

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Dated	17 — 1 —	# 1863

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
17th January 1863.

No. 71. Read the following letter from E. C. BAYLEY, Esq., Secretary to the Government of India; to the Secretary to the Government of Fort Saint George, dated Fort William, the 24th December 1862, No. 7,366.

Home Department, Legislative.

A Bill to provide further for the solemnization of marriages in India of persons professing the Christian Religion has been introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations, and will be further considered after the 2nd of March next. This Bill has been published in the *Calcutta Gazette* of this date for general information; but for facility of reference, I am directed to forward a copy of it, and to request that, after ascertaining the opinions of any of the Officers whom it may be considered desirable to consult, His Excellency the Governor in Council will favor the Governor General in Council with his sentiments on the provisions of the proposed enactment generally, and especially as they are likely to affect the cases of Native Christians and of Natives, Converts to Christianity, with reference to local circumstances and the usages of these classes of persons.

No. 72. ORDER THEREON, 17th January 1863, No. 57.

Referred to the Honorable the Judges of the High Court, the Right Reverend the Bishop of the Diocese, the Senior Chaplain of the Church of Scotland and to the Advocate General.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

2
No 29 of 1862

A

BILL

TO

*Provide further for the solemnization of Marriages
in India of persons professing the Christian
Religion.*

WHEREAS it is expedient to provide further
for the solemnization of
Preamble. marriages in India by
persons professing the Christian Religion ;
It is enacted as follows :— 5

PART I.

*As to the persons by whom, and places at which,
Marriage may be solemnized.*

I. From and after the day of
no marriage between
Marriages otherwise than in the presence of
a Marriage Registrar,
or by Minister of
Church of Scotland, by
whom and where to be
solemnized. persons, one of whom is a
person, or both of whom
are persons, professing
the Christian Religion 5

—except marriages in the presence of a
Marriage Registrar under the provisions
of the Act of Parliament 14 and 15 Vic.
c. 40 (entitled "*An Act for Marriages in India*") or of Act V of 1852 of the Gover- 10
nor-General in Council (*for giving effect to
the provisions of an Act of Parliament,
passed in the 15th year of the reign of Her
present Majesty, entitled "An Act for Mar- 15
riages in India"*) and except marriages
between persons, one or both of whom are
members of or hold communion with the
Church of Scotland, solemnized by an

ordained Minister of the Church of Scotland under the provisions of the Act of Parliament 58 Geo. III c. 84 (entitled "*An Act to remove doubts as to the validity of certain Marriages had and solemnized within the British Territories in India*") or of Act XXIV of 1860 of the Governor-General in Council (*for the solemnization of Marriages in India by ordained Ministers of the Church of Scotland*)—shall, unless as hereinafter provided, be solemnized by any person not being in Holy Orders, or at any other place than a Church or Chapel, or some other place of, or generally used for, public worship.

II. Unless as hereinafter provided, any marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, not being a marriage before a Marriage Registrar under the provisions of the said Act of Parliament 14 and 15 Vic c. 40, or of the said Act V of 1852 of the Governor-General in Council, or a marriage between persons, one or both of whom are members of or hold communion with the Church of Scotland, solemnized by an ordained Minister of that Church, which shall be solemnized in India after the day of Marriages not so solemnized to be null and void. by a person not being in Holy Orders, or which shall be solemnized in any other place than in a Church or Chapel, or some place of, or generally used for, public worship, shall be null and void.

III. After the day of Mode of solemnizing marriages by Minister of Church of Scotland not being a Marriage Registrar. it shall not be lawful for any Minister of the Church of Scotland, not being a Marriage Registrar, to solemnize any marriage under the

provisions of the said Act of Parliament 58 Geo. III c. 84, or of the said Act XXIV of 1860 of the Governor-General in Council, at any other place than a Church, Chapel, or some place of, or generally used for, public worship, unless the same be solemnized in the presence of a Marriage Registrar, according to the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, and of the said Act V of 1852 of the Governor-General in Council.

IV. Any marriage solemnized after the last mentioned day by a Minister of the Church of Scotland at any other place than a Church, Chapel, or some place of, or generally used for, public worship, unless the same be solemnized in the presence of a Marriage Registrar, according to the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, and of the said Act V of 1852 of the Governor-General in Council, shall be null and void. Marriages not so solemnized to be null and void.

V. The preceding Sections of this Act shall not apply to any marriage solemnized by a person in Holy Orders of the Church of England under a license from the Bishop of the Diocese, or from any Surrogate authorized in that behalf by the Bishop, according to the conditions of such license. Preceding Sections not to apply to marriages solemnized by licensed Clergymen of the Church of England, or Surrogates.

VI. All marriages solemnized in India before the day of Saving of certain marriages solemnized by persons not in Holy Orders, &c. by persons not in Holy Orders, or not otherwise expressly authorized to solemnize such marriages under any of the Acts of Parliament, or Acts of

the Governor-General in Council mentioned in Section I of this Act, whether the same were solemnized in a Church, Chapel, or some place of, or generally used for, the purpose of worship or not, if not otherwise invalid, shall be deemed to be valid to all intents and purposes.

PART II.

As to the mode of solemnizing marriages under this Act.

VII. In every case of marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, intended to be solemnized in India after the day of next, otherwise than under the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, or of the said Act V of 1852 of the Governor-General in Council, or otherwise than by publication of banns or by license according to the rites and ceremonies of the Church of England, one of the parties shall give notice in writing in the form prescribed by Schedule A to this Act annexed, or to the like effect to the person in Holy Orders, or in the case of a marriage intended to be solemnized under the provisions of the said Act of Parliament 58, Geo. III c. 84, or of the said Act XXIV of 1860 of the Governor-General in Council, to the ordained Minister of the Church of Scotland whom he shall desire to solemnize the said marriage, and shall state therein the name or names, and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time (not being less than four days) during which each has dwelt

Notice of intended marriage to whom to be given. Form of notice.

there, and the Church, Chapel, or other place of, or generally used for, public worship in which the marriage is to be solemnized. Provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein, that he or she hath dwelt there one month and upwards.

VIII. The person in Holy Orders, or the Minister of the Church

Publication of notice of Scotland, to whom such notice shall have been delivered, if he shall be entitled to officiate in the Church, Chapel, or place of public worship in which it is intended to solemnize the said marriage, shall publish every notice of marriage received by him, by causing the same to be published and affixed in some conspicuous part of the said Church, Chapel or place of, or generally used for, public worship in which it is intended that the said marriage shall be solemnized. If such person in Holy Orders or Minister shall not be entitled to officiate as a Minister in such Church, Chapel, or place of, or generally used for, public worship, he shall at his option either return the said notice to the person delivering the same to him, or shall deliver the same to some other person in Holy Orders, or Minister of the Church of Scotland, entitled to officiate in such place of worship, who shall thereupon cause the same to be so published, and affixed in the said Church, Chapel, or place of, or generally used for, public worship.

IX. When one of the parties intending marriage (not being a

Procedure as to notice when one of the parties intending marriage is under 21 years of age.

widow or widower) is under twenty-one years of age, every person in Holy Orders or Minister as aforesaid, who shall receive

such a notice, and who shall not forthwith return such notice to the party delivering the same under the last preceding Section, shall, within 24 hours after the receipt by him thereof, send or cause to be sent by the Post or otherwise a copy of such notice to the Marriage Registrar of the District.

X. The Marriage Registrar of the District on receiving any such notice shall affix the same in some conspicuous place in his own Office, or if he is a Minister of the Christian Religion, in his own Church, Chapel, or place of worship.

XI. If there be more Registrars than one in any District, the local Government shall appoint one of such Registrars to be Senior Registrar, and such notice as aforesaid shall be sent to such Senior Registrar, who, on receiving the same, shall, besides affixing it in the manner laid down in the last preceding Section, send or cause to be sent a copy of such notice to all the other Marriage Registrars in the same District, who shall likewise affix the same in their own Offices or Churches, Chapels, or places of worship as aforesaid.

XII. Any person in Holy Orders or Minister of the Church of Scotland, who shall consent or intend to solemnize any such marriage as aforesaid, on being required so to do by or on behalf of the party by whom the notice was given and upon one of the parties intending marriage making such declaration as hereinafter required, shall issue under his hand a certificate of such notice having been given and of such declaration having been made.

Provided no lawful impediment according to the law of England be shown to the satisfaction of such person or Minister why such certificate shall not issue, and the issue of such certificate shall not have been sooner forbidden in the manner hereinafter mentioned by any person authorized in that behalf.

XIII. Provided that where by such declaration it appears, or when it is otherwise known to such person in Holy Orders or Minister that one of the parties intending marriage and not being a widower or widow is under twenty-one years of age, such person or Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of such notice of marriage.

XIV. Before any such certificate as aforesaid shall be issued by any person in Holy Orders or Minister as aforesaid, one of the parties intending marriage shall appear personally before such person in Holy Orders or Minister, and shall make a solemn declaration that he or she believes that there is not any impediment of kindred or affinity or other lawful hinderance to the said marriage, and when either or each of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the person whose consent to such marriage is required by law has been obtained thereto, or that there is no person resident in India having authority to give such consent as the case may be.

XV. The father, if living, of any party under twenty-one years of age, such party not being a widower or widow

or if the father be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there be no such guardian, then the mother of such party, if unmarried, shall have authority to give consent to the marriage of such party, and such consent is hereby required for the marriage of such party so under age, unless there be no person authorized to give such consent resident in India.

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XVI. Every person, whose consent to a marriage is required as aforesaid, is hereby authorized to prohibit the issue of the certificate by any such person in Holy Orders or Minister of the Church of Scotland as aforesaid, at any time before the issue of such certificate, by notice in writing to such person or Minister, subscribed by the person so authorized as aforesaid, with his name and place of abode, and his or her character in respect of either of the parties, by reason of which he or she is so authorized.

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XVII. If any such notice prohibiting the marriage shall be received by such person in Holy Orders or Minister as aforesaid, he shall not issue his certificate, and shall not solemnize the said marriage until he shall have examined into the matter of the said prohibition, and is satisfied that the person prohibiting the said marriage is not authorized by law so to do, or until the notice of the said prohibition be withdrawn by the person who gave the same.

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XVIII. When any Native Christian about to be married takes a notice of marriage to a person in Holy

Procedure before issue of certificate in the case of a Native Christian.

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Orders or a Minister of the Church of Scotland as aforesaid, or applies for a certificate from such person or Minister, such person or Minister shall, before issuing such certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, and if not, shall translate or cause to be translated the said notice or certificate to such Native Christian in the language of such Native Christian, or in some language which he understands.

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XIX. The certificate to be issued by such person in Holy Orders or such Minister of the Church of Scotland as aforesaid, may be in the form prescribed by Schedule B to this Act annexed, or to the like effect.

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XX. After the issue of the certificate by such person in Holy Orders or Minister of the Church of Scotland, marriage may be solemnized between and by the parties therein described according to the provisions of Part I of this Act, or according to such form or ceremony as such person in Holy Orders or Minister shall see fit to adopt.

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XXI. Every marriage solemnized in India after the day of by any person in Holy Orders, and every marriage solemnized in India after that date by an ordained Minister of the Church of Scotland under the provisions of the said Act of Parliament 58 Geo. III. c. 84, or of the said Act XXIV of 1860 of the Governor-General of India in Council shall

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be so solemnized between the hours of 6 in the morning and 7 in the evening.

XXII. Whenever a marriage is not solemnized within two calendar months after the date of the certificate which shall have been issued by such person in Holy Orders or Minister as aforesaid, such certificate and all other proceedings thereon shall be void, and no person shall proceed to solemnize the said marriage until new notice shall have been given and certificate thereof issued in the manner aforesaid. 5 10

XXIII. Provided that whenever any marriage has been solemnized by a person in Holy Orders, or a Minister of the Church of Scotland in accordance with the provisions of Part I of this Act, it shall not be necessary in support of such marriage to give any proof in respect of the dwelling of the parties or of the consent of any person, whose consent is thereunto required by law, or of the notice of marriage, or of the certificate or the translation thereof respectively, or in respect of the hours between which the same may have been solemnized, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage. 5 10 15

XXIV. Part II of this Act shall not apply to any marriage solemnized after publication of banns or by license from the Bishop of the Diocese, or by any Surrogate duly authorized by him on that behalf, according to the rites and ceremonies of the Church of England. 5

Part II not to apply to marriages solemnized after publication of banns or by license according to the rites of the Church of England.

PART III.

As to the Registration of Marriages in India.

XXV. All marriages solemnized in India between persons, both or one of whom shall profess the Christian Religion after the day of except marriages solemnized under the Act of Parliament 14 and 15 Vic. c. 40, and Act V of 1852 of the Governor-General in Council, shall be registered in the manner herein prescribed. Provided that no omission or defect in such Registration shall invalidate any marriage not otherwise invalid. 5 10

XXVI. All marriages solemnized by persons in Holy Orders of the Church of England shall be registered by the person in Holy Orders solemnizing the same in the Register of Marriages of the Station or District in which the marriage shall be solemnized, according to the form now in use under the orders of the Government contained in the *Calcutta Gazette* of 14th July 1841. 5 10

XXVII. Every person in Holy Orders of the Church of England shall send four times in every year in duplicate, authenticated by the signature of such person, of the Register of Marriages solemnized at or in any Station or District at which such person shall have any spiritual charge, to the Registrar of the Archdeaconry to which such person shall be subject, or within the limits of which such station shall be situated. Such 5 10

Copies of Register of marriages, &c. to be provided quarterly by Clergymen of the Church of England to the Registrar of the Archdeaconry.

quarterly return shall contain all the entries of marriages contained in the said Register from the 1st day of January to the 31st day of March, from the 1st April to the 30th June, from the 1st July to 30th September, and from the 1st October to the 31st December, of each year respectively, and shall be transmitted by such person within two weeks from the expiration of each of the quarters above specified. The said Registrar upon receiving the same shall transmit one duplicate to the Secretary to the Government in the Home Department at the Presidency in which such Archdeaconry shall be.

XXVIII. All marriages solemnized by Marriages by Ministers of Church of Scotland in Presidency Towns to be certified. ordained Ministers of the Church of Scotland under the Act of Parliament 58 Geo. III c. 84, and Act XXIV of 1860 of the Governor-General in Council, in any of the Presidency Towns, or in the Chief Town of any Lieutenant-Governorship, or within the distance of 20 miles from any such Presidency Town, or Chief Town, shall continue to be certified by the Ministers solemnizing the same in the manner required by the said Act of Parliament and Act respectively.

XXIX. All marriages solemnized by Marriages by the same Ministers at a greater distance than 20 miles from Presidency Town, &c., to be registered and certified as provided in next Section. ordained Ministers of the Church of Scotland under the last mentioned Act of Parliament and Act, solemnized at a greater distance than 20 miles from any such Presidency Town, or Chief Town, shall be registered and certified under the provisions contained in the next following Section of this Act, and not otherwise.

XXX. After the solemnization of any marriage under this Act by any person in Holy Orders, not being a Clergyman of the Church of England, or by a Minister of the Church of Scotland, at a greater distance than 20 miles from any Presidency Town, or Chief Town as aforesaid, the person solemnizing the same shall forthwith register such marriage in duplicate in a Marriage Register Book to be kept by him for that purpose, or according to the form prescribed by Schedule C annexed to this Act, and also in a certificate attached to the Marriage Register Book as a counterfoil.

XXXI. The entry of any marriage with the certificate in the Marriage Register Book shall be signed by the person in Holy Orders, by whom the said marriage has been solemnized, and also by the parties married and attested by two witnesses, and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry and the Marriage Register Book.

XXXII. The person solemnizing the said marriage shall forthwith separate the certificate from the Marriage Register Book, and transmit it within one calendar month from the time of the solemnization of the said marriage to the Marriage Registrar of the District in which such marriage was celebrated, or, if there be more Registrars than one, to the Senior Registrar, who shall cause the same to be copied into a book to be kept

by him for that purpose, and shall transmit
all the said certificates which he shall have
received during the month with such num-
ber and signature or initials added thereto,
to the Secretary to the Government of
the Presidency or Lieutenant-Governorship
within which he resides, together with the
certificates from his own Marriage Register
Book, which he shall transmit under the
12th Section of the said Act of Parliament
14 and 15 Vic. c. 40, but distinct therefrom.

XXXIII. Such copies shall be entered in
order from the beginning
to the end of the said
book, and shall bear both the number of the
certificate as copied and also a number to be
entered by the Registrar, indicating the
number of the entry of the said copy in the
said book according to the order in which
each certificate was received by the said
Registrar.

XXXIV. The Registrar shall also add
such last mentioned
number of the entry of
the copy in the book to the
certificate with his signature or initials,
and shall at the end of every month, trans-
mit the same to the Secretary to the Govern-
ment of the Presidency or Lieutenant-
Governorship as aforesaid.

XXXV. The person solemnizing any
such marriage, as is
provided for in Part III
of this Act, shall keep
safely the said Register Book, until the
same shall be filled, or if he shall leave
the District in which he solemnized the
marriage before the said book is filled, shall
make over the same to the person who shall
succeed to the duties and spiritual charge

in the said District, who shall keep safely
the same, and shall enter therein the entries
by this Act required to be made in respect
of any marriage solemnized by him within
the said District, and the person having the
control of the book at the time when the
same shall be filled shall transmit the same
to the Marriage Registrar of the District,
or, if there be more Registrars than one, to
the Senior Marriage Registrar who shall
transmit the same to the Secretary to the
Government at the Presidency as aforesaid,
to be kept by him with the records of his
Office.

XXXVI. Provided that with regard to
the marriages so certi-
fied, of which it may
appear to the Governor-
General in Council desirable that evidence
shall be transmitted to England, the Secre-
tary to the Government shall, at the end of
every three calendar months in each year,
send all the certificates of marriage sent to
him as aforesaid during such three months,
signed by him, to the Secretary of State for
India, for the purpose of being delivered to
the Registrar General of Births, Deaths,
and Marriages in India.

XXXVII. Any person charged with the
duty of registering any
marriage, who shall dis-
cover any error to have been committed in
the form or substance of any such entry,
may, within one calendar month next after
the discovery of such error, in the presence
of the parties married, or, in case of their
death or absence, in the presence of two
other creditable witnesses, who shall respec-
tively attest the same, correct the errone-
ous entry according to the truth of the
case by entry in the margin without any
alteration of the original entry, and shall

sign the marginal entry, and add thereunto 15
the day of the month and year when such
correction shall be made, and such person
shall make the like marginal entry, attested
in the like manner, in the certificate thereof, 20
and in case such certificate shall have been
already transmitted to the Secretary of
Government of the Presidency or place
within which he resides, such person shall
make and transmit in like manner a separate 25
certificate of the original erroneous entry,
and of the marginal correction therein made.

XXXVIII. Every person solemnizing a
marriage under this Act
Searches may be made and certificates or copies given. and hereby required to re-
gister the same, and every 5
Marriage Registrar or Secretary to Govern-
ment who shall have the custody for the
time being of any Register of Marriages,
or of any certificate or copies of certificate
under this Act shall at all reasonable times 10
allow searches to be made of any Register
Book, or of any certificate, or duplicate, or
copies of certificate in his custody, and
shall give a copy under his hand of any
entry or entries in the same on the pay- 15
ment of the fees hereinafter mentioned, that
is, for every search extending over a period
of not more than one year the sum of
one Rupee and four annas additional for
every additional year, and the sum of one
Rupee for every single certificate. 20

XXXIX. All fees received by a Mar-
riage Registrar or Se-
Appropriation of fees. cretary shall be account-
ed for and paid over by him to Govern-
ment, and all fees received by a person 5
solemnizing a marriage, not being a Mar-
riage Registrar, may be retained by such
person.

XLIV. When in respect to any marriage
falling under this part
On marriage being performed it shall be the duty of the licensed person to grant a certificate thereof. of the Act, the condi-
tions prescribed in the 5
last preceding Section
shall have been fulfilled, it shall be the duty
of the person licensed as aforesaid in whose
presence the said declaration shall have been
made, to grant a certificate of such marriage
on the application of either of the parties to 10
such marriage on the payment of a fee of
four annas. Such certificate shall be signed
by such licensed person, and shall be receiv-
ed as conclusive evidence of such marriage
having been performed in any suit touching 15
the validity of such marriage, and no evi-
dence to prove the contrary shall be received
in any such suit.

XLV. The local Government or the
Chief Commissioner may
Licenses may be revoked. at any time revoke any
license granted by such Government or Chief
Commissioner under Section XLII of this 5
Act.

XLVI. The grant or revocation of any
license under Sections
Grant or revocation of license to be notified in the Gazette. XLII and XLV respec-
tively of this Act shall
be notified in the Official Gazette. 5

XLVII. All marriages performed between
Native Christians as
Marriages performed under the provisions of Section XLIII to be good and valid. aforesaid or their de-
scendants, in accordance
with the provisions of 5
Section XLIII of this Act, shall be good
and valid to all intents and purposes.

XLVIII. A Register Book of all marri-
ages, of which certifi-
Register Book to be kept. cates shall be granted
under Section XLII of this Act shall be 5

kept by the person granting such certificates 5
in his own vernacular. Such Register
Book shall be kept according to such form
as the local Government shall from time to
time prescribe, and true extracts therefrom 10
duly authenticated shall be deposited at
such places and at such times as the Local
Government shall direct.

XLIX. Every person licensed under this
Act to grant certificates
of marriage, and who
shall have the custody
of a Register Book under the last preced- 5
ing Section, shall, at all reasonable times,
allow search to be made in such Book in
his custody, and shall give a copy certified
under his hand of any entry or entries in 10
the same, on the payment of the fees here-
inafter mentioned, that is to say, for every
search extending over a period not exceed-
ing two years the sum of eight annas, and
two annas additional for every additional
year.

PART V.

As to Penalties.

L. Every person who shall know-
ingly and wilfully make
any false oath or de-
claration, or sign any
false notice or certificate, required by the 5
said Statute 14 and 15 Vic. c. 40 for the
purpose of procuring any marriage, and
every person who shall forbid the issue of
a Marriage Registrar's certificate by falsely
representing himself or herself to be a per- 10
son whose consent to such marriage is re-
quired by law, knowing such representation
to be false, shall, on conviction, be liable to
the punishment prescribed by Section 193
of the Indian Penal Code. 15

XL. Every certified copy, purporting
to be signed by the per-
son entrusted under the
Act with the custody
of any Marriage Regis- 5
ter, or certificate, or duplicate certificate
required to be kept or delivered under this
Act, of any entry of a marriage in such a
Register, or of any such certificate or dupli- 10
cate certificate, shall be received as evidence
of the marriage purporting to be so entered,
or of the facts purporting to be so certified
therein without further proof of such
register of certificate, or duplicate copy, or 15
of any entry therein respectively, or of
such copy.

XLI. Nothing contained in Part III of
this Act shall apply to
the register or certifi-
cate of any marriage
solemnized under the 5
Act of Parliament 14 and 15 Vic. c. 40,
or Act V of 1852 of the Governor-General
in Council.

PART IV.

As to the marriage of certain Native Christians.

XLII. And whereas it is expedient to
make provision for the
marriage of certain Na-
tive Christians to whom
the provisions of the said Statute 14 and 5
15 Vic. c. 40 and the said Act V of 1852 of
the Governor-General of India in Council
are found not to be suitable, it shall be
lawful for the local Government of any Pre-
sidency or place, or the Chief Commissioner 10
of any Province to issue a license to any
person not in Holy Orders authorizing such

person to grant certificates of marriage between Native Christians being converts from any religion in India and between the descendants of such Native Christians. 15

XLIII. It shall not be a necessary preliminary to the grant of

No notice or certificate necessary before marriage, but subsequent certificate may be given on certain conditions.

a certificate by any person licensed under the last preceding Section, that any notice of marriage

should have been given by either of the parties to such marriage, or that any certificate should have been issued of any notice having been given under the provisions of the said Act V of 1852 or otherwise, and every marriage between Native Christians as aforesaid, applying for a certificate under this part of the Act, shall be certified under this part of the Act if the following conditions be fulfilled and not otherwise. 15

1. The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years.

2. The man and the woman shall not stand to each other within the prohibited degrees of consanguinity or affinity.

3. Neither of the parties intending to be married shall have a wife or husband still living.

4. In the presence of the person so licensed and of at least two witnesses 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 be my lawful wedded wife (or husband) or words to the like effect.

LI. Whoever, not being authorized to solemnize a marriage under the said Act of Parliament 14 and 15

Punishment for a person, not duly authorized, solemnizing a marriage. 5
Vic. c. 40, or Act V of 1852 of the Governor-General in Council, or under the Act of Parliament 58 Geo. IV. c. 84, or Act XXIV of 1860 of the Governor-General in Council, and not being a person in Holy Orders, shall, from and after the day of 10
of knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, in the absence of a Registrar of the District in which such marriage is solemnized, shall be punished 15
with imprisonment of either description as defined in the Indian Penal Code, which may extend to ten years, and shall also be liable to fine, or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than 20
seven years and not exceeding ten years, or if the offender be an European or American, to penal servitude according to the provisions of Act XXIV of 1855. 25

LII. Whoever shall, from and after the day of

Punishment for solemnizing a marriage in a Church, &c., in the absence of a Registrar.

knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, in any other place than a Church, Chapel, or other place of, or generally used for, public worship, in the absence of any Registrar of the District in which such marriage is solemnized, shall be liable to imprisonment of either description as defined in the Indian Penal Code which may extend to a term of ten years, and shall also be liable to fine, or in lieu of a sentence of imprisonment for seven years or upwards to transportation for a term of not less than 15

seven years and not exceeding ten years, or if the offender be an European or American to penal servitude according to the provisions of Act XXIV of 1855. Provided that

Proviso. this Section shall not apply to any Clergyman of the Church of England who shall solemnize a marriage under a license from the Bishop of the Diocese, or from any Surrogate duly authorized in that behalf by the said Bishop, whether such license expressly sanctions the solemnization of the marriage otherwise than in a Church, Chapel, or some place of, or generally used for, public worship, or not.

LIII. Whoever shall, from and after the day of

Punishment for solemnizing a marriage at an unauthorized hour, &c. knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian Religion, at any time otherwise than between the hours of 6 in the morning and 7 in the evening, or in the absence of at least two witnesses, and whoever shall knowingly and wilfully solemnize such a marriage when one of the parties to such marriage, not being a widower or widow, is under 21 years of age, or within fourteen days after the receipt by him of notice of such marriage, no order for the issue of a certificate in less than 14 days having been made by a competent Court, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to three years, and shall also be liable to fine.

LIV. Whoever, being a Marriage Registrar appointed under the provisions of Act V of 1852, shall knowingly and wilfully issue any

Punishment for Registrars issuing certificates, or solemnizing marriages without publication of notice, &c.

certificate for marriage, or solemnize any marriage under Act V of 1852, without publishing or affixing in some conspicuous place the notice of such marriage as directed by the said Act, or after expiration of two calendar months after a certificate in respect of a marriage shall have been issued by him, shall solemnize such marriage, or shall, without an order of a competent Court authorizing to do so, solemnize any marriage when one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, before the expiration of 14 days after the entry of such notice as is required by the said Act, or without sending or causing to be sent by the Post or otherwise a copy of such notice of marriage to the Registrar of the District, or, if there be more Registrars than one, to the Senior Registrar of the District, or shall issue any certificate, the issue of which shall have been prohibited as in this Act directed by any person authorized to prohibit the issue thereof, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to five years, and shall also be liable to fine.

LV. Whoever, being a person authorized under the provisions of this Act to solemnize a marriage, and not being a person in Holy Orders of the Church of England

Punishment for persons authorized under this Act, solemnizing marriages without publication of notice, &c. solemnizing a marriage under a license from the Bishop of the Diocese, or a Surrogate duly authorized in that behalf, who shall knowingly and wilfully issue any certificate for marriage under this Act, or solemnize any marriage between such persons as aforesaid, without publishing or causing

to be affixed the notice of such marriage 15
 as directed in Part II of this Act, or after
 the expiration of two calendar months after
 the certificate shall have been issued by
 him, or shall knowingly and wilfully issue
 any certificate for marriage, or solemnize a 20
 marriage between such persons, when one
 of the persons intending marriage, not be-
 ing a widower, or widow, is under 21 years
 of age, or before the expiration of 14 days
 after the receipt of notice of such marriage, 25
 or without sending or causing to be sent
 by the post or otherwise a copy of such
 notice to the Registrar, or, if there be more
 Registrars than one, to the Senior Regis-
 trar of the District, or shall knowingly and 30
 wilfully issue any certificate, the issue of
 which shall have been forbidden under this
 Act, by any person authorized to forbid the
 issue, or shall knowingly and wilfully so-
 lemnize any marriage which shall have 35
 been forbidden by any person authorized to
 forbid the same, shall be punished with im-
 prisonment of either description as defined
 in the Indian Penal Code for a term which
 may extend to four years, and shall also be 40
 liable to fine.

LVI. Whoever, not being licensed
 to grant a certificate of
 marriage under Part
 IV of this Act, shall
 grant such certificate intending thereby to 5
 to make it appear that he is so licensed,
 shall be punished with imprisonment of
 either description as defined in the Indian
 Penal Code for a term which may extend
 to five years, and shall also be liable to 10
 fine.

LVII. Whoever shall wilfully insert
 or cause to be inserted
 any false entry in any

such Register Book or authenticated extract 5
 therefrom as is mentioned in Section
 XLVIII of Part IV of this Act, shall be
 liable to the punishment prescribed by Sec-
 tion 193 of the Indian Penal Code.

LVIII. Offences punishable under this
 Act shall be tried
 Jurisdiction. under the provisions of
 the Code of Criminal Procedure by the
 Court of Session as defined in the said Code 5
 of Criminal Procedure, provided that no
 European British subject shall be liable to
 be tried for any offence punishable under
 this Act except by one of Her Majesty's
 High Courts of Judicature in India. In 10
 cases beyond the limits of the Presidency
 Towns of Calcutta, Madras, and Bombay
 charges against European British subjects
 for any offence under this Act shall be in-
 vestigated, and the committal for trial shall 15
 be made under the provisions of Sections
 39, 40, and 41 of the Code of Criminal
 Procedure, and the trial of European British
 subjects under this Act by any of the
 said High Courts shall be under the proce- 20
 dure by which the proceedings of the said
 High Courts are regulated.

LIX. Except as provided in the last
 preceding Section, the
 provisions of the Code of
 Criminal Procedure shall
 apply to the investiga- 5
 tion and committal in all cases of charges
 under this Act. Provided that a summons
 shall ordinarily issue in the first instance,
 and provided also that offences punishable
 under this Act shall be bailable. 10

SCHEDULE (A)—See Section VII.

NOTICE OF MARRIAGE

To the Rev. John Brown, a Minister of the Church of Scotland at Calcutta.

I hereby give you notice, that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say),

NAME	Condition	Rank or Profession	Age	Dwelling Place	Length of Residence	Church, Chapel, or place of worship, in which the marriage is to be solemnized.	District in which the other party resides when the parties dwell in different Districts.
James Smith	Widower.	Carpenter.	Of full age.	16, Chas Street.	30 days.	St. Andrew's Church, Calcutta.	
Maria Green.	Spinster.	...	Minor.	20, Hastings Street.	More than a month.		

Witness my hand, this *sixth* day of *May*, one thousand eight hundred and sixty-three.

(Signed) JAMES SMITH.

(The *Italics* in this Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another District).

SCHEDULE (B)—(See Section XIX.)

Registrar's Certificate.

I, the Reverend John Brown, a Minister of the Church of Scotland at Calcutta in Bengal, do hereby certify, that on the *6th* day of *May* 1863 notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of *James Smith*, one of the parties (that is to say),

NAME	Condition	Rank or Profession	Age	Dwelling Place	Length of Residence	Church, Chapel, or place of worship, in which the Marriage is to be solemnized.	District in which the other party resides when the parties dwell in different Districts.
James Smith.	Widower.	Carpenter.	Of full age.	16, Chas Street.	30 days.	St. Andrew's Church, Calcutta.	
Maria Green.	Spinster.	...	Minor.	20, Hastings Street.	More than a month.		

and that the declaration required by Section XIV of Act has been duly made by the said (*James Smith*).

Date of notice entered *6th May* 1863. The issue of this Certificate has not been prohibited by

Date of certificate given *20th May* 1863. any person authorized to forbid the issue thereof.

Witness my hand, this *Twentieth* day of *May* one thousand eight hundred and sixty-two.

(Signed) John Brown,

Minister of the Church of Scotland.

This Certificate will be void unless the marriage is solemnized on or before the *2nd* day of *July* 1863.

(The *Italics* in the Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another District).

MARRIAGE REGISTER BOOK.											CERTIFICATE OF MARRIAGE.										
No.	WHEN MARRIED.			NAME OF PARTIES.		Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	No.	WHEN MARRIED.			NAME OF PARTIES.		Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.
	Day.	Month.	Year.	Christian.	Surname.							Day.	Month.	Year.	Christian.	Surname.					
1	26th	May	1863	James ...	White ...	26 years	Widower.	Carpenter	Agre	William White.	2	26th	May	1863	James ...	White ...	26 years	Widower	Carpenter	Agre	William White.
				Maria...	Duncan...	17 years	Spinster.	...	Agre	John Duncan.				Maria...	Duncan...	17 years	Spinster	...	Agre	John Duncan.	
Married in the Presbyterian Chapel, Agre. John Young, Minister of the Church of Scotland. This Marriage was solemnized between us { James White, } in the presence of us { John Smith, } { Maria Duncan. }											Married in the Presbyterian Chapel, Agre. John Young, Minister of the Church of Scotland. This Marriage was solemnized between us { James White, } in the presence of us { John Smith, } { Maria Duncan. }										

STATEMENT OF OBJECTS AND REASONS.

THIS Bill was prepared by the late Mr. Ritchie, with exception to Part IV relating to the marriage of certain Native Christians.

Mr. Ritchie, in a paper left by him, thus explained the objects and reasons of the Bill. He said "the object of this Bill is to put an end to the state of uncertainty which now exists in regard to Marriages in India of persons, one or both of whom are of the Christian Religion, but which are not solemnized in any of the modes expressly recognized by the law as valid.

"These modes are three in number:—two of them being generally applicable to all persons of whatever denomination of the Christian Religion, and one being applicable only to a particular class.

"The first consists in the performance of the marriage ceremony by a Clergyman in Holy Orders, according to the sense in which the English law understands that term, that is, a Clergyman who has been episcopally ordained. No particular rite or religious ceremony is legally requisite to this form of marriage, but the presence of a Clergyman in Orders at the time of the mutual promise to become man and wife is essential. But the Clergyman need not be of the same religious denomination as either of the parties. But the Clergyman of a denomination which does not recognise episcopacy, and who has not been ordained by a Bishop, confers no special privilege by his presence, and stands on the same footing in this respect as a layman.

"This was the only form of marriage recognised by the English common law as valid, as was decided in 1844 in the House of Lords in the well known case of the Queen *versus* Millis.

"In 1818 it was provided by an Act of Parliament that marriages between persons, one or both of whom were of the Church of Scotland, solemnized by ordained Ministers of that Church as by law established, or by a Chaplain of the East India Company in India, should be of the same force and effect as if they were solemnized by ordained Clergymen of the Church of England, according to the rites and ceremonies of the Church of England.

"This privilege was recently extended by the Legislative Council to ordained Ministers of the Church of Scotland other than Government Chaplains (see Act XXIV of 1860).

"Until the present reign no other positive law regarding the solemnization of marriages existed in India. But there was a general impression in consequence of Lord Stowell's famous decision in *Dalrymple versus Dalrymple*, that the presence of a Clergyman in Orders required by the English Marriage Act was not essential to the validity of a marriage in any part of the British Dominions beyond the operation of these Acts: and that a simple contract of marriage in words shewing that it was to take effect at once would suffice. The House of Lords in *Millis' case* decided upon the opinion of the English Judges, that the English common law of marriage as above stated obtained in Ireland, though the Marriage Act did not extend there, and that the presence of ordained Clergymen in Orders was thus essential. In consequence of the doubt thus thrown upon the validity of marriages in India in the absence of a Clergyman in Orders, the Statute 14 and 15 Vic., c. 40 commonly called the Indian Marriage Act was passed. This was followed by Act V of 1852, which gives effect to the provisions of the Statute.

"Under these Acts, marriages in the presence of a Marriage Registrar have been legalized. No religious ceremony is necessary, but it is optional to the parties to go through any religious ceremony they please. The Act of Parliament legalized all *past* marriages solemnized in India by persons not in Holy Orders, not being otherwise invalid by declaring them valid in law to all intents and purposes.

"But the doubt which existed as to the validity of such marriages at Common Law was not cleared up in regard to marriages contracted after the Statute. For it was provided that nothing in the Act shall invalidate any marriage which might be solemnized in India by any person in Holy Orders, or under the Statute of George the 3rd already cited, or any other marriage which under the law in force for the time being in India might have been there solemnized if the Act had not been passed. Provided that the Governor-General in Council might provide by Laws and Regulations, for the registration of such marriages."

The doubt thus left open as to marriages contracted since 1851 still exists. On the one hand Sir Erskine Perry, when Chief Justice of Bombay, and Doctor Lushington, as Dean of the Arches, have held that the principle laid down in the *Queen versus Millis* could not be applied to a country such as India or Australia in which, on the first introduction of English laws and institutions, there were no Clergyman in Holy Orders before whom marriage could be celebrated, and the House of Lords by passing a Divorce Bill founded on Sir Erskine Perry's decision, has to some extent, though by no means conclusively, sanctioned that view. On the other hand, the Court of Exchequer has held that the decision in question extended to invalidate a marriage performed between British subjects in Beyrout solemnized before a Baptist Clergyman not in Orders. And the Statute of 1848 and the Act of 1860 in favor of marriages performed by Ministers of the Scotch Church seem to show that the Legislatures both in England and in India considered that the English common law applied to Indian marriages.

"It is almost impossible to determine which of these views is correct, though I am inclined to think that the former is right in principle. But the result of the doubts is, that there is a distressing degree of uncertainty as to the validity of many marriages solemnized since 1851, and that a great deal of fraud in regard to the performance of a sham marriage ceremony by persons having no special qualification but pretending to be qualified, has passed unpunished.

"In 1854, it was brought to the notice of the Government, that a person who had once been a school master, but had never been ordained to the ministry in any way, professed to have authority to marry, and did perform the ceremony of marriage between several couples of Native Christians in the Backergunge District. Similar practices have been found to have prevailed in other districts, but as the person officiating did not profess to be a Marriage Registrar, but only to have authority to marry, and as according to my view of the law the marriages thus solemnized were legal, and the person referred to, therefore, as a witness did assist in rendering the marriages effectual, it was found impossible to punish him for his imposition."

"It is felt to be time to put an end to the uncertainty which now surrounds the question, and which, on so important a subject, as the validity of marriages, ought not to be allowed to continue for a day longer than can be avoided.

"One ground upon which it is supposed that the Legislature in India left the question unsettled for the last few years, was that a law effectually dealing with the subject of Christian marriage must to some extent affect or interfere with the provisions of the English Statute of 1851, which it was beyond the power of the Legislative Council as then constituted to touch. The difficulty is now removed, as the India Council's Act contains no restriction upon the interference with the Act of Parliament passed in the year above mentioned, and the proposed change of the law is quite within the competency of the Council as now constituted.

"The only effectual mode of dealing with the question appears to be to pass a law declaring that for the future no marriages between persons, both or one of whom shall profess the Christian religion, shall be valid in law unless it be celebrated in one of the three modes already expressly recognized by law. There will be no hardship in thus declaring the law now. For the Marriage Acts of 1851-52 have been ten years in operation. Their provisions are generally well known throughout India, and the facilities for contracting marriage under those Acts have been rendered as great by the appointment of Registrars at every place of any importance, both in our Dominions and in those of Foreign States in alliance with Great Britain, (for which the Statute also provides) as can reasonably be desired.

"In regard to past marriages, it is proposed to declare that all marriages previously contracted in the presence of persons not in Holy Orders, if not otherwise invalid, shall be deemed good and valid. This is the course which has been adopted on occasions on which Parliament has prescribed a stricter rule for the future than that which had previously existed, or had been supposed to exist in regard to marriages.

See 6 & 7, Wm. 4, c. 83.
14 and 15 Vic., c. 40
7 and 8 Vic. c., 81.

"The Bill provides that for the future no marriage between persons, one or both of whom profess the Christian Religion, shall be valid unless it be solemnized either (1) in the presence of a Clergyman in Holy Orders, or (2) in the presence of a Marriage Registrar according to the provisions of the Indian Marriage Acts, or (3) in the case of persons one or both of whom are of the Church of Scotland by law established, in the presence of a Minister of that Church.

"In regard to marriage by Clergymen in Holy Orders other than those of the Church of England or of Scotland provision is made for the registration of such marriages by the Clergyman, and for the transmission by him periodically of such Registers to the nearest Marriage Registrar.

"Punishment is provided for all persons who falsely pretend to have authority to perform a marriage ceremony, or to give validity by their presence to a marriage."

The object of Part IV, which has been added to the Bill since it was framed by Mr. Ritchie, is to meet the cases of the numerous classes of Native Christians scattered over the British Territories in India. These classes number several thousand persons, the majority of whom are far away from Clergymen in Holy Orders or Ministers of the Church of Scotland, or Marriage Registrars, and their Pastors are frequently natives like themselves.

It is impossible to expect from these classes of Native Christians a general observance of the Rules contained in Act V of 1852 (for Marriages in India), though there can

be little doubt that the Act is applicable to them, and no one really supposes that the marriages of the Karen Native Christians for instance, and others like them, are attended with all the prescribed formalities of Notices, Certificates, Registers, &c., &c.

It has been suggested that it would be better to leave Native Christians to what is called their own law of marriage, which is considered by some high authorities to have been preserved to them under Section 21, 14 and 15 Vic., c. 40, that is, the simple law of marriage *per verba de presenti*, with the option of availing themselves of the provisions of the present Bill as drawn by Mr. Ritchie, should they think proper to do so. But there appears to be considerable difference of opinion as to whether marriages between Native Christians, solemnized in the manner above mentioned, are really valid. The point is one which ought not to be left in uncertainty, and in order effectually to clear up the doubts that now exist legislation of some kind would seem to be required. Moreover, assuming the legality of marriages between Native Christians, resting simply on the verbal declaration of the parties thereto, some provision of law would appear to be absolutely necessary for the registration of such marriages, and for affording easy means of establishing the same.

It is considered that the provisions contained in Part IV of the Bill, as it is now drawn, will do all that is really required in respect to the solemnization of the marriages of Native Converts to Christianity who may be prevented by distance or any other cause from availing themselves of the other provisions of the Bill, and that while the Part in question makes sufficient provision for the due regulation of such marriages, for preserving an official record of the same, and for preventing abuses, it will be found to afford to all classes of Native Christians a simple, convenient, and inexpensive mode of solemnizing their marriages, and of establishing the marriage when proof may be required either in respect to the succession to property or otherwise.

One of the conditions contained in Section XLII of Part IV of the Bill as essential to the granting of a Certificate of marriage under that part is that the parties shall not stand to each other within the prohibited degrees of affinity or consanguinity.

It is to be observed that this is no new provision as respects Native Christians, though probably it is not always attended to. There seems to be no doubt that the legal impediments of kindred or affinity in respect of marriage which apply to European Christians apply equally to Native Christians, and so long as such impediments apply to European Christians, it is considered to be impossible, with any degree of propriety, to exempt Native Christians from them, or to make any distinction in this respect between the two classes.

H. B. HARRINGTON.

The 5th February 1862.

Government of India.

HOME DEPARTMENT.

LEGISLATIVE.

ANNEXURE

TO

Bill to provide further for the solemnization of
Marriages in India of persons professing the
Christian Religion.

(Statement of Objects and Reasons.)

Price 8 Annas.

Printed at the Bengal Printing Company's Press.

Proc: 17th January 1863 C.A. 57

Ind 4/63 912 21

Government of India.

HOME DEPARTMENT.

LEGISLATIVE.

A
BILL

TO

Provide further for the solemnization of Mar-
riages in India of persons professing the
Christian Religion.

(Mr. Harington.)

Pres. 17. Jan. 1863 C. 657.

Price 15 Annas.

Printed at the Bengal Printing Company's Press.

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With an Ordinance of 1863.

Transmitted to the Hon. Mr. Harington
on the 24th of Jan. 1863.
The Hon. Mr. Harington
on the 24th of Jan. 1863.
The Hon. Mr. Harington
on the 24th of Jan. 1863.

24th Jan. 1863
27th Jan. 1863
28th Jan. 1863
29th Jan. 1863
30th Jan. 1863
31st Jan. 1863

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