 66 (a) of the Police Act, 1916, was on the prosecutor. Section 66 of the Police Act, 1916, only applied after the prosecution had made out a *prima facie* case and did not aid the prosecution to make out a *prima facie* case. Money obtained by betting and card-playing should not be presumed in the absence of evidence to have been dishonestly obtained.

TAYLOR v. LENTHALL (1930) S.A.S.R. 413. To make out a *prima facie* case of an offence against section 66 (a) of the Police Act, 1916, the prosecution must show that the defendant had insufficient lawful means of support. This need not be proved beyond reasonable doubt in the first instance, since the defendant's failure to give a good account may convert a *prima facie* case into proof beyond reasonable doubt. The defendant may escape if, by reason of the failure of the case for the prosecution it appears on the preponderance of evidence that he had sufficient lawful means of support, or if he proves his means of support and that they were lawful.

LENTHALL v. CAVENDER (1931) S.A.S.R. 164; affirming LENTHALL v. CAVENDER (1930) S.A.S.R. 432. Money owned by the defendant, being savings derived from an illegal business which has been discontinued, is money honestly obtained within the meaning of section 66 of the Police Act, 1916; *semble,* money earned in a current illegal business is not; *semble,* also, money may be honestly obtained if it is intentionally and voluntarily paid to a man even though the payment for the consideration be illegal.

Refusal to pay for meals or accommodation.

**11.** (1) If a person is supplied—

(*a*) by the holder of a publican's or wine licence with liquor, meals, or accommodation on licensed premises; or

(*b*) by the proprietor of a guest house, private hotel, or restaurant with meals or accommodation,

and refuses on demand made by the holder of such licence, or by such proprietor, or by the servant or agent of such holder or proprietor, to pay a reasonable sum for the liquor, meals, or accommodation, he shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for not more than three months.

(2) In this section "a publican's licence" and "a wine licence" refer respectively to a publican's licence and a wine licence granted under the Licensing Act, 1932-1949.

Begging alms. cf. 2280, 1936, ss. 85 (1) (*c*), 86 (1) (*b*).

**12.** (1) Any person who—

(*a*) in any public place begs or gathers alms; or

(*b*) is in any public place for the purpose of begging or gathering alms; or

(*c*) goes from house to house begging or gathering alms; or

(*d*) causes or encourages any child to beg or gather alms in any public place or to be in any public place for the purpose of begging or gathering alms; or

(*e*) exposes wounds or deformities with the object of obtaining alms,

shall be guilty of an offence.

Penalty: Twenty-five pounds or imprisonment for not more than three months.

(2) In this section the word "house" includes building of any kind, and any separately occupied part of a building.

Consorting. cf. 2280, 1936, s. 85 (1) (*j*).

**13.** Any person who habitually consorts with reputed thieves, prostitutes, or persons having no lawful visible means of support shall be guilty of an offence.

---

s. 13. GABRIEL v. LENTHALL (1930) S.A.S.R. 318; 5 Austn. Digest 172. On a charge under section 13 it must be shown that the thieves in question are thieves with the reputation of being thieves. The evidence necessary to establish the reputation of being thieves, and the nature of the *mens rea* required to establish an offence discussed. Imprisonment is more appropriate than a fine as the penalty for an offence under the section.

Penalty: One hundred pounds, or imprisonment for six months.

* * * * * * * * * * *

s. 14 repealed by 22, 1958, s. 3.

Offensive weapons, drugs and articles of disguise.
Cf. 2280, 1936, ss. 85 (1) (*d*) and (*e*), and (2), 86 (1) (*e*).

**15.** (1) Any person who, without lawful excuse—

(*a*) carries any offensive weapon; or

(*b*) has in his custody or possession any implement of housebreaking; or

(*c*) carries any deleterious drug or article of disguise,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) Upon convicting a person for an offence against this section the court may order that any weapon, implement, drug, or article of disguise, proved to have been carried by, or in the custody or possession of, the defendant, shall be forfeited to Her Majesty.

(3) In this section—

"carry" includes to have on or about one's person:

"offensive weapon" includes any rifle, gun, pistol, sword, dagger, knife, club, bludgeon, truncheon or other offensive or lethal weapon or instrument:

"implement of housebreaking" includes any picklock-key, crow, jack, bit or other implement of housebreaking.

Possession of instruments for gaming or cheating.
c. 2280, 1936, s. 86 (1) (*k*) pt. and (2).

**16.** (1) Any person who, in any public place, without lawful excuse, has in his possession any instrument for gaming or any instrument constructed as a means of cheating shall be guilty of an offence.

Penalty: One hundred pounds.

---

s. 13. (*contd.*) DIAS v. O'SULLIVAN (1949) S.A.S.R. 195. On a charge of habitually consorting with reputed thieves, it is not necessary for the prosecution to prove that the reputed thieves were actual thieves. It is sufficient to prove that at the material times they bore the reputation, in the locality where they resided or were known, of being thieves. Observations as to the meaning of "habitually consorts."

REARDON v. O'SULLIVAN (1950) S.A.S.R. 77. On a charge of habitually consorting with reputed thieves, it is not necessary for the prosecution to prove that the reputed thieves were actual thieves. Meaning of "habitually consorts" considered.

s. 15. CARLING v. O'SULLIVAN (1956) S.A.S.R. 203. Held that the evidence as to housebreaking implements found in a woman's motor car was not sufficient to establish that they were in the woman's possession or custody within the meaning of section 15.

(2) Upon the conviction of a person for an offence against subsection (1) of this section the court may order that the instrument in respect of which the person was convicted shall be forfeited to Her Majesty.

(3) In this section the word "instrument" includes machine, device or contrivance of any kind.

Being unlawfully on premises. cf. 2280, 1936, s. 86 (1) (*n*).

**17.** (1) Any person who is in or on any premises or part of any premises for an unlawful purpose or without lawful excuse shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for six months.

(2) In this section "premises" means—

(*a*) any dwelling, hotel, lodging-house, shop, factory, office, store, clubhouse, shed or other building or structure of any kind;

(*b*) any tent, marquee or caravan;

(*c*) any wharf, quay or jetty;

(*d*) any ship or boat;

(*e*) any enclosed or fenced area of land;

Inserted by 39, 1957, s. 3.

(*f*) any area of land (whether enclosed or fenced or not) forming the yard, garden, or curtilage of any building.

---

s. 17. CRAFTER v. O'REILLY (1934) S.A.S.R. 20. The following circumstances may be a lawful excuse:—(*a*) A licence from the occupier, or if there is no occupier, the owner of the premises. (*b*) A lawful authority such as a search warrant, warrant of execution or a warrant to distrain. (*c*) Honest and reasonable belief that facts existed which if true would make the act charged an innocent one.

FERGUSON v. DAYMAN (1935) S.A.S.R. 4. A person on premises by leave of the recognized tenant cannot be convicted of being found on the premises without lawful excuse.

DROGEMULLER v. JAMES (1936) S.A.S.R. 12. Held that a partially-enclosed rubble pit was not an "area" within the meaning of this provision.

WILKINS v. CONDELL (1940) S.A.S.R. 139. Held on the facts that the appellant had been found on premises without lawful excuse.

ABBOTT v. PULBROOK (1947) S.A.S.R 57. The onus is on the complainant of showing, when the evidence has been completed, that the defendant is "without lawful excuse." The words "without lawful excuse" imply more than a mere trespass or civil wrong. The defendant's presence will be "without lawful excuse" only if his wrongful act is in being there was of sufficient gravity to merit not merely a fine but imprisonment.

CAMPBELL v. O'SULLIVAN (1947) S.A.S.R. 195. Held on the facts that the appellant had a lawful excuse for being in the premises.

POZNANSKI v. STOSIC (1953) S.A.S.R. 132. *Semble,* the fact that a husband and inquiry agents were searching a dwellinghouse for evidence for divorce proceedings of adultery by the wife of the husband did not constitute a lawful excuse for entering the dwellinghouse without permission and remaining there for half an hour.

**18.** Any person who lies or loiters in any public place and who, upon request by a member of the police force, does not give a satisfactory reason for so lying or loitering shall be guilty of an offence.

Lying or loitering in a public place.
cf. 2280, 1936, s. 89.

Penalty: Twenty-five pounds or imprisonment for three months.

**19.** (1) Any person who, being a suspected person or reputed thief, is in a public place or in a place adjacent to a public place with intent to commit any offence triable on information in the Supreme Court shall be guilty of an offence.

Being in a place with intent to commit offence.
cf. 2280, 1936, s. 86 (1) (*l*).

Penalty: Imprisonment for six months.

(2) In proving under subsection (1) of this section the intent to commit an offence, it shall not be necessary to show that the person charged was guilty of any particular acts tending to show his intent, but he may be convicted if from the circumstances of the case and his known character as proved to the court, the court is satisfied that his intention was to commit that offence.

**20.** (1) Any person who keeps any premises where provisions or refreshments are sold or consumed and who knowingly permits drunkenness or disorderly conduct to take place on such premises shall be guilty of an offence.

Permitting drunkenness and disorderly conduct.
cf. 2280, 1936, s. 117.

Penalty: Twenty pounds.

(2) In this section "premises" includes any shop, any restaurant, or any other premises to which the public are admitted.

---

s. 18. RYAN v. DINAN (1954) S.A.S.R. 67. Extent in which loitering and the request to give a satisfactory account must be contemporaneous, considered.

O'SULLIVAN v. HORMANN (1956) S.A.S.R. 198. The lying or loitering in a public place, and the failure upon request to give a satisfactory reason for so doing, must be concomitant in point of time and occur as a continuing transaction or on a single occasion.

s. 19. WILKINS v. LENTHALL (1931) S.A.S.R. 90. Evidence by a police officer that he suspected the defendant and had been told by other police officers that defendant was a reputed thief is sufficient to prove defendant was a suspected person. Prior to the enactment of subsection (2) no inference of guilt could be drawn from the bad character of the accused.

MURPHY v. LENTHALL (1931) S.A.S.R. 260; 5 Austn. Digest 335. The defendant may be properly convicted under section 19, although the evidence also discloses that he was guilty of assault with intent to rob.

CARLING v. O'SULLIVAN (1956) S.A.S.R. 203. Upon a charge against a person under section 19 for that, being a suspected person or a reputed thief, he was in a public place to commit an offence triable on information in the Supreme Court, it is sufficient for the prosecution to prove that the person had a general intention of committing such an offence, and it is not necessary for the prosecution to allege or prove an intention to commit any specified offence.

Permitting premises to be frequented by thieves, etc. cf. 2280, 1956, ss. 85 (1) (g), 117 (1) (d).

**21.** (1) Any person who—

(a) is the occupier of premises frequented by reputed thieves, or prostitutes, or persons without lawful means of support, or persons of notoriously bad character; or

(b) is without reasonable excuse in any premises frequented by any such persons,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) In a prosecution under this section it shall not be necessary for the prosecutor to prove that the defendant knew that the persons frequenting the premises were reputed thieves, prostitutes, persons without lawful means of support or persons of notoriously bad character; but it shall be a defence that the defendant did not know and could not by the exercise of reasonable diligence have ascertained that the persons frequenting the premises were such persons as aforesaid.

*Offences Against Decency and Morality.*

Indecent language. cf. 2280, 1936, ss. 75 (a) and (c) pt., 83 (a). Amended by 51, 1956, s. 3.

**22.** (1) Any person who uses indecent or profane language or sings any indecent or profane song or ballad—

(a) in a public place; or

(b) in a police station; or

(c) which is audible from a public place; or

(d) which is audible in any neighbouring or adjoining occupied premises; or

---

s. 22. MITCHELL v. FRANKHAM (1889) 23 S.A.L.R. 114. Held that the words "you went down the country to get a kid," were not indecent.

RICHARDS v. WEBSTER (1919) S.A.L.R. 298. Held that a licensed billiard saloon was not a public place within the meaning of section 63 (a) of the Police Act, 1916. (But see NICHOLSON v. MORGAN, infra.)

NICHOLSON v. MORGAN (1920) S.A.L.R. 142. The definition of public place in section 4 of the Police Act, 1916, applied in the construction of section 63 (a) of the Police Act, 1916.

THOMPSON v. HIGGS (1924) S.A.S.R. 243; 12 Austn. Digest 320. Before the amending Act 2186 of 1934, it was necessary, in order to constitute an offence under section 63 (a) of the Police Act, 1916, that some person should have been passing in the street and should have heard what was said.

NORLEY v. MALTHOUSE (1924) S.A.S.R. 268. "Indecent" is not equivalent to lewd or obscene, but means "highly offensive to the recognized standards of common propriety."

LINEHAN v. SCHROETER (1949) S.A.S.R. 205. Upon a complaint under section 83 of the Police Act, 1936, held that where profane, indecent or obscene language is used within the hearing of any person, it is not necessary that it should also be in a public place. Held that evidence that during a period of about nine months prior to the offence charged defendant on various occasions had used indecent language towards the complainant was relevant and admissible, as tending to prove the offence charged.

(*e*) with intent to offend or insult any person,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for two months.

(2) In this section "indecent" includes obscene.

Indecent exposure and gross indecency.
cf. 2280, 1936, ss. 79, 86 (1) (*g*).

**23.** (1) Any person who behaves in an indecent manner—

(*a*) in a public place, or while visible from a public place, or in a police station; or

(*b*) in any place, other than a public place or police station, so as to offend or insult any person,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) Any person who in a public place, or while visible from a public place or from any occupied premises wilfully does any grossly indecent act whether alone or with any other person shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months.

Urinating, etc. in a public place.

**24.** Any person who urinates or defæcates in a public place within a municipality or town, elsewhere than in premises provided for that purpose, shall be guilty of an offence.

Penalty: Twenty-five pounds.

Soliciting.
cf. 2280, 1936, s. 83 (*b*).

**25.** Any female person who—

(*a*) in any public place or within the view or hearing of any person in a public place accosts or solicits any person for the purpose of prostitution; or

(*b*) loiters in any public place for the purpose of prostitution,

shall be guilty of an offence.

Penalty: Twenty pounds or imprisonment for two months.

Male persons living on prostitution and soliciting.
cf. 2280, 1936, s. 86 (1) (*h*).

**26.** (1) Any male person who—

(*a*) knowingly lives wholly or in part on the earnings of prostitution; or

(*b*) in any public place solicits for any immoral purpose,

shall be guilty of an offence.

---

s. 23. ROBERTS v. O'SULLIVAN (1950) S.A.S.R. 245. Held that a sand pit used as a rubbish dump and by children as a playground was a public place within the meaning of the section.

O'SULLIVAN v. DE YOUNG (1956) S.A.S.R. 211. The offence of indecent exposure contrary to section 23 is not an "offence of a sexual nature" within the meaning of sections 77 and 77a of the Criminal Law Consolidation Act.

Penalty: One hundred pounds or imprisonment for six months.

(2) The fact that a male person lives with or is habitually in the company of a prostitute and has no visible lawful means of support shall be *prima facie* proof that he is knowingly living on the earnings of prostitution.

*Brothels.*

Definition of brothel.
cf. 2280, 1936, s. 101.

**27.** In the next five succeeding sections of this Act—

"brothel" means any premises—

(*a*) to which people of opposite sexes resort for the purpose of prostitution; or

(*b*) occupied or used by any woman or women for the purpose of prostitution;

"premises" includes a part of any premises.

Keeping and managing brothels.
cf. 2280, 1936, s. 102 (1) (*a*).

**28.** (1) Any person who—

(*a*) keeps or manages a brothel, or assists in keeping or managing a brothel; or

(*b*) receives any money paid in a brothel in respect of prostitution,

shall be guilty of an offence.

Penalty: For a first offence, fifty pounds or imprisonment for three months.

For a subsequent offence, one hundred pounds or imprisonment for six months.

(2) Any person who acts or behaves as master or mistress or as a person having the control or management of a brothel shall for the purpose of this section be deemed to keep that brothel whether he or she is or is not the keeper thereof.

Permitting premises to be used as brothels.
cf. 2280, 1936, s. 102 (1) (*b*) and (*c*).

**29.** Any person who—

(*a*) lets or sublets any premises with knowledge that they are to be used as a brothel; or

(*b*) permits any premises to be used as a brothel,

shall be guilty of an offence.

Penalty: For a first offence, one hundred pounds.

For a subsequent offence, two hundred pounds or imprisonment for six months.

s. 28. SCIEGHI v. HOMES (1923) S.A.S.R. 464; 12 Austn. Digest 265. Held, that a woman kept a brothel although her husband resided in and owned the premises.

**30.** (1) A prosecution shall not be instituted under either of the two preceding sections without the written consent of the Commissioner of Police or a superintendent or inspector of police.

Prosecutions.
cf. 2280, 1936, s. 102 (2).

(2) An apparently genuine document produced by the prosecutor and purporting to authorize a prosecution under either of the said two preceding sections and purporting to be signed by the Commissioner of Police or a superintendent or inspector of police shall be accepted without proof as *prima facie* evidence of the consent of the Commissioner, superintendent or inspector to the prosecution.

**31.** (1) Upon the conviction of the tenant, lessee, or occupier of any premises for permitting the premises, or any part thereof, to be used as a brothel, the landlord or lessor may require the person so convicted to assign the lease or other contract under which the premises are held by him to some person approved by the landlord or lessor, which approval shall not be unreasonably withheld.

Determination of tenancy of brothels.
cf. 2280, 1936, s. 105.

(2) If a person so convicted fails within one month to assign the lease or contract as aforesaid, the landlord or lessor may determine the lease or other contract, but without prejudice to any rights or remedies of any party to such lease or contract in respect of anything done or omitted before such determination.

(3) If the landlord or lessor after such a conviction has been brought to his notice fails to exercise his rights under subsection (1) of this section, and subsequently during the subsistence of the lease or contract the premises are again used as a brothel, the landlord or lessor shall be deemed to have permitted the premises to be used as a brothel.

(4) Where a landlord or lessor determines a lease or other contract under the powers conferred by this section and subsequently grants another lease or enters into another contract of tenancy to, with, or for the benefit of the same person without causing to be inserted in such lease or contract reasonable and adequate provisions for preventing the premises from being used as a brothel, he shall, if the premises are subsequently used as a brothel, be deemed to have permitted the premises to be used as a brothel.

s. 30. Scieghi v. Homes (1923) S.A.S.R. 464; 12 Austn. Digest 265. An authority to prosecute may relate to more than one offence, and need not specify any particular offence with the detail required in a complaint.

Power of police to enter suspected brothel.
cf. 2280, 1936, s. 106.

**32.** The Commissioner of Police, or any superintendent or inspector of police, or any member of the police force authorized in writing by the Commissioner or a superintendent or inspector of police may at any time enter and search any premises which he suspects on reasonable grounds to be a brothel.

*Publication of Indecent Matter.*

Publication of indecent matter.
cf. 2280, 1936, ss. 86 (1) (*f*), 108.

**33.** (1) In this section—

"indecent matter" includes any printing, writing, painting, drawing, picture, statue, figure, carving, sculpture, or other representation or matter of an indecent immoral or obscene nature but does not include books and other matter of artistic or literary merit or books and other matter published in good faith for the advancement or dissemination of medical science.

(2) Any person who—

(*a*) prints, publishes, sells, offers for sale, or has in his possession for sale any indecent matter; or

(*b*) gives or delivers or causes to be given or delivered to any person any indecent matter for the purpose of sale, delivery, or exhibition; or

(*c*) affixes or inscribes any indecent matter on anything whatsoever so that the matter so affixed or inscribed is visible to persons in any public place; or

(*d*) delivers or exhibits any indecent matter to any person who is in any public place; or

(*e*) delivers any indecent matter in or at any building or yard, garden, or enclosure of any building; or

(*f*) exhibits any indecent matter to any person in a place other than a public place, so as to offend or insult that person,

shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months.

(3) In determining whether any matter is indecent, immoral, or obscene the Court shall have regard to—

(*a*) the nature of the matter; and

(*b*) the persons, classes of persons and age groups to or amongst whom it was or was intended or was

likely to be published, distributed, sold, exhibited, given or delivered; and

(*c*) the tendency of the matter to deprave or corrupt any such persons, class of persons or age group,

to the intent that matter shall be held to be indecent, immoral, or obscene when it is likely in any manner to deprave or corrupt any such persons, or the persons in any such class or age group, notwithstanding that persons in other classes or age groups may not be similarly affected.

(4) A prosecution for an offence against this section shall not be instituted without the written consent of the Attorney-General.

An apparently genuine document produced by the prosecutor and purporting to consent to a prosecution under this section and to be signed by the Attorney-General shall, without proof, be accepted by a court as *prima facie* evidence of such consent.

(5) Notwithstanding anything in subsection (1) of this section, the court shall not hold that books or other matter do not fall within the definition of indecent matter because of their literary or artistic merit, if such books or matter describe with undue detail, or emphasize, coition, unnatural vice, or other sexual, immoral, or lascivious behaviour, or the organs of generation or excretion.

Restriction on reports of judicial proceedings.
cf. 2280, 1936, s. 109.

**34.** (1) No person shall—

(*a*) print or cause to be printed; or

(*b*) offer for sale, sell, or cause to be offered for sale or sold to any person; or

(*c*) have in his possession for sale or distribution,

any book, paper, or document containing any particulars relating to any judicial proceedings for divorce or dissolution of marriage, nullity of marriage, judicial separation, relief from the obligation to cohabit with a husband, or restitution of conjugal rights, other than the following particulars, 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 proceedings, and the decision of the court thereon:

(iv) the summing-up of the judge or magistrate and the finding of the jury (if any) and the judgment of the court and observations made by the judge or magistrate in giving judgment.

Penalty: For a first offence, two hundred pounds.

For a second or subsequent offence, five hundred pounds or imprisonment for six months, or both such fine and imprisonment.

**Restriction on reports of immorality, etc.**
cf. 2280, 1936, s. 110.

**35.** (1) No person shall—

(*a*) print or cause to be printed; or

(*b*) offer for sale, sell, or cause to be offered for sale or sold to any person; or

(*c*) have in his possession for sale or distribution,

any newspaper in which any one report—

(i) relating to any legal proceedings involving questions of sexual immorality, unnatural vice, or indecent conduct; or

(ii) containing any other news, account, or story descriptive of or relative to sexual immorality, unnatural vice, or indecent conduct,

occupies more than fifty lines of thirteen ems wide or the equivalent thereof, in any kind of type, or carries a heading composed of type larger than ten point capitals.

Penalty: For a first offence, two hundred pounds.

For a second or subsequent offence, five hundred pounds or imprisonment for six months, or both such fine and imprisonment.

(2) In this section—

"legal proceedings" includes coroner's inquests and sittings of Royal and other commissions of inquiry and of select committees of Parliament:

s. 35. O'Sullivan v. Truth and Sportsman Limited (1956-1957) 96 C.L.R. 220; 31 A.L.J. 97 affirming O'Sullivan v. Truth and Sportsman Limited (1955) S.A.S.R. 58. *Held* that section 35 does not make the inclusion, in the one issue of a newspaper, of every report that is sufficient in itself to satisfy the prescribed description, a distinct and separate offence. *Quaere,* whether the separate sale of a copy is an offence distinct from any other sale of a copy. *Held,* further, that one person does not within the meaning of the provision "cause" another to do the prohibited act except where he contemplates or desires that it will ensue and it is done on his actual authority, express or implied, or in consequence of him exerting some capacity which he possesses in fact or law to control or influence the acts of the other.

"newspaper" means a copy of a periodical publication which is published at intervals not exceeding three months or any part of such a copy.

(3) for the purpose of this section separate articles in the same newspaper relating to the same matter shall be deemed to form one report, and all photographs illustrative of or connected with any report shall be deemed to form part thereof.

(4) Paragraphs (*b*) and (*c*) of subsection (1) of this section shall be construed as prohibiting within the State the sale, offering for sale, causing to be offered for sale or sold, or having in possession for sale or distribution of any newspaper containing a report contrary to subsection (1), whether the newspaper was printed or published within or outside the State, and whether the reports therein relate to legal proceedings and other matters taking place within or outside the State.

Exemptions and consent to prosecutions. cf. 2280, 1936, s. 111.

**36.** (1) Nothing in the last two preceding sections shall apply to the printing, offering, selling, or having in possession of—

(*a*) any pleading, transcript of evidence or other document for use in connection with any legal proceedings; or

(*b*) any notice or report published in pursuance of the directions of the court or other body conducting legal proceedings; or

(*c*) any separate volume or part of any *bona 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

(*d*) any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions:

Provided that in any proceedings under this Act it shall lie on the defendant to prove that the matter complained of falls within the provisions of this section.

(2) A prosecution for an offence against either of the two preceding sections shall not be instituted without the written consent of the Commissioner of Police.

s. 36. O'Sullivan v. Truth and Sportsman Limited (1955) S.A.S.R. 85. Where a prosecution had been instituted for an offence against section 35 without the written consent of the Commissioner of Police, held that the court of summary jurisdiction had no jurisdiction to deal with the complaint.

An apparently genuine document produced by the prosecutor and purporting to authorize a prosecution under either of the said two preceding sections and purporting to be signed by the Commissioner of Police shall without proof be accepted by a court as *prima facie* evidence of the consent of the Commissioner of Police to the prosecution.

*Fraud, Unlawful Possession, etc.*

Frauds upon charitable institutions. cf. 2280, 1936, s. 86 (1) (*c*).

**37.** Any person who by any false pretence obtains from any charitable institution or organization any chattel, money, valuable security, credit, benefit, or advantage shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for twelve months.

Fraud other than false pretences. cf. 2280, 1936, s. 91.

**38.** Any person who by fraud other than false pretences obtains any chattel, money, valuable security, credit, benefit or advantage, shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for twelve months.

Valueless cheques. cf. 2280, 1936, s. 90.

**39.** (1) Any person who obtains any chattel, money, valuable security, credit, benefit, or advantage by passing any cheque which is not paid on presentation shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for twelve months.

(2) It shall be a defence to a charge for an offence against subsection (1) of this section to prove that the defendant—

(*a*) had reasonable grounds for believing that the cheque would be paid in full on presentation; and

(*b*) had no intent to defraud.

(3) The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the cheque was drawn, shall not of itself be a defence.

---

s. 37. NORRIS v. CRAFTER (1935) S.A.S.R. 170. Section 86 (1) (*c*) of the Police Act, 1936, was not limited to frauds on charity and benevolence, but applied to any case where money is obtained by fraudulent representation. It did not apply where money is paid under a contract procured by fraud. Held, on the facts, that money was obtained as the direct result of fraud, and not under a contract procured by fraud.

s. 39. BRAUER v. O'SULLIVAN (1957) S.A.S.R. 185. Held on the facts that the defendant had not obtained a valuable security by "passing" a cheque.

**40.** Every person who for personal gain—

Fortune telling, palmistry, etc.
cf. 2280, 1936, s. 86 (1) (*d*).

(*a*) pretends to tell fortunes; or

(*b*) uses palmistry or other subtle craft, means or device to deceive any person,

shall be guilty of an offence.

Penalty: Twenty pounds or imprisonment for one month.

**41.** (1) Any person who has in his possession any personal property which either at the time of such possession, or at any subsequent time before the making of a complaint under

Unlawful possession of personal property.
cf 2280, 1936, s. 93.

s. 40. SMITH v. O'SULLIVAN (1921) S.A.S.R. 349. An intention to deceive is not an essential ingredient in the offence of pretending to tell fortunes.

ARRIOLA v. HARRIS (1943) S.A.S.R. 175. Where as part of a service held in a Spiritual Church there was a demonstration of the appellant's purported spiritualistic powers, held that the appellant was guilty of pretending to tell fortunes.

s. 41. ORR v. FRAZER (1921) S.A.S.R. 176. Held (before the enactment of 1577, 1923, section 4) that reasonable suspicion and possession must co-exist. A conviction under section 71 of the Police Act, 1916, should recite that the defendant failed to give a satisfactory account of how he came into possession of the goods.

HOWIE v. NOBLET (1923) S.A.S.R. 277. Held (before the enactment of 1577, 1923, section 4) that reasonable suspicion and possession must co-exist. Possession means complete personal physical control either by manual custody, or by having the property where the "possessor" alone has the exclusive right or power to place his hands on it.

MOORE v. ALLCHURCH (1924) S.A.S.R. 111. Section 71 of the Police Act, 1916, required the prosecution to prove an actual suspicion reasonably entertained before the making of the charge. Suspicion and possession need not co-exist. "Stolen" includes "embezzled."

R. v. SCOTT; *Ex parte* CHURCH (1924) S.A.S.R. 220; 5 Austn. Digest 1086. A dismissal of a complaint for unlawful possession will not support a plea of *autrefois acquit* on a charge of larceny.

HOMES v. THORPE (1925) S.A.S.R. 286. Held that section 71 of the Police Act, 1916, did not apply where the property in question was not *suspected,* but *believed* to have been stolen.

HENDERSON v. SURFIELD AND CARTER (1927) S.A.S.R. 192; 12 Austn. Digest 369; affirming HENDERSON v. SURFIELD (1927) S.A.S.R. 31. Held that section 71 of the Police Act, 1916, did not apply where the evidence of the supposed suspecter shows he had such a knowledge of events as more probably to *convince* him that he saw actual stealing, than to lead him to *suspect* stealing.

CORSTEN v. NOBLET (1927) S.A.S.R. 421. Where no witness swore that he had entertained a suspicion, and the evidence merely made it probable that such a suspicion existed, held that the defendant could not be convicted.

ALMOND v. LENTHALL (1929) S.A.S.R. 267. On proof by the prosecution of the possession of property by the defendant, and of an actual and reasonable suspicion in the mind of some person that the property was stolen or unlawfully obtained, the defendant must show that he came by the property lawfully; it is not enough for the defence to prove that the property was not stolen on one occasion if the witnesses might have suspected, had they known all the facts, that it was stolen on another occasion.

DEANE v. TELFORD (1930) S.A.S.R. 86. Where one witness *suspected* and another *believed* goods to have been stolen, held that the court should examine what the witnesses knew of the facts and if their knowledge most probably led to the conclusion of actual larceny the section would not apply.

MURPHY v. LENTHALL (1931) S.A.S.R. 260. Decisions in HOMES v. THORPE (1925) S.A.S.R. 286; NOBLET v. JOHNSON (1929) S.A.S.R. 385; HENDERSON v. SURFIELD AND CARTER (1927) S.A.S.R. 192 discussed.

LENTHALL v. C. A. NEWMAN (1932) S.A.S.R. 126; LENTHALL v. M. J. NEWMAN (1932) S.A.S.R. 126. Where a witness can testify of his own knowledge to a specific larceny of the property in question he cannot be said to "suspect" and the

this section in respect of such possession, is reasonably suspected of having been stolen or unlawfully obtained shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for two years.

(2) It shall be a defence to a charge of an offence against this section to prove that the defendant obtained possession of the property honestly.

(3) If any personal property is proved to have been in the possession of a person, whether in a building or otherwise,

---

**s. 41.** (*contd.*) section does not apply. But a witness may be held to "suspect" if he "thinks" or "believes" the property was stolen. In straightforward cases of larceny the section should not be used.

LENTHALL v. FIMERI (1933) S.A.S.R. 22; 5 Austn. Digest 1088. An acquittal for larceny is no bar to a prosecution for unlawful possession of the same goods. *Semble* that while the section should not be used "as a cloak for the exercise of summary jurisdiction over cases of larceny generally" the court should not assume that the prosecution is so using the section.

LE POIDEVIN v. HUDSON (1935) S.A.S.R. 223. It is not necessary for anyone to depose expressly to suspicion. It is sufficient if circumstances reasonably justify suspicion, and a person acts as if he suspected.

BROAD v. MOORE (1935) S.A.S.R. 297. Where the evidence does not clearly show larceny, unlawful possession may properly be charged. A betting ticket is personal property within the meaning of the section.

HARRISON v. TROTTER (1937) S.A.S.R. 7. On a charge of unlawful possession the burden is on the defendant to convince the court beyond reasonable doubt that his explanation of his possession of the goods is true. A belief that the defendant had stolen the goods in his possession and may be convicted of larceny does not exclude the possibility that the defendant had unlawfully obtained the goods. An acquittal on a charge of larceny of goods is not a bar to prosecution for unlawful possession of them.

SAMPSON v. CRAFTER (1940) S.A.S.R. 427. On a charge of joint unlawful possession of goods separate trials were ordered and the evidence showed that there was no joint possession but it was shown that there had been reasonable grounds of suspicion before the making of the charge that the defendant who was first tried had been in unlawful possession of the goods. Held that he had been rightly convicted of the offence of unlawful possession.

CRAFTER v. BRUCE (1941) S.A.S.R. 269. Where two defendants were charged with unlawful possession of petrol, held that although it could be said of each defendant that he had the petrol in his possession, the complaint alleged a single possession exercised by or on behalf of both defendants, and it could not be said that either had a single possession so exercised.

KITCHIN v. TUIT (1945) S.A.S.R. 16. There is no inflexible rule that goods entrusted to a common carrier are in his possession.

BUTTON v. COOPER (1947) S.A.S.R. 286. Held on the facts that goods were in the possession of the defendant within the meaning of the section.

HEWITT v. O'SULLIVAN (1947) S.A.S.R. 384. Leave to appeal to the High Court refused 75 C.L.R. 632 (note); (1947) S.A.S.R. XIX (note). Anything short of knowledge of all the ingredients essential to the charge of a specific offence is suspicion for the purposes of the section.

O'SULLIVAN v. TREGASKIS (1948) S.A.S.R. 12. The reasonable suspicion must attach to the property and not merely to the person in possession of it; and the fact that the person in possession has given a false account as to how he came by the property does not, of itself, justify a reasonable suspicion that the property was stolen or unlawfully obtained. It is not necessary, however, before a reasonable suspicion can be formed that the person suspecting should have a belief that the property answered to the description of property reported as stolen. Other circumstances (including the nature of the property, the circumstances in which it has been found and the behaviour of the possessor with respect to it) may reasonably attract suspicion to the property.

O'SULLIVAN v. REEDY 27 A.L.J. 290 *affirming* REEDY v. O'SULLIVAN (1953) S.A.S.R. 114. It is a necessary ingredient of an offence under section 93 (1) of the Police Act, 1936, of being in possession of property which "may . . . have

and whether the possession had been parted with before the hearing or not, it shall for the purpose of this section be deemed to have been in the possession of that person.

Larceny of things attached to land.
cf. 2280, 1936, s. 98 (1) (a) and (b).

**42.** (1) Any person who—

(*a*) steals, or with intent to steal, severs removes damages or destroys any article fixed to or in or forming part of any land or building, or growing in any land; or

(*b*) receives any such article knowing it to have been stolen or unlawfully obtained,

shall be guilty of an offence.

Penalty: Fifty pounds, or imprisonment for six months.

(2) Upon convicting a person for an offence against this section the court may order him to pay to the owner of the land or building or the article such amount as the court deems just by way of compensation for the loss caused to such owner by the defendant.

(3) In this section "article" includes any wood, metal, mineral, or other substance, any article or structure fabricated from wood, metal, mineral, or other substance, and any tree, sapling, shrub, seedling, plant or other vegetable growth.

---

s. 41. (*contd.*) been" reasonably suspected of having been stolen or unlawfully obtained, that a concrete suspicion must have been actually entertained on reasonable grounds by some particular person at some particular time prior to the making of the charge. Accordingly, a complaint alleging that the defendant had goods in his possession which "might have been" suspected of having been stolen did not disclose an offence under section 93 (1) of the Police Act, 1936.

O'Sullivan v. Reedy (1952) 87 C.L.R. 291; 27 A.L.J. 290, affirming Reedy v. O'Sullivan (1955) S.A.S.R. 114. Held that it was a necessary ingredient of an offence under section 93 (1) of the Police Act, 1936, that a concrete suspicion must have been actually entertained on reasonable grounds by some particular person at some particular time prior to the making of the charge; and, accordingly, a complaint alleging that the defendant had goods in his possession which "might have been" reasonably suspected of having been stolen did not disclose an offence under section 93 (1).

Palumbo v. O'Sullivan (1955) S.A.S.R. 315. Meaning of the word "possession" in section 41 and the nature of the onus of proof under the section, considered.

Wallace v. Hansberry (1959) S.A.S.R. 20. Upon a charge under section 41, the prosecution is required to prove, beyond reasonable doubt, (1) possession by the defendant of personal property: (2) a suspicion entertained by some person (either at the time of the possession or at some subsequent time prior to the making of the complaint) that the property had been stolen or unlawfully obtained: and (3) that the suspicion was entertained upon reasonable grounds. The prosecution is not required to establish *mens rea* on the part of the defendant; and if the three elements of the charge have been found, the defendant is liable to be convicted of the offence unless he proves, on the balance of probabilities, that he obtained possession of the property honestly. It is not necessary that any witness for the prosecution should expressly depose in evidence that he actually entertained a suspicion that the property had been stolen or unlawfully obtained; but it is sufficient if the evidence shows that the witness did in fact entertain such a suspicion.

*Offences with Respect to Property.*

Wilful damage to property. cf. 2280, 1936, s. 97 (1).

**43.** (1) Any person who wilfully and without lawful authority destroys or damages any property shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) Upon convicting a person for an offence against this section the court may order him to pay to the owner of the property destroyed or damaged such sum as the court deems just by way of compensation for the loss caused to the owner by the defendant.

(3) In this section—

"owner" includes any person having any estate or interest in any property:

"property" includes real and personal property of all kinds whether owned by Her Majesty or any public or local authority or by any other person.

Use of land for training horses.

**44.** Any person who, without the consent of the owner or occupier, uses any land for the purpose of training or exercising horses shall be guilty of an offence.

Penalty: Twenty-five pounds.

Using vehicles or animals without consent of owner. cf. 2280, 1936, s. 78.

**45.** (1) Any person who uses any vehicle (other than a motor vehicle as defined in Part II of the Road Traffic Act, 1934-1952) horse or other beast of burden without the consent of the owner thereof shall be guilty of an offence.

Penalty: Fifty pounds.

(2) Upon convicting a person for an offence against this section, the court may order him to pay to the owner of the vehicle, horse, or other beast such sum as the court deems just by way of compensation for the loss caused to the owner by the defendant.

Interference with ships and boats without consent. cf. 2280, 1936, s. 78a.

**46.** (1) Any person who without lawful authority damages, destroys, removes, or uses any boat or any equipment, material or article in, upon, or forming part of a boat, without the consent of the owner of the boat equipment or article shall be guilty of an offence.

Penalty: For a first offence, fifty pounds or imprisonment for three months.

For a second or subsequent offence, one hundred pounds or imprisonment for six months.

(2) Upon convicting a person for an offence against this section, the court may order him to pay to the owner of the boat, equipment or article in respect of which the offence was committed such sum as the court deems just by way of compensation for the loss caused to the owner by the defendant.

(3) In this section—

"boat" includes canoe, dinghy, yacht, raft, pontoon, ship and other like vessel.

Interference with homing pigeons. cf. 2280, 1936, ss. 99, 100.

**47.** (1) Any person who—

(*a*) without lawful authority kills, injures, or takes any homing pigeon; or

(*b*) enters upon any land for the purpose of killing, injuring or taking any homing pigeon without lawful authority,

shall be guilty of an offence.

Penalty: Twenty pounds.

(2) Upon the conviction of a person for an offence against subsection (1) of this section, the court may order that he pay to the owner of any pigeon killed injured or taken in contravention of that subsection a sum equal to the value of that pigeon.

(3) A person shall not be convicted under subsection (1) of this section for killing, injuring or taking any homing pigeon if he proves that he was the owner or occupier of any improved or cultivated land, or a person acting under the instructions of any such owner or occupier, and killed, injured or took the pigeon while it was actually upon that land or any building thereon.

(4) In this section—

"homing pigeon" means a pigeon having a ring affixed or attached to either or both legs:

"take" includes to ensnare or catch by any device or means whatsoever.

Posting bills and writing on walls, etc. cf. 2280, 1936, s. 122 (1) (*f*).

**48.** (1) Any person who without lawful authority—

(*a*) affixes any bill, poster, or placard to or against any building, wall, fence, structure, road or footpath; or

(*b*) writes upon, soils, defaces or marks any building, wall, fence, structure, road, or footpath with paint, chalk, or by any other means,

shall be guilty of an offence.

Penalty: Twenty-five pounds.

(2) The court by which a person is found guilty of an offence against subsection (1) of this section may, whether or not a fine is imposed on him, order him to remove within the time specified by the court any bill, poster, placard, paint, chalk, or other thing affixed to or written or marked upon any building, wall, fence, structure, road or footpath in contravention of this section, and to restore the said building, wall, fence, structure, road or footpath to its former condition.

(3) If a person makes default in complying with the order under subsection (2) of this section—

(*a*) he shall be guilty of an offence and liable to a fine not exceeding fifty pounds; and

(*b*) the court may order him to pay to the owner or occupier of the building, wall, fence, structure, road or footpath, the cost of doing the work in respect of which default has been made.

Extinguishing street lamps. cf. 2280, 1936, ss. 82, 122h.

**49.** (1) Any person who, without lawful authority, extinguishes the light of a street lamp shall be guilty of an offence.

Penalty: Twenty-five pounds.

(2) In this section—

"street lamp" means a lamp erected, placed or maintained for the purpose of the safety or convenience of the public, in or upon a road, street, thoroughfare, park, garden, reserve or public convenience.

(3) The allegation in a complaint that any lamp therein indicated was a street lamp shall be *prima facie* evidence of the matter so alleged.

*Nuisances and Annoyances.*

Unlawfully ringing house bells. cf. 2280, 1936, s. 80.

**50.** Any person who without reasonable excuse disturbs any person by wilfully pulling or ringing the door bell of any house or by knocking at the door of any house, shall be guilty of an offence.

Penalty: Five pounds.

**51.** (1) Any person who discharges any firearm or throws any stone or other missile without reasonable cause and so as to injure, annoy or frighten, or be likely to injure, annoy or frighten any person or so as to damage or be likely to damage any property, shall be guilty of an offence.

Use of firearms. Cf. 2280, 1936, s. 122 (1) (*g*) and (2) (*a*).

Penalty: Twenty-five pounds.

(2) In this section—

"firearm" means any gun or device, including an airgun, from or by which any kind of shot, bullet or missile can be discharged:

"throw" includes to discharge or project by means of any mechanism or device.

**52.** Any person who throws, sets fire to, or explodes any firework or explosive material so as to injure, annoy or frighten, or be likely to injure, annoy or frighten persons in any public place shall be guilty of an offence.

Throwing fireworks. cf. 2280, 1936, s. 122 (2) (*b*).

Penalty: Twenty-five pounds.

**53.** (1) Any person who in any public place or in any place adjacent to a public place plays any game so as to injure or annoy or be likely to injure or annoy any persons in a public place or so as to damage or be likely to damage any property shall be guilty of an offence.

Playing games so as to cause annoyance or damage. cf. 2280, 1936, s. 122 (1) (*i*).

Penalty: Ten pounds.

(2) This section does not apply to the playing of any game on any oval, court, or other ground constructed for the purpose of such playing.

**54.** (1) Any householder may personally or by his servant or by any police constable request any street musician to depart from the neighbourhood of his house on account of the illness of any inmate of the house or for any other reasonable cause.

Street musicians. cf. 2280, 1936, s. 124.

(2) Any person who, having been so requested to depart, plays any musical instrument in the street on the day when the request was made, so as to be heard from such house shall be guilty of an offence.

Penalty: Five pounds.

s. 51. SMITH v. LEURS AND OTHERS (1944) S.A.S.R. 213. A boy of the age of 13 years in the course of an affray in a public place with other boys discharged a missile from a shanghai and injured one of the other boys. Held that the provisions of section 122 (1) (*g*) of the Police Act, 1936, were inconsistent with the implication of an added private remedy, and that no such remedy was available.

Suffering ferocious dogs to be at large.
cf. 2280, 1936, s. 122 (1) (*b*).

**55.** If the owner of any unmuzzled ferocious dog suffers such dog to be at large within any municipality or town he shall be guilty of an offence.

Penalty: Twenty-five pounds.

Throwing and leaving dead animals in streets, etc.
cf. 2280, 1936, s. 132.

**56.** Any person who deposits the carcass of any animal, or leaves the carcass of any animal belonging to him upon—

(*a*) any street, road, or other thoroughfare; or

(*b*) any public park or reserve; or

(*c*) any land or premises abutting any such place as mentioned in paragraph (*a*) or (*b*) of this section,

to the annoyance of persons in any such place, land or premises shall be guilty of an offence.

Penalty: Twenty-five pounds.

Depositing rubbish on land.

**57.** (1) Any person who deposits rubbish on any land without the consent of the owner or occupier or other lawful authority shall be guilty of an offence.

Penalty: Twenty-five pounds.

(2) The court by which a person is found guilty of an offence against subsection (1) of this section may, whether or not any fine is imposed on him, order him to remove, within the time specified by the court, the rubbish from the land on which it was deposited.

(3) If a person makes default in complying with an order under subsection (2) of this section—

(*a*) he shall be guilty of an offence and liable to a fine not exceeding fifty pounds: and

(*b*) the court may order him to pay to the owner or occupier of the land the cost of removing the said rubbish.

(4) In this section—

''rubbish'' includes soil, stone, rubble, animal or vegetable matter, and other debris, waste and refuse of any kind:

''land'' includes roads, streets and other public places as well as private land.

Obstruction of highway.
cf. 2280, 1936, s. 122 (1) (*a*)

**58.** Any person who wilfully obstructs the free passage of any highway shall be guilty of an offence.

Penalty: Twenty-five pounds.

**58a.** (1) The driver or conductor of an omnibus or any member of the police force may request a person who has entered the omnibus to depart therefrom if—

Objectionable persons in omnibuses and their removal therefrom. Inserted by 62, 1960, s. 3.

(*a*) before or at the time when the person entered the omnibus, he was informed by the driver or conductor that it was fully loaded with passengers;

(*b*) the person, being under the influence of intoxicating liquor, is causing or is likely to cause annoyance to any passenger in the omnibus;

(*c*) the person's attire or person soils or damages or is likely to soil or damage any part of the omnibus or the attire or belongings of any such passenger; or

(*d*) the person acts in a noisy, violent, or abusive manner, or uses obscene or indecent language, or consumes intoxicating liquor in the omnibus, after having been requested to cease doing so.

(2) If the person, upon being requested to depart from the omnibus, fails to comply with the request forthwith, he shall be guilty of an offence.

Penalty: Twenty pounds or imprisonment for three months.

(3) If the person, upon being so requested, fails to comply with the request, he may be removed from the omnibus by the driver or conductor or member of the police force and any person or persons whom the driver, conductor or member may call to assist in so removing him.

(4) The driver or conductor of an omnibus or any member of the police force may require a person who so fails to comply with the request to state his correct full name and correct address and if that person fails to comply with that requirement forthwith he shall be guilty of an offence.

Penalty: Twenty pounds.

(5) If the driver, conductor or member of the police force has reasonable cause to suspect that the name or address stated by the person is incorrect or false in any particular, the person shall, if required to do so by the driver, conductor or member, produce to him evidence of the correctness of the name or address so stated.

Penalty: Twenty pounds.

(6) If any such person produces false evidence with respect to his name or address he shall be guilty of an offence.

Penalty: Twenty pounds or imprisonment for three months.

*Control of Traffic on Special Occasions.*

Regulation of traffic in certain cases. cf. 2280, 1936, s. 121.

**59.** (1) In this section "special occasion" means any period of time during which, in the opinion of the person giving a direction under this section, any street, roads or public places will be unusually crowded.

(2) The Commissioner of Police and the mayor of any municipality and the chairman of any district council district shall have power to give directions either in writing or orally or in any other manner for—

(*a*) regulating traffic of all kinds;

(*b*) preventing obstructions;

(*c*) maintaining order,

in any street, road or public place on any special occasion.

(3) Any such direction—

(*a*) if given by the Commissioner of Police may apply within the whole or any part of the State;

(*b*) if given by the mayor of a municipality or the chairman of a district council shall apply only within that municipality or district, as the case may be.

(4) If a direction given by the Commissioner of Police under this section is in conflict with a direction given by a mayor or chairman of a district council district, the direction of the Commissioner shall prevail.

Amended by 39, 1957, s. 4.

(5) The Commissioner of Police may delegate his power to give directions under this section to any member of the police force holding a rank not lower than that of inspector, subject to any limitations or conditions which the Commissioner thinks it proper to impose.

(6) If a person on being requested by a member of the police force to comply with a direction given under this section fails to comply forthwith with that direction he shall be guilty of an offence.

Penalty: Twenty pounds.

**60.** (1) On any occasion of riot or public disorder, the Commissioner may close and keep closed to the public any public place during such time as the Commissioner thinks proper.

Power to close road. cf. 2280, 1936, s. 73.

(2) Any person who is in or upon any public place which is closed to the public as aforesaid and who does not forthwith leave that public place upon being requested so to do by a member of the police force, may be removed therefrom by any member of the police force, and shall, in addition, be guilty of an offence.

Penalty: Twenty pounds.

(3) In this section the expression "public place" includes, in addition to the places mentioned in section 4 of this Act, any wharf, pier, or dock.

*Bribery of Police.*

**61.** (1) Any person who gives or offers or promises to give any bribe to, or makes any collusive agreement with any member of the police force to induce him to neglect his duty, or to conceal or connive at any act whereby any regulation or order relating to the appointment and duties of members of the police force may be evaded shall be guilty of an offence.

Bribery. 2280, 1936, s. 19.

Penalty: One hundred pounds or imprisonment for twelve months.

(2) In this section "bribe" includes valuable consideration of any kind.

*False Reports to Police.*

**62.** (1) Any person who falsely and with knowledge of the falsity of his statements represents to any member of the police force that any act has been done or that any circumstances have occurred, which act or circumstances as so represented are such as reasonably call for investigation by the police, shall be guilty of an offence. Provided that where the statements alleged to have been made by the defendant were statements concerning the conduct of a member of the police force the defendant shall not be convicted on the uncorroborated evidence of members of the police force.

False reports to police. cf. 2280, 1936, s. 118.

Penalty: Fifty pounds.

s. 62. MOUNTFORD v. CRAFTER (1942) S.A.S.R. 244. Held on the facts that the appellant had been rightly convicted of an offence under the section.

(2) Upon convicting a person for an offence against this section, the court may order him to pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made by any member of the police force as a result of the false statement.

(3) Any amount received by the complainant under this section shall be paid by him to the Treasurer in aid of the general revenue of the State.

Creating false belief as to events calling for police action. Inserted by 22, 1958, s. 4.

**62a.** (1) If—

(*a*) any person does any act with the intention of creating a belief that a felony or misdemeanour has been committed or that life has or may have been lost or is endangered; and

(*b*) at the time of doing the act firstmentioned, he knows that the act or circumstances with respect to which he intends to create such belief has not or have not occurred,

he shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for one year.

In this subsection "belief" includes suspicion.

(2) Upon convicting a person for an offence against this section, a court may order him to pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made by a member of the police force as a result of the offence.

(3) Any amount received by the complainant under this section shall be paid by him to the Treasurer in aid of the general revenue of the State.

Self inflicted injuries.

**63.** (1) Any person who wilfully causes any injury to himself—

(*a*) with intent to procure his admission to and treatment in a hospital; or

(*b*) which is of such a nature as to require treatment in a hospital,

shall be guilty of an offence.

Penalty: Fifty pounds or imprisonment for three months.

(2) In this section "injury" includes illness, physical disability or abnormal physical condition.

*Proceedings by Municipal and District Councils in respect of Certain Offences.*

Procedure on certain offences.
cf. 2280, 1936, s. 149a.

**64.** (1) The Governor may make regulations declaring the offences to which this section shall apply, being offences—

(*a*) against any Act which is administered by municipal councils or district councils:

(*b*) against any regulation made under such Act:

(*c*) against any by-law made under any Act by any municipal council or district council.

Any such regulation may describe any such offences either by reference to the Act, regulation, or by-law creating them or in any other way sufficient to identify them.

(2) In every such regulation there shall be stated an amount (not exceeding one pound) in relation to each offence which shall be payable as provided by this section by any person alleged to have committed that offence.

(3) If any report is made by a member of the police force with respect to the commission of any offence to which this section applies, that report shall be referred to the municipal council or district council of the area in which the offence is alleged to have been committed.

(4) If it is reported to any municipal or district council (whether on the report of a member of the police force or otherwise) that any person is alleged to have committed any offence to which this section applies, the council may give notice to such person to the effect that he may expiate the offence by the payment to the council of the amount fixed by regulation with respect to the offence. Any such notice may be given by post addressed to the last or usual place of abode or business of such person. The notice may require the said amount to be paid before any day specified in the notice.

(5) If in respect of such offence such person pays the amount as aforesaid to the council giving the notice, he shall not be liable to any proceedings in any court of summary jurisdiction for such offence.

(6) After the making of a regulation under this section, it shall not (except as provided by this section) be lawful for any municipal council or district council to require or invite any person alleged to have committed any offence to pay any amount to the council with respect to the alleged offence.

(7) If, after any report is made by any member of the police force with regard to the commission of any offence to which this section applies, any payment in respect of that offence is made to a municipal council or district council as provided by this section, the council shall pay to the Treasurer one-half of the amount so paid to the council and the amount paid to the Treasurer shall be by him paid into the general revenue. In every other case in which any payment is made to a municipal council or district council as provided by this section, the amount so paid shall be retained by the council as moneys of the council.

Payment of certain fines. cf. 2280, 1936, s. 149b.

**65.** If any report is made by any member of the police force to any municipal council or district council with respect to the commission of any offence (whether an offence to which the preceding section applies or not) and arising out of such report any proceedings are taken in any court and any fine is imposed upon the offender, and if under any Act it is provided that such fine is to be paid to any municipal council or district council, then, notwithstanding that Act, one-half of the fine shall be paid to the Treasurer and shall be by him paid into the general revenue.

*Compounding Informations and Complaints.*

Compounding informations and complaints. cf. 2280, 1936, s. 119.

**66.** (1) Any person who having laid an information or complaint before a justice for an alleged offence, subsequently receives any valuable consideration for withdrawing, seeking the dismissal of, or delaying the hearing of, that information or complaint shall be guilty of an offence.

Penalty: Fifty pounds.

(2) The discharge of a civil obligation shall not be deemed to be a valuable consideration within the meaning of subsection (1) of this section.

*Powers of Police as to Arrest, Search, Etc.*

General search warrants. 2280, 1936, s. 56.

**67.** (1) Notwithstanding any law or custom to the contrary, the Commissioner may issue general search warrants to such members of the police force as he thinks fit.

(2) Every such warrant shall be in the form in the schedule, or in a form to the like effect, and shall be signed by the Commissioner.

(3) Every such warrant shall remain in force for six months from the date thereof, or for any shorter period specified therein: Provided that the Commissioner may at any time revoke any such warrant.

(4) The member of the police force named in any such warrant may, at any time in the day or night, exercise all or any of the following powers:—

(*a*) He may with such assistants as he thinks necessary enter into, break open, and search any house, building, premises, or place where he has reasonable cause to suspect that—

(i) any felony or misdemeanour has been recently committed, or is about to be committed; or

(ii) there are any stolen goods; or

(iii) there is anything which may afford evidence as to the commission of any felony or misdemeanour; or

(iv) there is anything which may be intended to be used for the purpose of committing any felony or misdemeanour:

(*b*) He may break open and search any cupboards, drawers, chests, trunks, boxes, packages, or other things, whether fixtures or not, in which he has reasonable cause to suspect that—

(i) there are any stolen goods; or

(ii) there is anything which may afford evidence as to the commission of any felony or misdemeanour; or

(iii) there is anything which may be intended to be used for the purpose of committing any felony or misdemeanour:

(*c*) He may seize any such goods or things, to be dealt with according to law.

(5) In this section the term "stolen goods" includes goods obtained by the commission of any felony or misdemeanour.

Power to search suspected vehicles and persons. 2280, 1936, s. 58.

**68.** (1) Any member of the police force may do any or all of the following things, namely, stop, search, and detain—

(*a*) any vehicle in or upon which there is reasonable cause to suspect that there are any stolen goods;

(*b*) any person who is reasonably suspected of having, or conveying in any manner, any stolen goods.

(2) In this section "stolen goods" includes goods obtained by the commission of any felony or misdemeanour.

Power to board vessels. 2280, 1936, s. 60. Amended by 22, 1958, s. 5.

**69.** Any member of the police force may at any time in the day or night—

(*a*) enter into or upon any vessel which is in any harbour, port, dock, river, or creek, and into or upon every part of any vessel;

(*b*) search and inspect the vessel; and

(*c*) inspect and observe the conduct of all persons who are employed on board the vessel in or about the loading or unloading thereof; and

(*d*) take all such measures as are necessary for providing against fire and other accidents; and

(*e*) take all such measures as are necessary for preserving peace and good order and preventing or detecting the commission of offences on board the vessel.

Power to stop and search vessels. 2280, 1936, s. 61.

**70.** If any member of the police force in charge of a police station or holding a rank not lower than sergeant has reasonable cause to suspect—

(*a*) that any offence has been, or is about to be, committed on board of any vessel, which is in any harbour, port, dock, river, or creek; or

(*b*) that any person who has committed an offence or against whom any warrant has been issued by any justice, is on board of any vessel,

that member of the force may at any time in the day or night exercise all or any of the following powers:—

I. he may stop and detain that vessel:

II. he may enter at all times with such constables as he thinks necessary, into and upon that vessel, and every part thereof:

III. he may search and inspect that vessel, and therein take all necessary measures for the effectual prevention and detection of any such suspected offence and for the apprehension of any such suspected person as aforesaid:

IV. he may take into custody any person reasonably suspected of having committed any offence or liable to apprehension as aforesaid:

V. he may take charge of all property suspected to be stolen or otherwise unlawfully obtained.

**71.** Any member of the police force holding a rank not lower than sergeant, or any constable, when so ordered by any such member of the police force or called upon by the master or chief officer of the vessel concerned, may—

Power to apprehend persons committing offences on board vessels. 2280, 1936, s. 62.

(*a*) enter into and upon any vessel which is in any harbour, port, dock, river, or creek; and

(*b*) without any warrant, apprehend any person whom he finds drunk or committing any offence or whom he has reasonable cause to suspect of having committed any offence.

**72.** In the last preceding three sections "vessel" means any ship, boat, or other navigable vessel not being a ship, boat, or vessel belonging to the Navy of Her Majesty the Queen, or to the Navy of the Commonwealth or of any British Possession or foreign Government.

Meaning of vessel.

**73.** (1) Any member of the police force may—

Power to visit places of public entertainment. cf. 2280, 1936, s. 63.

(*a*) whenever he thinks proper enter into any place of public entertainment; and

(*b*) order any common prostitute or reputed thief or disorderly person who is in that place of public entertainment to leave it.

(2) If any such person refuses to leave any such place on being ordered by a member of the police force so to do, or having so left any such place returns thereto on the same day, that member may forcibly remove him therefrom, and may take him into custody.

(3) Any such person who—

(*a*) remains in any such place after having been so ordered to leave; or

(*b*) after being removed from or leaving any such place pursuant to this section returns thereto on the same day,

shall be guilty of an offence.

Penalty: Twenty-five pounds.

(4) In this section "place of public entertainment" includes any premises or place open to the public whether on payment of money or not and kept or used for any entertainment, amusement, sport, game or contest.

Power to enter licensed premises. 2280, 1936, s. 64.

**74.** (1) Any member of the police force when called upon by any holder of a licence under the Licensing Act, 1932-1949, may—

(*a*) enter into the licensed premises of the holder of that licence; and

(*b*) without any warrant, apprehend any person whom he finds drunk and behaving in a riotous or indecent manner, or whom he finds fighting or using threatening, abusive, or insulting words, or behaving in a threatening, abusive, or insulting manner.

(2) This section shall not be deemed to take away or restrict any power conferred by the Licensing Act, 1932-1949.

Power of arrest. cf. 2280, 1936, s. 65.

**75.** (1) Any member of the police force, without any warrant other than this Act, at any hour of the day or night, may apprehend any person whom he finds committing or has reasonable cause to suspect of having committed, or being about to commit, any offence.

(2) Any member of the police force may require any such person to state his full name and address; and if such member has reasonable cause to suspect that the name or address stated is false, he may require that person to produce evidence of the correctness of the name or address stated by him.

The powers conferred by this subsection may be exercised whether the suspected person is apprehended or not.

(3) If any such person refuses to comply with any such requirement, or states a name or address which is false in

---

**s. 75.** White v. Kain (1921) S.A.S.R. 339; 8 Austn. Digest 426; 9 Austn. Digest 537; 13 Austn. Digest 1096, 1103. The expression "just cause to suspect" in section 48 (1) (*e*) of the Police Act, 1916, connoted that the constable must have a suspicion, based on grounds which would create a suspicion in the mind of a reasonable man. The plaintiff in an action for wrongful arrest need not negative justification. The defendant must prove it; but *semble,* justification may be inferred from proof that the defendant was a constable, by reason of the maxim *omnia praesumuntur rite esse acta.*

Rosey v. Reynolds (1929) S.A.S.R. 408; 5 Austn. Digest 951; 9 Austn. Digest 522. Section 48 (1) (*e*) of the Police Act, 1916 (in which the expression "just cause to suspect" occurred) gave power to arrest for a suspected offence under section 63 of the Lottery and Gaming Act, 1936 (loitering). The section operates when the constable not only suspected, but believed that a person was loitering.

Johns v. Powell (1930) S.A.S.R. 230; 13 Austn. Digest 1097. The expression "just cause to suspect" in section 48 (1) (*e*) of the Police Act, 1916, meant grounds for suspicion of guilt, which are such as might cause a real and not trivial suspicion in the mind of an ordinarily prudent man regarding the matter reasonably at the material time.

Dinan v. Brereton (1960) S.A.S.R. 101; 34 A.L.J. 158. A police officer who finds a person committing, or has reasonable cause to suspect a person of having committed, an offence, is authorized by section 75 to follow that person on to private premises for the purpose of apprehending him.

any particular, or produces false evidence with respect to his name or address, he shall be guilty of an offence.

Penalty: Twenty pounds, or imprisonment for three months.

**76.** (1) If the owner of any property finds any person committing an offence on or with respect to that property, that owner or his servant or any person authorized by him may apprehend the offender and detain him until he can be delivered into the custody of a member of the police force to be dealt with according to law.

Arrest by owners of property. cf. 2280, 1936, s. 68 (*b*).

(2) Where the property on or with respect to which an offence is committed consists of land, buildings, or other premises the powers conferred by this section on the owner may also be exercised by any occupier or person resident on or in such land, building, or premises.

**77.** Any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that the person so offering the property has committed any offence with respect to that property, may apprehend the person so offering the property, and detain him until he can be delivered into the custody of a member of the police force, to be dealt with according to law.

Arrest of persons pawning or selling stolen goods. 2280, 1936, s. 69.

**78.** (1) Any person apprehended without a warrant under any of the preceding sections of this Act shall be forthwith delivered into the custody of the member of the police force who is in charge of the nearest police station, in order that that person may be secured until he can be brought before a justice to be dealt with according to law, or, if such member deems it prudent to take bail, until he has given bail for his appearance before a justice:

Proceedings on arrest without warrant. 2280, 1936, s. 70. Amended by 39, 1957, s. 5, and by 1, 1960, s. 3.

Provided that where a person has been so apprehended at a place not more than fifteen miles in a direct line from the General Post Office at Adelaide upon suspicion of having committed an offence against section 48 or section 121a of the Road Traffic Act, 1934-1956, he may be delivered as aforesaid into the custody of the member of police force who is in charge of—

(*a*) the police station at Adelaide, known as the City Watch House; or

(*b*) the police station at Port Adelaide; or

(*c*) the police station nearest to the place where the person was apprehended.

(2) When any person apprehended under this Act without a warrant is deliverd into the custody of any member of the police force in charge of any police station, that member may, if he deems it prudent, take bail by recognizance, with or without sureties, as he thinks fit, without any fee or reward, from that person, the condition of the recognizance being that that person shall appear for examination before a justice at the place specified in the recognizance at the hour of ten o'clock in the forenoon next after the recognizance is taken, unless that hour falls on a Sunday or Christmas Day or Good Friday, or any public holiday, and in that case at the like hour on the succeeding day.

(3) Every recognizance so taken shall be of equal obligation on the parties entering into it, and the same proceedings shall lie for enforcing it as if it had been taken before a justice.

(4) The member of the police force taking any such recognizance shall keep the original recognizance in the police station of which he is in charge and shall lay it before the justice who is present at the time and place when and where the party is required to appear.

(5) An apparently genuine document purporting to be a recognizance under this section shall upon production and without proof of any signature be admitted before any court or justice as *prima facie* evidence of all matters recorded or stated therein.

(6) If the party fails to appear, but applies by any person on his behalf to postpone the hearing of the charge against him, and the justice consents thereto, the justice may enlarge the recognizance to such further time as he appoints.

(7) When the matter has been heard and determined, either by the dismissal of the case or by binding the party over to answer the matter thereof or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward.

Arrest without warrant where warrant has been issued. 2280, 1936, s. 71.

**79.** (1) Any member of the police force may, without a warrant, take into custody any person whom he has reasonable cause for believing or suspecting to be a person for whose apprehension or commitment a warrant has been issued by any justice.

s. 79. BULL v. LAING (1929) S.A.S.R. 65; 12 Austn. Digest 450. Prior to the amendment made by Act 1936 of 1929, section 50 of the Police Act, 1916, did not affect the rule that when an officer executes a warrant of commitment for non-payment of a fine imposed by a court of summary jurisdiction he must have the warrant in his possession.

(2) If any member of the police force, without a warrant, takes into custody any person whom he has reasonable cause for believing or suspecting to be a person for whose committal a warrant has been issued by a justice, that member shall forthwith deliver that person into the custody of the member of the police force in charge of the nearest police station, and shall as soon as conveniently may be, produce or cause to be produced to the person taken in custody the warrant of commitment (if any); whereupon the said person shall be dealt with as required by the warrant.

Right of arrested person to appear before justice to apply for bail.

**80.** (1) When a person arrested without a warrant is delivered into the custody of a member of the police force at a police station, and that member does not on application admit the arrested person to bail, the member shall, if so requested by the arrested person, forthwith bring him before a justice if there is one present in order that an application for bail may be made to and dealt with by that justice.

(2) Subsection (1) of this section does not apply where the person in custody was arrested upon suspicion of being a person in respect of whom a warrant of commitment has been issued.

Power to search, examine, and take particulars of persons in custody. 2280, 1936, s. 72.

**81.** (1) When a person is in lawful custody upon a charge of committing any offence, any member of the police force may search his person and take from him anything found upon his person, and may use such force as is reasonably necessary for those purposes.

(2) When a person is in lawful custody upon a charge of committing any offence and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, any legally qualified medical practitioner acting at the request of any member of the police force in charge of a police station, or of or above the rank of sergeant, and any person acting in good faith in his aid and under his direction, may make such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence, and may use such force as is reasonably necessary for that purpose.

(3) Where a member of the police force intends to request a medical practitioner to examine a person in custody—

(*a*) such member shall before communicating with the medical practitioner for the purpose of making

such request inform the person in custody of his said intention and inquire from such person whether he desires to be examined also by another medical practitioner named by him:

(*b*) if such person states that he does so desire, and names a medical practitioner such member shall promptly take all reasonable steps to inform that practitioner by telephone message that the person in custody desires him to attend at the police station and examine such person.

A person in custody shall be liable for the cost of any medical examination conducted at his request under this subsection, and neither the Crown nor any member of the police force shall be liable for that cost.

Failure to comply with this subsection shall not affect the legality of the detention of any person in custody, or of any medical examination conducted at the request of a member of the force.

(4) When a person is in lawful custody upon a charge of committing any offence any member of the police force in charge of a police station or of or above the rank of sergeant, may take or cause to be taken all such particulars as he deems necessary for the identification of that person, including his photograph and finger-prints, and may use or cause to be used such reasonable force as may be necessary to secure those particulars.

(5) The powers given by this section are in addition to and shall not derogate from any other powers of members of the police force.

General powers, privileges, duties, etc., of police.

**82.** Every member of the police force shall have, in addition to the powers, privileges, duties, and responsibilities conferred or imposed by this or any other Act, all such powers, privileges, duties, and responsibilities as any constable has by the common law.

Escape from custody. 2280, 1936, s. 72a. 44, 1946, s. 10.

**83.** Any person who being lawfully in the custody of a member of the police force, or lawfully confined in a police prison or police cell escapes or attempts to escape from that custody, prison, or cell, shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for twelve months.

*Miscellaneous Provisions.*

Proceedings for offences.

**84.** Proceedings for offences against this Act shall be heard and determined summarily.

Proceedings against persons acting under the Act.
2280, 1936, s. 150.

**85.** (1) No action shall be brought against any person for any act done in pursuance or execution or intended execution of this Act or in respect of any act or default in the execution of this Act unless it is commenced before the expiration of six months from the date on which the cause of action accrued.

(2) Where the act, neglect, or default is a continuing one the cause of action shall be deemed to accrue at the time when the act, neglect, or default ceases.

(3) Notwithstanding subsections (1) and (2) of this section the court may hear and determine an action brought after the time mentioned in this section if satisfied that failure to commence the action within that time was due to legal disability, absence from the State, or other reasonable cause, but in no case shall an action be maintained if commenced after the period fixed by the Limitation of Actions Act, 1936-1948.

(4) In any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereon.

(5) No plaintiff shall succeed in any such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into court after action brought by or on behalf of the defendant, together with the costs incurred up to that time.

---

s. 85. HODGSON v. ORR (1874) 8 S.A.L.R. 273; 13 Austn. Digest 77. Where a South Australian constable arrested a person out of South Australia for an offence committed in South Australia, held that, for the purposes of section 111 of the Police Act, 1869-70 (similar in substance to section 85 of the Police Offences Act, 1953), he was in the same position as a private person and not entitled to notice.

COBB v. DUFFY AND ANOTHER (1887) 21 S.A.L.R. 142; 13 Austn. Digest 90. The notice of action must state the place where the circumstances complained of occurred.

KYLOH v. WILSEN (1923) S.A.S.R. 501; 13 Austn. Digest 76. Where a constable making an arrest uses more force than is reasonably necessary, and the excess of force was not used in the honest belief that it was justified, no notice of action is necessary.

## THE SCHEDULE.

South [*Royal Arms*] Australia.

POLICE OFFENCES ACT, 1953.

*General Search Warrant.*

To

You are hereby authorized at any time in the day or night, with such assistants as you think necessary, to enter into and search any house, building, premises, or place where you have reasonable cause to suspect that—

(*a*) any felony or misdemeanour has been recently committed, or is about to be committed; or

(*b*) there are any goods obtained by any felony or misdemeanour; or

(*c*) there is anything which may afford evidence as to the commission of any felony or misdemeanour; or

(*d*) there is anything which may be intended to be used for the purpose of committing any felony or misdemeanour,

and to break open such house, building, premises, or place, and to break open and search any cupboards, drawers, chests, trunks, boxes, packages, or other things, whether fixtures or not, in which you have reasonable cause to suspect that—

I. there are any goods obtained by any felony or misdemeanour; or

II. there is anything which may afford evidence as to the commission of any felony or misdemeanour; or

III. there is anything which may be intended to be used for the purpose of committing any felony or misdemeanour,

and to seize any such goods or things, to be dealt with according to law. This warrant shall remain in force for six months from the date hereof. [*If for a shorter period state how long.*]

Dated this day of , 19 .

Commissioner of Police.