



ANNO SEXTO

VICTORIÆ REGINÆ,

No. 16.

By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT to amend an Act passed in the Second Year of the Reign of Her present Majesty intituled An Act for regulating Marriages in Van Diemen's Land and its Dependencies.

WHEREAS an Act was passed in the Second Year of the Reign of Her present Majesty intituled *An Act for regulating Marriages in Van Diemen's Land and its Dependencies*—AND WHEREAS it is expedient to amend the same in the manner hereinafter set forth—BE IT THEREFORE ENACTED by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies by and with the advice of the Legislative Council that from and after the passing of this Act no License Dispensation or Certificate shall be issued by any ecclesiastical or other person whomsoever authorised to issue Licenses Dispensations or Certificates for the solemnization of any Marriage whatsoever nor shall any Marriage be celebrated by any person or persons after the publication of Banns unless before any such License Dispensation or Certificate shall be granted or in case where Banns have been duly published

PREAMBLE.

No Marriage to be celebrated without a certain affidavit being made by one of the parties to be married.

before such Marriage shall be celebrated one of the parties about to be married shall make and subscribe an affidavit before such person or persons as are hereinafter authorised to take the same setting forth that both of the said parties are free and that he or she believeth that there is no impediment of kindred or alliance or of any other lawful cause nor any suit commenced in any Ecclesiastical Court to bar or hinder the proceeding of the said Matrimony and in case such Marriage is intended to be celebrated in pursuance of a License that one of the said parties hath for the space of fifteen days immediately preceding the issue of such License or in case of publication of Banns immediately preceding the third publication thereof had his or her usual place of abode within the Parish or District within which such Marriage is to be solemnized and where either of the parties not being a Widower or Widow shall be under the age of twenty-one years that the consent of the person or persons whose consent to such Marriage is required under the provisions of the said recited Act has been obtained thereto—PROVIDED ALWAYS that if there shall be no such person or persons within this Island having authority to give such consent then upon affidavit made to that effect by the party requiring such License Dispensation or Certificate or by one of the parties requiring to be married in pursuance of the due publication of Banns as aforesaid it shall be lawful to grant such License Dispensation or Certificate or to solemnize such Marriage after such publication of Banns notwithstanding the want of such consent—PROVIDED ALSO that in case either or both of the persons seeking to contract Matrimony shall be a prisoner of the Crown such affidavit shall with the exception of stating that such person or persons is or are free contain all the particulars hereinbefore mentioned and shall also set forth that the consent of the Lieutenant-Governor for the time being to such Marriage has been communicated by the Principal Superintendent of Convicts or other person acting as such to such party or parties.

Penalty for solemnizing a Marriage without having such affidavit produced.

II. AND BE IT ENACTED that from and after the passing of this Act if any person shall issue any License Dispensation or Certificate for a Marriage or in the case of Banns having been published shall solemnize any Marriage without such affidavit as aforesaid having been made before him such person shall be liable to a penalty of Five Hundred Pounds which shall be recoverable by action of debt to be brought in the Supreme Court of Van Diemen's Land in the name of Her Majesty's Attorney-General against the party offending.

Persons before whom such affidavits may be made.

III. AND BE IT ENACTED that in the case of all Marriages celebrated by License or Dispensation such affidavit as aforesaid may in the case of Marriages to be solemnized according to the rites and ceremonies of the Church of England be made before the Archdeacon's Surrogate or Surrogates until such time as this Island may be erected into a separate Bishoprick and from and immediately after that event before the Bishop or his Commissary or such other person or persons as he may appoint for that purpose and in case of Marriages according to the rites and ceremonies of the Church of Scotland before the Moderator for the time being or the persons appointed by him for the purpose

of granting Marriage Licenses and in case of Marriages according to the rites and ceremonies of the Church of Rome before the Vicar-General or such persons as he shall appoint for that purpose and in all other cases of License or Certificate before the Deputy Registrars—PROVIDED ALWAYS that such persons as are hereinbefore last mentioned respectively shall not only have power and authority to administer the necessary oaths and to take such affidavits for the purposes aforesaid but shall also have power and authority if they shall deem the same necessary further to examine on oath the person having made such affidavit as to any of the matters set forth or required to be set forth therein which examination on oath shall be taken down in writing by the person before whom such examination shall take place or by some person duly authorised by him for such purpose and shall remain and be kept in the custody of the person or persons for that purpose hereinafter specified—PROVIDED ALSO that every Deputy Registrar shall be authorised to issue Licenses forthwith when satisfied as to the truth of the particulars set forth in the affidavits hereinbefore required to be made any thing in the Twelfth Section of the hereinbefore recited Act to the contrary notwithstanding.

IV. AND BE IT ENACTED that if any person making any such affidavit or in his or her examination on oath as aforesaid shall knowingly and wilfully insert set forth or state therein any matter or thing by this Act required to be set forth or stated otherwise than according to the truth or shall knowingly and wilfully omit to set forth or state therein according to the truth any matter or thing required by this Act to be therein set forth or stated every person so offending shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

Penalty for making false affidavits.

V. AND BE IT ENACTED that every affidavit or examination so taken as aforesaid shall remain and be kept in the custody of the persons and their successors in office respectively hereby or by the hereinbefore recited Act empowered to take or receive the same.

Custody of such affidavits.

VI. AND BE IT ENACTED that whenever a Marriage shall not be had within three months after the complete publication of Banns no Minister or other person shall proceed to the solemnization of the same until the Banns shall have been re-published on three several Sundays unless by License Dispensation or Certificate duly obtained according to the provisions of the hereinbefore recited Act and of this Act and until a new affidavit shall have been made pursuant to the directions in that behalf contained in the Second Section of this Act.

Banns to be re-published if the Marriage is not solemnized within three months after first publication.

VII. AND BE IT ENACTED that whenever a Marriage shall not be had within three months after the grant of a License Dispensation or Certificate by any Minister or other person having authority to grant such License Dispensation or Certificate no Minister or other person shall proceed to the solemnization of such Marriage until a new License Dispensation or Certificate shall have been obtained unless by Banns duly published according to the provisions of the said recited

Or new Licence under like circumstances.

Act and of this Act and until a new affidavit shall have been made pursuant to the directions in that behalf contained in the Second Section of this Act.

Licence to specify the building where the Marriage is to take place and if in a private house the name of the Minister by whom alone the Marriage shall

Where Banns published the Marriage to take place only before the Minister who published them unless upon his Certificate of their publication.

Marriage to be solemnized between 8 A.M. and 4 P.M.

Marrying at other hours or without a License or publication of Banns or falsely personating a Clergyman and marrying persons deemed felony.

Licenses granted by the authorities of one Church not to authorise

VIII. AND BE IT ENACTED that from and after the passing of this Act no License or Dispensation for Marriage shall be granted by any Minister or other person authorised to grant such Licenses or Dispensations without specifying therein the particular Church or Chapel or private house in which the solemnization of the intended Marriage is to be performed—PROVIDED ALWAYS that in case the same is intended to be performed in any private house or any other place except in a Church or Chapel then such License or Dispensation shall also specify by name the Minister or other ecclesiastical person duly authorised to solemnize Marriage by whom it is intended such Marriage is to be solemnized and it shall not be lawful for any other person whomsoever to solemnize such Marriage as aforesaid by virtue of such License or Dispensation—PROVIDED ALSO that in all cases where Banns shall have been published no Marriage in pursuance thereof shall be solemnized by any other Minister or ecclesiastical person authorised to solemnize Marriage except the person or persons by whom such Banns have been published unless it shall be certified in writing under the hand of such Minister or ecclesiastical person that he had duly published the said Banns specifying the date when such publication was complete and also certifying that no just cause or impediment had been shown why the parties seeking Matrimony should not be joined together therein.

IX. AND BE IT ENACTED that it shall not be lawful for any person whatsoever to solemnize Matrimony at any other time than between the hours of eight o'clock in the forenoon and four o'clock in the afternoon.

X. AND BE IT FURTHER ENACTED that if any person shall from and after the passing of this Act solemnize Matrimony at any other time than between the hours of eight o'clock in the forenoon and four o'clock in the afternoon or shall solemnize Matrimony without the due publication of Banns unless a License Dispensation or Certificate of Marriage be first had and obtained from some person or persons having authority to grant the same or if any person falsely pretending to be in Holy Orders or to be duly authorised to solemnize matrimony shall nevertheless solemnize Marriage between any persons every person knowingly and wilfully so offending and being lawfully convicted thereof shall be deemed and adjudged to be guilty of felony and shall be transported for the space of fourteen years according to the laws in force for the transportation of felons—PROVIDED that all prosecutions for such felony shall be commenced within the space of two years after the offence committed.

XI. AND BE IT ENACTED that no License or Dispensation granted by any Minister or other ecclesiastical authority of the Church of England shall authorise the solemnization of Matrimony by any

Minister Priest or other ecclesiastical person of or belonging to the Churches of Scotland or Rome or any other denomination of persons whatsoever and that no License or Dispensation granted by any ecclesiastical authority or person of or belonging to the Church of Scotland shall authorise the solemnization of Matrimony by any Minister Priest or other ecclesiastical person of or belonging to the Churches of England and Rome respectively and that no License or Dispensation granted by any Priest or other ecclesiastical authority or person of or belonging to the Church of Rome shall authorise the solemnization of Matrimony by any Minister or other ecclesiastical person of or belonging to the Churches of England and Scotland respectively.

the solemnization of Marriage by a Minister of any other Church.

XII. AND BE IT ENACTED that it shall be lawful for any person interested in that behalf at any time before the issue of a Marriage License or Dispensation to enter a Caveat against the issue of such License or Dispensation with the ecclesiastical authority by whom such License or Dispensation is about to be issued such Caveat being duly signed by or on behalf of the person who enters the same and containing his or her place of residence and the ground of objection on which his or her Caveat is founded and no License or Dispensation shall be then granted until such ecclesiastical authority shall have examined into the matter of the Caveat and be satisfied that it ought not to obstruct the grant of a License or Dispensation for the said Marriage or until the Caveat be withdrawn by the party entering the same—PROVIDED ALWAYS that in case such License or Dispensation is upon the entry of any such Caveat and upon examination into the grounds thereof refused by any subordinate Minister of the respective Churches of England Scotland and Rome the person applying for such License or Dispensation may appeal to the Archdeacon (or after this Colony shall be erected into a Bishoprick to the Bishop) or to the Moderator or Vicar-General of those Churches respectively who shall thereupon either confirm the refusal or direct the grant of the License or Dispensation sought for.

Provides for the entry of Caveats against the issue of Licenses.

XIII. AND WHEREAS by the First Section of the said recited Act it was amongst other things enacted that after the Sixth day of November then next all Marriages if celebrated in the manner therein stated should be valid—AND WHEREAS by the Twenty-third Section of the said Act it was enacted that every Marriage celebrated before the passing of the said Act should except where a lawful impediment might have existed at the time of such Marriage be deemed as valid as if such Marriage had been performed under the provisions of the said Act—AND WHEREAS the said Act was passed on the Seventh day of the month of August preceding the said Sixth day of November and it is therefore expedient in order to settle any doubts which may exist as to the legality of any Marriages which may have taken place between the said Seventh day of August and the said Sixth day of November to make provision in that behalf in the manner hereinafter mentioned—BE IT THEREFORE ENACTED that every Marriage celebrated in this Island or its Dependencies between the said Seventh day of August and the said Sixth day of November and upon those

Settles doubts as to the legality of Marriages contracted between the time of the passing of 2nd Vict. No. 7 and its coming into operation.

days respectively by any Clergyman Minister or other person authorised to solemnize Marriage whether the same was so celebrated in any Church Chapel or building set apart for religious worship or in a private house shall to all intents and purposes be deemed as valid as if such Marriage had been performed under the provisions of the said recited Act—PROVIDED ALWAYS that nothing in this Act contained shall extend or be construed to extend to render valid any Marriage in respect to which a lawful impediment may have existed at the time of such Marriage.

JOHN FRANKLIN.

Passed the Legislative Council this twenty-
third day of November, one thousand eight
hundred and forty-two,

FR. HARTWELL HENSLOWE, *Clerk of the Council.*