

Laws of His Majesty's Province of Upper-Canada; Passed in the Second Session of the Provincial Parliament of Upper Canada, Met at Newark, on the Thirty-First day of May, in the Thirty-Third Year of the Reign of our Sovereign Lord George the Third (1793). Niagara: Gideon Tiffany, Printer to the King's Most Excellent Majesty, 1795.

33 George III – Chapter 5

An Act to confirm and make valid certain Marriages heretofore contracted in the Country now comprized within the Province of Upper-Canada, and to provide for the future Solemnization of Marriage within the same.

Whereas many marriages have been contracted in this province, at a time when it was impossible to observe the forms prescribed by law for the solemnization thereof, by reason that there was no protestant parson or minister duly ordained residing in any part of the said province, nor any consecrated protestant church or chapel within the same, and whereas the parties having contracted such marriages, and their issue may therefore be subjected to various disabilities, in order to quiet the minds of such persons, and to provide for the future solemnization of marriage within this province, Be it enacted and declared 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 the marriage and marriages of all persons, not being under any canonical disqualification to contract matrimony, that have been publicly contracted before any magistrate or commanding officer of a post, or adjutant, or surgeon of a regiment, acting as chaplain, or any other person in any public office or employment, before the passing of this Act, shall be confirmed and considered to all intents and purposes as good and valid in law, and that the parties who have contracted such marriage, and the issue thereof, may become severally entitled to all the rights and benefits, and subject to all the obligations arising from marriage and consanguinity in as full and ample a manner as if the said marriage had respectively been Solemnized according to law.

II. And be it further enacted by the authority aforesaid, That in order to enable those persons who may be desirous to preserve the testimony of such marriage and of the birth of their children, to effectuate the same, it shall and may be lawful at any time within three years from the passing of this act, for any magistrate of the district where any such parties may have contracted matrimony as aforesaid, shall reside, at the request of either of the said parties, to administer the following oath to the husband:

"I A. D. do solemnly swear in the presence of Almighty God, 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 to administer the following Oath to the Wife:

"I C. D. do solemnly swear in the presence of Almighty God, that I did publicly intermarry with A. B. 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 maybe):

T. B. born on the _____ day of _____
M. B. born on the _____ day of _____

Which form of attestation shall be subscribed by the parties, and certified under the hand and seal of the magistrate administering the said oath, who shall be entitled to demand and receive one drilling for such certificate, and that it shall and may be lawful for the clerk of the peace of the district to enter and record, and he is hereby required, upon the payment of the sum of two shillings to enter and record such attestation, duly certified as aforesaid, in a book or register to be by him kept for that purpose; and that such register or an attested copy thereof, which copy the said clerk, is hereby required to make out, and on the payment of the sum of two shillings to deliver to any person requesting the same, shall be held and taken as sufficient evidence of such marriage, and the birth of such children in all his majesty's courts of law and equity.

III. And be it further enacted by the authority aforesaid, That until such time as there shall be five parsons or ministers of the church of England, severally incumbent or doing duty on and in their respective parishes or place or residence in any one district within this province, such parties as are not under any canonical disability and are desirous of intermarrying with each other, and neither of them living within the distance of eighteen miles of any parson or minister of the church of England, may apply to any neighboring justice of the peace within the district and declare the same, whereupon it shall and may be lawful for the said justice, to cause to be affixed in some public place within the township or parish wherein the parties reside, or if they should reside in different townships or parishes, then in the most public place within each of the said townships or parishes, a notice in the following form, for which he shall be entitled to receive the sum of one shilling, and no more:

"Whereas A. B. of and C. D. of are desirous of intermarrying with each other, and there being no parson or minister of the church of England living within eighteen miles of them or either of them, all persons who know any just impediment why they should not be joined in matrimony, are to give notice thereof to E. F. esquire, of one of his majesty's justices of the peace for the district."

And if no valid objection shall have been made to such intended marriage when three Sundays have intervened after the publication of the said notice, it shall and may be lawful for the said magistrate to proceed to solemnize the marriage, according to the form prescribed by the church of England, and to give to the parties a certificate thereof, in the following form, for which he shall be entitled to receive the sum of one shilling, and no more:

“Whereas A. B. of and C. D. of were desirous of intermarrying with each other, and there being no parson or minister of the church of England, living within eighteen miles of them or either of them, they have applied to me for that purpose; now these are to certify, that in pursuance of the powers granted by an Act of the legislature of this province, passed in the thirty-third year of his majesty’s reign, I A. B. one of his majesty’s justices of the peace, having caused the previous notice by the statute required to be given, have this day married the said A. B. and C. D, together, and they are become legally contracted to each other in marriage.”

Which certificate shall be signed by the parties, and also by any two or more persons present at the said marriage, and such marriage shall be good and valid in law to all intents and purposes whatever. And that upon application for that purpose made, the clerk of the peace for the said district shall and may, and he is hereby required to register the said certificate in a book for that purpose by him to be kept, and that it shall and may be lawful for him to demand and receive the sum of two shillings for registering the same, and that such register, or an attested copy thereof, which the said clerk is hereby required to make and deliver to any person requesting the same, and paying for it the sum of two shillings, shall be held and taken to be sufficient evidence of such marriage in all his majesty’s courts of law and equity.

IV. And be it further enacted by the authority aforesaid, That if any person shall after the passing of this Act, make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or Act or assist in falsely making, altering, forging or counterfeiting, any such certificate of marriage as hereinbefore is required to be given, or shall knowingly and wilfully insert or cause to be inserted in such register-book to be kept in each district any false entry of any matter or thing relating to any marriage, or Act or assist in falsely making, altering, forging any such entry in such register, or utter or publish as true, any such false, forged, altered, or counterfeited certificate or register as aforesaid, or a copy thereof, knowing such certificate or register of marriage respectively to be false, altered, forged, or counterfeited, or shall wilfully destroy or cause or procure to be destroyed any register-book of marriages or any part of such register-book, with an intent to avoid any marriage, every person so offending, and being thereof lawfully convicted, shall for such offence suffer such fine and imprisonment as to the court shall seem meet, provided such imprisonment be in the common gaol of the district, for a term not less than twelve calendar months.

V. Provided always, That when and so soon as there shall be five parsons or ministers of the church of England, severally incumbent and doing duty, within their respective parishes or places, of residence in any one district within this province, that the authority herein before given to the justices of the peace, within such district for the purposes aforesaid, shall cease and determine, and to the end that it may become publicly known when such a number of parsons or ministers are incumbent within any district, it shall and may be lawful for the governor, lieutenant governor or person administering the government of this province, and he is hereby required to give notice thereof, by an instrument under his hand and seal to the first general quarter sessions to be holden for the said district, certifying that there are five parsons or ministers of the church of England, severally incumbent, and doing duty, within their respective parishes, or places of abode

in the said district, and that therefore the provisions herein before made authorizing the justices of the peace to solemnize matrimony, have ceased and determined within the said district, which said instrument shall be publicly read before the justices in quarter sessions assembled, and kept and preserved by the clerk of the peace, among the records of the said district, and from and after the publication of such notice, it shall not be lawful for any justice of the peace within such district, to perform the marriage ceremony; and if any justice of the peace within the district where such notification shall have been made in manner aforesaid, shall after the publication thereof, knowingly and wilfully pretend to perform the marriage ceremony between any persons under or by virtue of the powers of this Act, or under any pretence whatever, he shall for every such offence, forfeit and pay the sum of twenty pounds, one moiety thereof to his majesty, his heirs and successors for the public uses of the province, and the support of the government thereof, and the other moiety to any person who shall sue for the same by action of debt, plaint, bill or information, in any of his majesty's courts of record within this province, and such pretended marriage so performed, shall be null and void to all intents and purposes whatever.

VI. And be it further enacted by the authority aforesaid, That it shall be no valid objection to the legality of any marriage heretofore solemnized by any parson or minister either by licence, or after due publication of banns or hereafter to be solemnized in manner aforesaid, or by any justice of the peace, duly authorized under the provisions of this Act, that the same was not solemnized in a church or chapel duly consecrated, nor shall any such marriage on account thereof, be held or taken to be illegal.

VII. And be it further enacted by the authority aforesaid, That this Act shall be publicly read in the several districts of this province, at the opening of the general quarter sessions of the peace for each district, that shall be holden next after the passing thereof, and once in every year for two years following, at the quarter sessions to be holden in the month of January.