

STATUTES,

OF

Upper Canada,

PASSED IN THE FIRST SESSION OF THE ELEVENTH PROVINCIAL
PARLIAMENT.

MET AT YORK ON THE SEVENTH DAY OF JANUARY 1831, AND PROROGUED ON THE SIX-
TEENTH DAY OF MARCH, IN THE FIRST YEAR OF THE REIGN OF
WILLIAM IV.

SIR JOHN COLBORNE, K.C.B.

LIEUTENANT GOVERNOR

ANNO DOMINI 1831.

CHAP. I.

AN ACT to make valid certain Marriages heretofore contracted, and to provide for the
future Solemnization of Matrimony in this Province.

*(The Royal Assent to this Bill was signified, by Message of His Excellency the Lieutenant
Governor, to the Legislative Council and Assembly of this Province on the Second
day of March, 1831.)*

WHEREAS doubts have arisen respecting the legality of certain
Marriages heretofore Contracted and Solemnized in this Province; *and* Preamble.
whereas the Parties thereto, and their Issue, may be subject to disabilities
unless such Marriages be confirmed by Law, in order therefore to afford
relief to such persons, and establish the Legitimacy of their issue—*Be it
therefore enacted* by the King's most Excellent Majesty, by and with the
advice and consent of the Legislative Council and Assembly of the Pro-
vince of Upper Canada, constituted and assembled by virtue of and under

the authority of an Act passed in the Parliament of Great Britain, entitled, “An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s Reign entitled, ‘An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,’” and by the authority of the same, That the Marriage, or Marriages of all persons, not being under any canonical disqualification to contract matrimony, that have been publicly contracted in this Province before any Justice of the Peace, Magistrate, or Commanding Officer of a Post, or before any Minister, or Clergyman, before the passing of this Act, shall be, and are hereby confirmed, and shall be considered good and valid in Law; and the parties to such Marriages, and the Issue thereof, shall be entitled to all the rights, and subject to all the obligations, resulting from Marriage and consanguinity, any Law, usage or custom, to the contrary in anywise notwithstanding.

Former Marriages confirmed.

II. And to enable any person who may be desirous to preserve the evidence of their Marriage, and of the Birth of their Children, *be it further enacted by the authority aforesaid*, That it shall and may be lawful, at any time within Six years after the passing of this Act, for any Justice of the Peace, at the request of either of the parties, to administer the following Oath, or Affirmation, as the case may be, to the Husband and Wife, or either of them. “I A. B. do solemnly Swear, or Affirm, as the case may be, that I did publicly intermarry with C. D. at _____ on the _____ day of _____ in the year of our Lord _____ and that there is now _____ living Issue of the said Marriage, as the case may be, T. B. born on the _____ day of _____ M. B. born on the _____ day of _____ and that such Marriage was Solemnized by M. D. of the District of _____” which form of attestation shall be subscribed by the party making the same, and certified under the Hand and Seal of the Justice administering the said Oath or Affirmation, who shall be entitled to receive therefor One Shilling; and it shall be the duty of the Clerk of the Peace, upon payment of the sum of Two Shillings and six pence, to enter and record such attestation, duly certified as aforesaid, in a Register, or Book, to be by him kept for that purpose, and such Register, or an attested copy thereof, shall be considered sufficient evidence of such Marriage and of the Birth of the said Children; and the said Clerk of the Peace is hereby required to give such copy duly certified to any person demanding the same upon payment of Two Shillings. *Provided always*, that nothing in this Act contained shall extend, or be construed to extend, to make valid any Marriage illegally Solemnized, when the parties to such illegal Marriage, or either of them, shall have subsequently contracted Matrimony according to Law.

Method of preserving testimony of former Marriages.

Former Marriages not to be rendered valid where a subsequent Marriage has been legally contracted.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any Clergyman or Minister of any Church, Society, Congregation or Religious Community of persons, professing to be Members of the Church of Scotland, Lutherans, Presbyterians, Congregationalists, Baptists, Independants, Methodists, Menonists, Tunkers; or Moravians, who shall be authorised, in manner hereinafter mentioned, to Solemnize the ceremony of Marriage within this Province between any two persons, neither of whom is under any legal disqualification to contract Matrimony.

Ministers of certain Denominations authorised to Solemnize Matrimony.

IV. *Provided nevertheless, and be it further enacted by the authority aforesaid,* That no person shall be taken or deemed to be a Clergyman or Minister of such Church, Society, Congregation, or Religious Community, within the intent and meaning of this Act, who shall not have been regularly ordained, constituted or appointed, according to the rites and form of such Church, Society, Congregation or Religious Community, of which he professes to be a Clergyman or Minister, and unless he shall be a Subject of His Majesty, and shall appear before the Justices of the District in which he shall reside, in general Quarter Sessions assembled, and unless he shall produce proof of his ordination, constitution, or appointment as such Minister, and shall then and there take the Oath of Allegiance to His Majesty, which oath the said Court shall then and there administer, and thereupon, if it shall appear to the Majority of the Justices then present that he has been regularly ordained, constituted, or appointed as aforesaid, they are hereby authorised and required to grant him a Certificate under the Seal of the Court, and signed by the Chairman and the Clerk of the Peace, for which the said Clerk shall be entitled to receive the sum of Five Shillings, certifying him to be a Minister or Clergyman of such Church, Society, Congregation, or Religious Community, which Certificate may be in the following form:—

Certificate to be obtained from the Quarter Sessions by Ministers, before they can Solemnize Matrimony.

“Be it remembered, that at the General Quarter Sessions of the Peace, holden at——in and for——District, on the——day of——in the year of our Lord——before A. B. and others, Esquires, Justices of our Sovereign Lord the King, assigned to keep the Peace in the said District, came C. D. of——who professes to be a Minister or Clergyman of the Church, Society, Congregation or Religious Community, (as the case may be,) it appeared to a majority of the Justices that he the said C. D. was duly ordained, constituted or appointed, as the case may be, a Minister or Clergyman of the said Church, Society, Congregation or Religious Community.

E. F. Chairman.

G. H. Clerk of the Peace.”

Banns to be published or Licence obtained before the Solemnization of any Marriage.

V. *Provided also, and be it further enacted by the authority aforesaid,* That no such Minister or Clergyman shall at any time celebrate the ceremony of Marriage between any two persons as aforesaid, unless such their intention of Marriage shall have been declared openly and in an audible voice in the Church, Chapel, Meeting-house, or place of Public Worship of such Congregation or Religious Community, on three several Sundays, either in some intermediate part of the Service, or immediately before it began, or immediately after it ended, together with the number of times the said declaration shall have respectively been made, or unless such Minister or Clergyman shall have been duly authorised by Licence under the Hand and Seal of the Governor, Lieutenant Governor, or Person Administering the Government of the Province, to celebrate the said Ceremony between the two persons therein named.

Certificate of Marriage to be given by the person Solemnizing the same.

VI. *And be it further enacted by the authority aforesaid,* That every Minister, or Clergyman, or Justice of the Peace who has been or shall be authorised to celebrate Marriage by virtue of this Act, or any other Act of this Province, shall, if required at the time by either of the Parties Married, by such Minister, Clergyman, or Justice of the Peace, give a Certificate under his hand of such Marriage, specifying in such Certificate the names of the Parties, the time, and the names of two or more Persons who witnessed such Marriage, and whether such Marriage has been Solemnized by Licence, or by Publication of Banns, and also once in every twelve months return a Certified list under his hand of all Marriages by him Solemnized within the said term of twelve months, or since his last preceding return, to the Clerk of the Peace in and for the District in which such Marriages shall have been respectively Solemnized, specifying in such list the names of the Parties so by him Married, the respective dates of such Marriages, and the names of two or more persons who witnessed each of said Marriages, and whether such Marriages respectively shall have been Solemnized by Licence or Publication of Banns, and such Minister, or Clergyman, or Justice of the Peace, shall, at the time of returning a Certified list as aforesaid, pay to the said Clerk of the Peace the sum of Two Shillings and Six Pence; and it shall thereupon be the duty of the said Clerk, to record the said Certified list in the Register, or Book required by Law to be kept by him, of the Registry of Certified Marriages of members of the Church of Scotland, Lutherans, Congregationalists, Baptists, Independants, Methodists, Menonists, Tunkers, Presbyterians, or Moravians; and such Register, or a certified copy thereof, shall be considered in case of the death or absence of the Witnesses to any Marriage, a sufficient evidence of the said Marriages; and the said Clerk of the Peace is hereby required to give such copy of the Registry of any of the said Marriages, duly certified, to any person demanding the

Return of Marriages to be made annually to the Clerk of the Peace.

Clerk of the Peace to record such Return, which shall be evidence.

same, upon the payment of Two Shillings ; and if any such Minister, or Clergyman, or Justice of the Peace, shall refuse or neglect to return such certified list as aforesaid, he shall forfeit and pay the sum of Forty Pounds, to be recovered by action of Debt in His Majesty's Court of King's Bench, one moiety thereof to the use of the Informer, who shall sue for the same, and the other to be paid to the Receiver General of this Province, to and for the use of His Majesty, His Heirs and Successors, for the public uses of this Province, and the support of the Civil Government thereof, to be accounted for to His Majesty through the Lords Commissioners of His Majesty's Treasury for the time being, in such manner and form as His Majesty shall direct.

Persons neglecting to make Returns to forfeit £40.

CHAP. II.

AN ACT to prevent a failure of Justice by reason of Immaterial variances in certain Law Proceedings, and to require all Courts to take Judicial notice of Private Acts of Parliament.

[Passed 16th March, 1831.]

WHEREAS great expense is often incurred, and delay or failure of Justice takes place at trials, by reason of Variances between Writings produced in evidence, and the recital or setting forth thereof upon the Record on which the trial is had, in matters not material to the merits of the case, and such Record cannot now in any case be amended at the trial, and in some cases cannot be amended at any time ; *and whereas* great additional expense is often incurred by reason of the necessity of pleading Specially Private Acts of Parliament, which the several Courts of Justice cannot judicially notice unless they be so pleaded or given in evidence : *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That it shall and may be lawful for every Court of Record holding Plea in Civil Actions ; any Judge sitting at Nisi Prius, and any Court of Oyer and Terminer,

Preamble.