



ANNO SEXTO

VICTORIÆ REGINÆ,

*As to Sec. 5 Sec. 21 v. No 3
" " " 9 " 23 v. No 11*

No. 18.



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 repeal an Act passed in the Sixth Year of the Reign of Her present Majesty intituled An Act to amend an Act passed in the Second Year of the Reign of Her present Majesty and to amend the said last-mentioned Act.

77.16.

WHEREAS an Act was passed in the Sixth Year of the Reign of Her present Majesty intituled *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—* AND WHEREAS it is expedient to repeal the said first-mentioned Act and to amend the Act so passed in the Second Year of the reign of Her present Majesty in the manner hereinafter provided—**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

PREAMBLE.

2 Vict. 77.16.

6 Vict. No. 16
repealed.

from and after the passing of this Act the said hereinbefore recited Act of the Sixth Year of the Reign of Her present Majesty shall be and the same is hereby repealed.

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

Repealed by
21st. of 1843

II. AND BE IT ENACTED that from and after the passing of this Act before any such License or Dispensation as in the said recited Act of the Second Year of the Reign of Her said Majesty is mentioned and provided for shall be granted or issued one of the parties about to be married shall make and subscribe an affidavit 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 that one of the said parties hath for the space of fifteen days immediately preceding the issue of such License had his or her usual place of abode within the Parish or District as the case may require 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 last-mentioned recited Act has been obtained thereto—PROVIDED ALWAYS that if there shall be no such person or persons having authority to give such consent then upon affidavit made to that effect by the party requiring such License or Dispensation it shall be lawful to grant such License or Dispensation.

Affidavits to be made before Surrogates until arrival of Bishop of Church of England and Moderator of Presbytery and Vicar General.

III. AND BE IT ENACTED that every affidavit for a License for a Marriage to be celebrated according to the rites and ceremonies of the Church of England shall be made and subscribed by the person making the same before the Surrogate or Surrogates who have usually taken affidavits for obtaining such Licences before the passing of this Act until this Island either alone or with its Dependencies or any of them shall be erected into a separate Bishoprick and from and immediately after that event and the arrival of the Bishop of such separate Bishoprick then before a Surrogate of the Bishop for the time being of such separate Bishoprick and every such affidavit for a License for a Marriage to be celebrated according to the rites and ceremonies of the Church of Scotland shall be made and subscribed as aforesaid before the Moderator for the time being of the Presbytery of the Church of Scotland in this Island or such other person or persons or one of them as he shall appoint for that purpose and every affidavit for a Marriage to be celebrated according to the rites and ceremonies of the Church of Rome shall be made and subscribed as aforesaid before the Roman Catholic Vicar General for the time being or such person or persons or one of such persons as he shall appoint for the purpose of receiving such affidavits as last aforesaid and that in every other case of an application for a Marriage License the affidavit hereby required shall be made before the Deputy Registrar to whom such application shall be made.

Caveat against the grant of License.

IV. AND BE IT ENACTED that if any Caveat be entered against the grant of any License for a Marriage to be celebrated according to the rites and ceremonies of the Church of England or of the Church of Scotland or of the Church of Rome such Caveat being duly signed by or on behalf of the person entering the same together with his place of residence and the ground of objection on which his Caveat is founded no License shall issue until the person duly authorised by law to issue such License and with whom such Caveat shall have been entered shall

have examined into the matter of such Caveat and be satisfied that it ought not to obstruct the grant of the License for such Marriage or until the Caveat be withdrawn by the person entering the same.

V. AND BE IT ENACTED that every License or Dispensation for a Marriage to be celebrated according to the rites and ceremonies of the several Churches of England Scotland and Rome shall specify therein the particular Church or Chapel or private house in which such Marriage is intended to be celebrated and such Marriage shall not be celebrated in any other place and in case the same is intended to be celebrated in any private house 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.

License 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 be solemnized.

VI. AND BE IT ENACTED that no License granted by any ecclesiastical authority of the Church of England shall authorise the solemnization of Matrimony by any other person than a Minister of the Church of England and that no License granted by the Moderator for the time being of the Presbytery of the Church of Scotland in this Island or by any person appointed by him to issue Marriage Licenses shall authorise the solemnization of Matrimony by any other person than a Minister of the Church of Scotland and that no License granted by any ecclesiastical authority of the Church of Rome shall authorise the solemnization of Matrimony by any other person than a Minister of the Church of Rome.

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

VII. AND BE IT ENACTED that whenever any Deputy Registrar duly authorised under the said recited Act of Second Victoria to issue Licenses for Marriage shall upon application made to him for any such License be satisfied as to the truth of all the matters required to be sworn to previous to the issue thereof and all such matters shall have been so sworn to it shall be lawful for him forthwith to issue such License —PROVIDED ALWAYS that no Caveat against the issue thereof shall have been entered according to the provisions of the said Act.

Deputy Registrar may issue License forthwith.

does this do away with the 7 days notice required by 21st V. No. 7512?

P. Sec. 19 V. No. 16 & 18 21 V. No. 3

VIII. AND BE IT ENACTED that before any Marriage shall be solemnized by any person or persons after the publication or republication of Banns and before any Certificate shall be issued for the solemnization of any Marriage one of the parties seeking to contract Matrimony shall make and subscribe before the Officiating Minister or Deputy Registrar who shall have been applied to for such Certificate as the case may require an affidavit 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 nor any other lawful cause nor any suit commenced in any Ecclesiastical Court to bar or hinder the proceeding of the said Matrimony and that one of the said parties hath for the space of fifteen days immediately preceding the third publication of Banns or the application for a Certificate as the case may be had his or her usual place of abode within the Parish or District (as the case may require) 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 such person or persons whose consent to such Marriage is required under the provisions of the said last-mentioned

Affidavit to be made before Marriage by Banns or issue of Certificate.

Repd. by 21 V. No. 3

recited Act has been obtained thereto but in case there shall be no such person or persons having authority to give such consent then upon affidavit made to that effect by the party requiring such 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 Certificate or to solemnize such Marriage after such publication of Banns—PROVIDED ALWAYS that in case either or both the persons desirous of contracting Matrimony by virtue of such Certificate or after the due publication of Banns shall be under sentence or order of transportation whether made or passed in this or in any other country such affidavit instead of stating that both of the said parties are free shall state and 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 and in such case before any such Certificate shall be issued or Marriage be celebrated the letter or instrument communicating such consent shall be delivered to the officiating Minister or Deputy Registrar as the case may require and the delivery thereof to such Deputy Registrar shall be specially mentioned in his Certificate and such letter or instrument shall be safely kept by such Minister and Deputy Registrar respectively and their respective successors in office—AND PROVIDED also that no Marriage of a Convict shall take place until such intended Marriage has been notified in three successive Gazettes by the Principal Superintendent of Convicts such notification to contain the names and residence of both the parties—PROVIDED ALSO that where any person applying for such Certificate shall be one of the people commonly called Quakers it shall be sufficient if he or she instead of such affidavit as aforesaid make and subscribe before the Deputy Registrar a solemn affirmation of the several particulars by this Section required to be sworn to or such of them as shall be applicable to the particular case.

*Sec. 21 V
No. 3*

Power to take affidavits.

Exh. A-1. 23 V. No. 11. S. V

IX. AND BE IT ENACTED that every person before whom any affidavit is required by this Act to be made and subscribed shall have full power and authority to take the same and to swear the deponent or deponents to the truth thereof and if he shall think it necessary so to do to examine every deponent on his or her oath as to the particulars or any of them set forth in such affidavit and every person before whom any affirmation is required by this Act or the said Act of the Second Year of the Reign of Her present Majesty to be made shall have full power and authority to take the same and if he shall think it necessary so to do to examine the person or persons making any such affirmation as to the particulars set forth therein or any of them and every such examination as aforesaid shall be reduced to writing and signed by the person so examined and shall be certified under the hand of the person taking the said examination and the custody of every such affidavit affirmation and examination shall belong to the person taking the same and his successor and successors in office.

Penalty for making false affidavits.

X. AND BE IT ENACTED that if any person making any such affidavit or affirmation or in his or her examination 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.

XI. AND BE IT ENACTED that in cases of Marriages to be celebrated according to the rites and ceremonies of the Church of England or of the Church of Scotland or of the Church of Rome whenever a Marriage shall not be had within three months after the complete publication of Banns no Minister shall proceed to the solemnization of the same until the Banns shall have been republished on three several Sundays unless by License duly obtained and authorising the solemnization of such Marriage by such Minister and that no Minister of either or any of the said Churches shall proceed to the solemnization of any Marriage upon the publication of Banns only or the republication of Banns only unless he be the officiating Minister of the Church in which such Banns have been published or republished or unless it shall be certified to him in writing under the hand of such officiating Minister that such Banns have been published or republished as the case may require and that no just cause or impediment has been shown why the parties seeking Matrimony should not be joined together therein.

Marriage to be celebrated within three months after publication of Banns by officiating Minister of Church where Banns published.

XII. 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 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 Banns shall have been duly published or republished as the case may require according to the provisions of the said recited Act and of this Act.

Marriage to be celebrated within three months after granting License Dispensation or Certificate.

XIII. AND BE IT ENACTED that from and after the passing of this Act if any person shall solemnize any Marriage after the publication or republication of Banns only without requiring and causing to be made and subscribed before him and delivered to him such an affidavit as is hereinbefore required in such case or if either of the persons desirous of contracting Matrimony shall be under such sentence or order of transportation as aforesaid without requiring and causing to be delivered to him the letter or instrument communicating the consent of the Lieutenant-Governor for the time being to such Marriage every person so offending shall for every such offence forfeit and pay a penalty of Five Hundred Pounds and every such penalty and every penalty which shall become forfeited under the Twenty-ninth Section of the said Act of the second year of the Reign of Her present Majesty 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 so offending.

Penalty for solemnizing Marriage without affidavit or consent of Lieutenant-Governor.

XIV. AND BE IT ENACTED that in any case where a Marriage is intended to be solemnized after publication of Banns and there shall be no Church Chapel or other place of public worship of the denomination or creed to which either of the parties seeking to contract Matrimony shall belong in either of the parishes in which either of such parties shall have had his or her usual place of residence then it shall be lawful for the officiating Minister of the parish nearest to the place of abode of either of the said parties in which there shall be a Church Chapel or other place of worship of the denomination or creed to which either of such parties as aforesaid shall belong to publish such Banns and solemnize such Marriage in such adjoining or nearest parish as aforesaid—AND in case any Marriage is intended to be had and solemnized either in presence of any Deputy Registrar or by virtue of a

Marriage may in certain cases be solemnized by Minister of parish nearest to place of abode of either party and in certain cases where no Deputy Registrar of a District notice may be given to Deputy Registrar of nearest District.

Certificate issued by any Deputy Registrar and there shall be no Deputy Registrar in either of the Districts in which either of such parties shall have had his or her usual place of residence then such notice as is required by this Act may be given to the Deputy Registrar of the District nearest adjoining to that in which either of the said parties shall have had his or her usual place of residence and in either of such cases the affidavit hereinbefore required to be made by persons about to contract Matrimony as the case may be instead of stating that one of the parties hath for the space of fifteen days immediately preceding the third publication of Banns or the application for a Certificate as the case may be had his or her usual place of abode within the Parish or District as the case may be within which such Marriage is intended to be solemnized shall state and set forth the name of the Parish or District as the case may be in which each of the said parties have had their usual place of residence and in every such case it shall be lawful for the Deputy Registrar of such nearest adjoining District to issue his Certificate and thereupon such proceedings may be had as if both of the parties intending to contract Matrimony had been resident for the time aforesaid in such nearest adjoining District.

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

XV. 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.

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

XVI. 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 or without the due republication of Banns whenever such republication shall be necessary according to the provisions of this Act unless a License Dispensation or Certificate of Marriage be first had and obtained from some person or persons having authority to grant the same and unless a new License Dispensation or Certificate be also first had and obtained whenever such new License Dispensation or Certificate shall be necessary according to the provisions of this Act 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.

Persons convicted of felony under this Act or the Act 2 Vict. No. 7 liable to transportation.

XVII. AND BE IT ENACTED that every person convicted of any felony created by this Act or by the said Act of the Second Year of the Reign of Her present Majesty shall be liable to be transported beyond the sea for the term of his or her natural life or for any term not being less than seven years or to be imprisoned in the common Gaol or House of Correction for any time not exceeding two years with or without hard labour—PROVIDED that every prosecution for any such felony shall be commenced within the space of two years after the commission of the offence.

Proviso.

Deputy Registrar may make altera-

XVIII. AND BE IT ENACTED that every Deputy Registrar lawfully may and shall make such alterations in the forms of Certificate

and of License of Marriage contained respectively in the Schedules marked B and C to the said Act of the Second Year of Her present Majesty annexed as shall be necessary in any and every case in order to make such Certificate or License conformable to the provisions of this Act.

tions in forms of Certificates in certain cases.

XIX. AND WHEREAS by the First Section of the said recited Act it was among 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 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.

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.

JOHN FRANKLIN.

Passed the Legislative Council this thirty-first day of January, one thousand eight hundred and forty-three,

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

