

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1791. Saint John, NB: Christopher Sower, Printer to the King's Most Excellent Majesty, 1791.

31 George III – Chapter 5

An Act for regulating marriage and divorce, and for preventing and punishing Incest, Adultry, and Fornication.

Whereas it is necessary in order to the keeping up of a decent and regular society, that the matrimonial union be settled and limited by certain rules and restraints; and the state of this province requires some provisions in this behalf, as also for cases of divorce and alimony.

I. Be it enacted, by the Lieutenant Governor, Council and Assembly, That when any persons of lawful age and capacity to make a contract of marriage, shall make known to any Parson, Vicar, Curate or other person in Holy Orders of the Church of England in the town or parish where they respectively reside, or in case there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England in such town or parish; then to any of his Majesty's Justices of the Peace, being of the Quorum in the county where they respectively reside, their intention of making a contract of marriage, such Parson, Vicar, Curate or other person in Holy Orders of the Church of England, shall cause proclamation to be made with an audible voice of such intention of marriage at some church, chapel, or other public place of meeting for religious worship in the town or parish, or towns and parishes where such parties and each of them respectively reside, during the time of divine service, on three Sundays successively, or in case there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England as aforesaid, such Justice of the Peace as aforesaid, shall cause a notification of such bans of matrimony in writing subscribed with the hand of such Justice of the Peace, to be affixed to some visible part of such church, chapel or other public place of meeting for religious worship, or some other public building to be directed and appointed by such Justice of the Peace and situate as aforesaid, on three Sundays successively. And if there shall be no lawful impediment or objection after such publication or notification of bans as aforesaid, it shall and may be lawful for such or any other Parson, Vicar, Curate or other person in Holy Orders of the Church of England, or any such Justice of the Peace as aforesaid, where there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England, as aforesaid, and they are hereby respectively authorized to solemnize and take the acknowledgment of marriage between such parties. Provided that in case they or either of them are within the age of twenty one years, consent thereto be first had of the father or guardian of the party or parties within the age last mentioned. Provided also, that any marriage so to be solemnized by any such Justice of the Peace as aforesaid, shall be solemnized and performed in the manner and form which shall be directed by the Governor, Lieutenant Governor or, Commander in Chief of the province.

II. And be it further enacted, That if any Parson, Vicar, Curate or other person in Holy Orders of the Church of England or any such Justice of the Peace as aforesaid, shall presume to solemnize or celebrate marriage between any persons whatsoever before proclamation or notification of bans

of matrimony between them made in form aforesaid, except a licence be first had and obtained therefor by and under the hand and seal of the Governor, Lieutenant Governor, or Commander in Chief of this province, he shall forfeit and pay to His Majesty the sum of twenty pounds to be recovered, with costs of suit, by bill, plaint or information in the Supreme Court of Judicature. Provided always, that every prosecution for any offence, penalty, or forfeiture in this clause contained, shall be commenced within the space of twelve months after such offence committed and not afterwards.

III. And be it further enacted, That, if any person, other than a Parson, Vicar, Curate, or some person in Holy Orders of the Church of England, or some such Justice of the Peace where there shall be no Parson, Vicar, Curate or other person in Holy Orders of the Church of England as aforesaid, shall presume to solemnize or celebrate marriage or shall officiate or assist in solemnizing or celebrating or making any marriage, or contract of present marriage between any persons whatsoever, or if any such Parson, Vicar, Curate or other person in Holy Orders of the Church of England, or any such Justice as aforesaid, shall solemnize or celebrate marriage or shall officiate or assist in solemnizing or celebrating, or making any marriage contrary to the provisions and the true intent and meaning of this Act, every such offender who shall be thereof convicted upon indictment or information of His Majesty's Attorney General before the Supreme Court of Judicature or any Court of *Oyer and Terminer* or Gaol Delivery, shall for every offence forfeit and pay a fine to the King not exceeding one hundred pounds, nor less than fifty pounds and suffer Twelve Months imprisonment. Provided always, that nothing in this act contained shall extend or be construed to extend to prevent any Minister of the Kirk of Scotland regularly ordained according to the rights thereof, from celebrating and solemnizing marriage agreeable to the forms and usages of that Church between persons of that communion. Provided also, that nothing herein contained shall extend or be construed to extend to prohibit or restrain persons called Quakers from the full and free liberty of solemnizing marriage according to the usages, forms and customs of that sect in case both parties to such marriage are Quakers. And Provided also, that nothing in this Act shall extend or be construed to extend to prohibit or restrain any person regularly ordained in Holy Orders of the Church of Rome from solemnizing marriage agreeable to the forms of their Church between persons of that, communion only.

IV. And be it further enacted, That every such Justice of the Peace as aforesaid shall register or cause to be registered in a fair or legible hand writing, subscribed with his own proper name and addition by himself, or by some other person in his presence and by his direction, in a book to be provided and kept for that purpose, all marriages and contracts of marriage by and in presence of him and them respectively celebrated, solemnized and acknowledged from time to time, and shall also within three months from and after every, such celebration and solemnization of marriage, deliver or transmit to the Clerk of the Peace in the county where the marriage shall have been solemnized and made as aforesaid, a certificate or memorial thereof in writing subscribed with his proper name and addition, which certificate or memorial the said Clerk of the Peace is hereby authorized and required to enter, transcribe and inrol in and with the records of the court of General Sessions of the Peace. And such registry shall be deemed and taken in all Courts of Law and Equity in this province to be as good evidence of such marriage so registered, as the registry of

such marriage would be if made by any Parson Vicar, Curate or other person in Holy Orders of the Church of England, agreeable to the Canons of the said Church.

V. And be it further enacted, That all causes, suits, controversies, matters and questions touching and concerning marriage and contracts of marriage and divorce, as well from the bond of matrimony as divorce and separation from bed and board and alimony, shall and may be heard and determined by and before the Governor or Commander in Chief of this province and His Majesty's Council: And that the Governor or Commander in Chief and Council aforesaid or any five or more of the said Council together with the Governor or Commander in Chief as President be and they are hereby constituted, appointed and established a Court of Judicature in the matters and premises aforesaid, with full authority, power and jurisdiction in the same. Provided, and it is hereby declared that nothing herein contained shall deprive, diminish, control, obstruct or abridge, or be construed, deemed, or extended to deprive, diminish, control, obstruct or abridge in any manner the rights, powers, authority, judicature, or jurisdiction of the Court of Chancery or of the Supreme Court of Judicature or of any Inferior Court of this province in and touching the matters and premises aforesaid or any of them, and that no sentence, decree, judgment, or proceeding of the said Court of Governor or Commander in Chief and Council in any information, prosecution, suit or issues touching and concerning any marriage or contract of marriage or divorce or alimony shall take away, annul, bar, suspend or in any wise alter or affect the right of action of any person or persons for any injury or damage sustained for or by reason of any breach of any covenant or contract of marriage.

VI. And be it further enacted, That the fixed and stated terms of holding the said Court of the Governor and Council for the purposes and causes herein mentioned, shall be and commence on the first Tuesday in February and the third Tuesday in July in each and every year and shall continue during the space of ten days.

VII. And whereas, the arduous affairs of government may render it impossible for the Governor or Commander in Chief at all times to preside in person in the Court aforesaid.

Be it further enacted, That it shall and may be lawful for the Governor or Commander in Chief by warrant or commission under his hand and seal, to depute, constitute and appoint the Chief Justice, or either of the Justices of the Supreme Court of Judicature or the master of the Rolls to preside in his place and lead in the said Court, or the Governor and Council, and to have hold and exercise all the powers, privileges, authority and jurisdiction of the Governor or Commander in Chief in the same Court, and that such Deputy or Vice President, shall have, hold and exercise all such powers, privileges, authority and jurisdiction accordingly as are hereby given and granted to the Governor or Commander in Chief in the same Court in all the causes, matters and things therein cognizable by this Act.

VIII. And for the more effectually preventing and punishing of incest, adultery, fornication and all acts of lewdness and unlawful cohabitation and intercourse between man and woman.

Be it further enacted, That every person who shall be hereafter lawfully convicted of any of the crimes aforesaid, before the Supreme Court of Judicature or any Court of Oyer and Terminer and Gaol Delivery in this province, shall be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender or offenders shall be convicted.

IX. And it is hereby declared and enacted, That the causes of divorce from the bond of matrimony and of dissolving and annulling marriage are and shall be frigidity or impotence, adultery and consanguinity within the degree's prohibited in and by an act of Parliament made in the thirty-second year of the reign of King Henry the eighth, entitled "An Act for marriages to stand notwithstanding pre-contracts" and no other causes whatsoever.

X. Provided always, and be it further enacted, That in case of a sentence of divorce from the bond of matrimony or marriage for the cause of adultery, the issue of, such marriage shall not in any case be bastardized or in any way prejudiced or affected with any disability thereby. Provided also, that the wife in such case shall not be thereby barred of her dower, or the husband be thereby deprived of any tenancy by the curtesy of England unless it shall be so expressly adjudged and determined in and by such sentence of divorce.

XI. And be it further enacted, That an Act made and passed in the twenty-seventh year of His present Majesty's reign, entitled "An Act for regulating marriage and divorce and for preventing and punishing Incest, Adultery and Fornication" be and the same is hereby, repealed, and declared to be utterly, null and void.