



WESTERN AUSTRALIA.

ANNO QUARTO & QUINTO

VICTORIÆ REGINÆ,

No. 10.

An Act to regulate the Solemnization of Matrimony in the Colony of Western Australia.

WHEREAS it is expedient that certain regulations should be Preamble.
adopted with regard to the performance of the ceremony of
Marriage in the Colony of Western Australia;—Be it therefore enacted,
by His Excellency the Governor of Western Australia, by and
with the advice and consent of the Legislative Council thereof, that
from and after the passing of this Act, all the rules prescribed by the Rules prescribed by the Rubric to be duly observed.
Rubric concerning the solemnization of Marriage shall continue to
be duly observed by every person in Holy Orders of the Church of
England, who shall solemnize any marriage in the colony of Western
Australia. Provided always, that where, by any law or canon in Proviso where banns formerly necessary, the production of Registrar's certificate sufficient.
force before the passing of this Act, it is provided that any marriage

may be solemnized after publication of banns, such marriage may be solemnized in like manner, on production of the Sub-registrar's certificate in the manner hereinafter provided.

Proviso, that where no consecrated building, minister may solemnize marriage in place used for devotional purpose.

II. PROVIDED always, and be it enacted, that any marriage may be performed or banns published by a Minister of the Church of England under the provisions of this Act in any place which has been usually employed for the purposes of public devotion, according to the forms of the Church of England, in districts where there may be no regularly consecrated building.

Requisites to validity of Marriage.

III. AND be it enacted, that when any marriage is intended to be solemnized, it shall be lawful for the parties to adopt any form or ceremony they may think fit; provided always that no marriage shall take place without the production of the Sub-registrar's license or certificate, where such officer shall have been appointed, as hereinafter provided—nor unless with open doors in the place of which notice has been given to the Sub-registrar, and in the presence of the Sub-registrar or his deputy, and of two or three credible witnesses, in whose presence each of the parties shall also declare as follows:—

“I do solemnly declare that I know not of any lawful impediment why I, A B; may not be joined in matrimony to C D.”
And each of the parties shall say to the other—

“I call upon these persons here present to witness that I, A B, do take thee, C D, to my wedded wife,” (or “husband,” as the case may be.)

Provided also that no lawful impediment shall be alleged to the marriage of such parties.

Penalty on minister and party for marriage contrary to Act, £2 to £10.

IV. AND be it enacted, where any marriage shall be performed otherwise than according to the provisions of this Act in any district where a Sub-registrar shall have been appointed, the Minister performing the ceremony, and the man married, shall each forfeit and pay a sum not less than Forty shillings, nor exceeding Ten pounds.

Marriages by license.

V. AND be it enacted, that in case of any marriage intended to be solemnized by the Sub-registrar's license according to the provisions of this Act, one of the parties shall personally appear before the Sub-registrar of the district in which he or she may have been residing, and be examined touching the intended marriage, and shall make a solemn declaration of the name, surname, and the profession and condition of each of the parties intending marriage, the dwelling place of each of them, the time during which each has dwelt therein, and the public place of worship or other building in which the marriage is to be solemnized, and that the consent of the person whose consent is required by law has been obtained thereto (or that there is no person within the said colony having authority to give such con-

Declaration required.

sent), and that he or she knows of no lawful impediment why the said parties may not be joined together in matrimony; which declaration shall be subscribed in the presence of the Sub-registrar in a book kept for that purpose: after which the Sub-registrar shall issue a license under his hand and seal according to the annexed schedule, and such license shall be a sufficient authority for a due solemnization of such marriage.

VI. AND be it enacted, that in case of any marriage intended to be solemnized in any other way than by the Sub-registrar's license, one of the parties (or if they dwell in different districts, both the parties intending marriage) shall signify his or her intention to the Sub-registrar of the district in which he or she has resided in the form of the annexed schedule, upon which the Sub-registrar shall direct the Minister or Ministers of the place or places of worship nearest the residence or dwelling of the respective parties or which each of them has been in the habit of attending, to read aloud at some period during the time of divine service the notice of the intended marriage, according to the annexed schedule, in three successive weeks; and should no impediment be alleged, the Sub-registrar of the district in which the marriage is to be solemnized shall grant a certificate in the form of the annexed schedule, which shall be a sufficient authority for a due solemnization of the marriage.

VII. AND be it enacted, that any Minister neglecting or refusing to give notice when so required as aforesaid, shall forfeit and pay a sum not less than Forty shillings, nor more than Ten pounds.

VIII. AND be it enacted, that any person may, after license or certificate duly obtained, contract and solemnize marriage according to the provisions of this Act at the office of any Sub-registrar.

IX. AND be it enacted, that in all marriages to be solemnized by license where either of the parties (not being a widower or widow) shall be, if a man, under the age of 21 years, and if a woman, under the age of 18 years, the consent of the father or the natural or legal guardians of such of the parties so under age shall be required and obtained as far as practicable; but it shall not be necessary in support of such marriage to give any proof of the actual consent of any person whose consent thereunto is required by law, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

X. AND be it enacted, that any person may enter a caveat with the Sub-registrar against the grant of a license or certificate for the marriage of any person named therein; and if any caveat be entered with the Sub-registrar, such caveat being duly signed by, or on

behalf of, the person who enters the same, with the ground of objection on which his or her caveat is founded, no license or certificate shall be granted until the Sub-registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the license or certificate for the said marriage, or until the caveat be withdrawn by the party who entered the same.

XI. AND be it enacted, that every person who shall enter a caveat with the Sub-registrar against the grant of any license, or issue of any certificate, on grounds which the Sub-registrar shall declare to be frivolous, and that they ought not to obstruct the grant of the license, shall be liable for the costs of the proceedings, and for damages, to be recoverable in a special action upon the case by the party against whose marriage such caveat shall have been entered.

Persons making false declarations, &c., guilty of perjury. XII. AND be it enacted, that every person who shall knowingly or wilfully make any false declaration for the purpose of procuring any marriage, or shall falsely represent himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury.

Limitation of Prosecution. XIII. AND be it enacted, that every prosecution under this Act shall be commenced within the space of one year after the date when the offence is charged to have been committed.

XIV. AND be it enacted, that the Registrar and Sub-registrar respectively shall be entitled to charge the several Fees mentioned in the annexed Schedule.

Recovery of fines. XV. AND be it enacted, that all fines and forfeitures incurred under the provisions of this Act, may be recovered by a summary conviction before any two Justices of the Peace, and in case any such fine or forfeiture, together with costs of conviction, shall not be paid within the time mentioned by the order of the convicting Justices, it shall be lawful for the said Justices to levy and raise the same by distress and sale of the goods and chattels of the offender, and in case such goods and chattels be found insufficient for that purpose, to commit the offender or offenders to prison, there to be kept to hard labour for any time not exceeding six calendar months, unless such fines, with all the costs of proceeding, shall be sooner paid.

Appeal to the Quarter Sessions. XVI. AND be it enacted, that if any person shall think himself aggrieved by any judgment or conviction made under this Act, such person may appeal therefrom to the next Court of Quarter Sessions, which court shall hear and determine the matter of such appeal, and shall summon all necessary parties and witnesses, and shall make such order in affirmation or reversal of the judgment or conviction

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appealed from and for the payment of the costs of the appeal as to such Court may seem meet, and shall enforce such order (if necessary) by distress and sale of the goods and chattels of any person refusing or neglecting to obey such order, or by the imprisonment of any such persons for any time not exceeding six calendar months, provided that notice of such appeal be given by the appellant to the Justice or Justices from whose Judgment or conviction such appeal shall be made within three days next after such judgment or conviction, and that such appellant deposit the sum of Five Pounds with the said last mentioned Justices; or enter into recognizance with two sureties for securing payment of the costs of such appeal.

Notice and security for costs of appeal.

XVII. AND be it enacted, that no conviction before any Justice or Justices under this Act, or any adjudication made on appeal therefrom, shall be quashed for want of form, nor be removed by Writ of certiorari or otherwise, and no Warrant or commitment shall be held void by reason of any defect therein, provided that it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same.

No conviction, &c., void for want of form, or to be removed by certiorari.

XVIII. AND be it enacted, that all fines and forfeitures recovered under this Act shall be divided, paid and applied as follows, that is to say, after deducting charges of prosecution and sale from the produce thereof, one moiety shall be paid to the Colonial Treasurer to be appropriated towards the government of the Colony in such manner as the Governor acting with the advice and consent of the Legislative Council shall by law appoint, and the other moiety to the party or parties informing.

Appropriation of fines.

XIX. AND be it enacted, that this Act may be altered, amended, or repealed by any Act to be passed in the present Session.

Act may be amended.

JOHN HUTT,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council }
27th May, 1841. }*

WALKINSHAW COWAN,
Clerk of the Council.

SCHEDULE

REFERRED TO BY THE ANNEXED ACT.

No. 1.

SUB-REGISTRAR'S LICENSE.

District of } *Whereas* *of* *in the*
Western Australia. } *district of* *came before me and stated*
that he, the said *and* *of* *in the district*
of *were desirous to contract and solemnize marriage, and*
made and subscribed the declaration required by the provisions of an
Act passed in the 4th and 5th year of the reign of Her Majesty
Queen Victoria, entitled "An Act to regulate the solemnization of
Matrimony in the colony of Western Australia; I do hereby au-
thorise the solemnization of the said marriage within three calendar
months from the date hereof at the *of* *in the*
district of *in conformity with the provisions of the said Act.*

Given under my hand and seal this *day of* *18*

SUB-REGISTRAR.

No. 2.

NOTICE TO SUB-REGISTRAR.

day of *18*

Sir,

Inasmuch as I *of* *in the district*
of *and* *of* *in the district of* *are*
desirous to contract and solemnize Matrimony in the *of*
you are requested to have notice published of the same.

To the Sub-registrar of the }
district of }

No. 3.

SUB-REGISTRAR'S NOTICE TO MINISTER.

day 18

Sir,
You are requested to read aloud in your place of worship during the time of Divine Service the endorsed Notice in three several weeks, and to return it with the annexed certificate.

To the Rev. Minister of
Sub-Registrar.

I certify that I published the endorsed notice at the times and in the manner above specified.

Minister of
day of 18

No. 4.

SUB-REGISTRAR'S CERTIFICATE.

District of }
Western Australia. }

Whereas due notice (according to the provisions of an Act passed in the 4th and 5th year of the reign of Her Majesty Queen Victoria, entitled "An Act to regulate the solemnization of Matrimony in the Colony of Western Australia") has been published at of an intended marriage between of in the district of and of in the district of and whereas no lawful impediment to the said marriage has been shewn to me; I do hereby authorize the solemnization of the said marriage within three calendar months from the date hereof at the of in the district of in conformity with the provisions of the said Act.

Given under my hand and seal the
day of
Sub-registrar.

No. 5.

TABLE OF FEES.

	£	s.	d.
Sub-registrar, for every Notice or Declaration	0	1	0
Certificate	0	5	0
License	0	10	0
Marriage at the Sub-registrar's house	1	0	0
Attendance at Marriage	0	5	0
And expenses at the rate of 9d. per mile going and returning.			
Minister—For publication of notice of Marriage to receive from Sub-registrar on return of Certificate of such publication, with which sum the Sub-registrar shall be entitled to charge the parties	0	2	6