

THE LAWS OF BRITISH GUIANA

Transcribed Excerpt pertaining to MARRIAGE LAW of 1838 - Pages 223 to 238

"The Laws of British Guiana, Chronologically arranged from the year 1773 to 1870", Volume I, Printed & published by L. McDermott at the Colonist Office, Water Street, Georgetown, Demerara; 1870

No. LXVI.

ORDER-In-COUNCIL, 7th September, 1838

Received in the Colony 30th October, 1838, published 1st November, came into operation 1st December following

[Henry LIGHT, Governor]

At the Court of Windsor

Present: THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

1. Whereas since the Abolition of Slavery throughout the British Colonies, Plantations, and Possessions abroad, the Marriage Laws of the said Colonies, Plantations and Possessions have been found inappropriate to the altered condition thereof, and inadequate to the increased desire for lawful matrimony therein. And whereas, it is expedient and necessary to amend the said Marriage Laws and to adopt the same to the altered state and condition of society in the said Colonies, Plantations, and Possessions. It is therefore hereby ordered by the Queen's Most Excellent Majesty, by and with the advice of her Privy Council, that from and after the taking effect of this Order, it shall be lawful for any Minister of the Christian Religion, ordained or otherwise set apart to the Ministry of the Christian Religion, according to the usage of the persuasion to which he may belong, to publish, with the Colonies of **British Guiana**, Trinidad, St. Lucia, the Cape of Good Hope and Mauritius, or any of them, Banns of Marriage between persons desirous of being joined together in matrimony, and such publication shall be made in an audible manner some time during public Divine Service on a Sunday, in the face of the congregation before whom such Minister shall officiate in the parish in which both or one of the parties to be married shall dwell and shall contain the Christian and other name and surname and place of abode of each of the said parties, and shall be so published by some such Minister for three Sundays preceding the solemnization of the Marriage, during the morning service, if there be service in the morning, or if there shall be no morning service, then during the evening service; and if the parties to be married shall dwell in different parishes the Banns shall be published in like manner before each of the congregations to which the said parties may respectively belong, whether both the said congregations shall assemble in the same parish or not. And, where one or both of the parties shall dwell in any extra-parochial place, then if there be a congregation of the persuasion to which any such party shall belong assembling for public Divine Worship as aforesaid in such extra-parochial place, the Banns of the party or parties dwelling in such extra-parochial place shall be published in manner aforesaid in such extra-parochial place and if there shall be no congregation in such extra-parochial place, then the Banns of such of the parties to be married as shall dwell in such extra-parochial place shall be published in manner aforesaid in some parish next adjoining to such extra-parochial place; and in cases where the Banns shall have been published in different places, the officiating Minister at either of the said places shall, on the request of both or either of the parties whose Banns shall have been published as aforesaid, give to the party requiring the same, a certificate of the Banns having been duly published in the place of which he is an officiating minister, and on the production of such Certificate to the officiating Minister of the other place where the Banns were published, or of such Certificates to any other Minister as aforesaid in the parish or extra-parochial place to which one of the parties shall belong, it shall be lawful for such Minister where the Banns were published, on receiving such Certificate from such other Minister where the Banns were published, or for such Minister as aforesaid, to whom the Certificates of such Ministers of both places where the Banns were published, on receipt of such Certificate or Certificates (as the case may be) to solemnize Matrimony between the said parties according to such form and ceremony as shall be in use or be adopted by the persuasion to which the Minister solemnizing such Marriage shall belong; Provided that whenever the form and ceremony used shall be other than that of the United Church of England and Ireland, each of the parties shall, in some part of the ceremony, make the following declaration:

"I do solemnly declare that I know not of any lawful impediment why I, 'A.B.', may not be joined in matrimony to 'C.D.', here present,"

And each of the parties shall say to the other:

"I call upon these persons here present to witness that I, 'A.B.', do take thee, 'C.D.', to be my lawful wedded wife (or husband)."

2. And it is hereby further ordered, that no Minister shall be obliged to publish Banns between any persons whomsoever, unless the persons to be married shall, two days at the least before the time required for the first publication of such Banns respectively, deliver, or cause to be delivered to such Minister, a notice of their true Christian and other names and surnames, and a description of their place or respective places of abode, in such parish or extra-parochial place as aforesaid, and of the time during which they have dwelt in such place or places; and that it shall not be lawful for any Minister to solemnize any Marriage after three calendar months from the last publication of Banns of such Marriage; and in all cases where three calendar months shall have elapsed with the Marriage having been solemnized, the publication of such Banns

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shall be void; and before the said parties can be married by Banns, it shall be necessary to re-publish Banns anew, in manner and form aforesaid, as if no Banns had ever been published between them.

3. And be it further enacted, that no such Minister as aforesaid who shall solemnize any Marriage after due publication of Banns as aforesaid between persons, both or one of whom (not being a widow or widower) shall at the time of such Marriage be under legal age, shall be answerable or responsible, or liable to any pain penalty, or proceeding, for having solemnized such Marriage without the consent of the parents or guardians, or other persons (if any) whose consent is required by law, unless such parents or guardians, or other person, or one of them shall forbid the Marriage and give notice thereof to such Minister before he has solemnized the same; and in the case such Marriage shall be forbidden as aforesaid, and such notice shall be given as aforesaid, the publication of the Banns for such Marriage shall be absolutely void.
4. And it is hereby further ordered, that where by any law in force, or which may hereafter be in force in any of the Colonies to which this Order applies, by which Licences for Marriage, without the publication of Banns, may be granted or issued in any such Colony by the Governor thereof, or any other civil authority therein, it shall be lawful for the parties intending Marriage, or either of them, to require that such licence shall authorise the solemnization of the Marriage, in respect of which such licence is applied for, in any place where, and by any Minister by whom such Marriage could have been solemnized by virtue of this Act, if Banns thereof had been published as aforesaid.
5. "And whereas it may happen that in some of the Colonies to which this Order applies, or in some parts thereof respectively, there may not be any such Minister as aforesaid, or not a sufficient number of such Ministers to afford convenient facilities for Marriages, and it is expedient to provide for such cases."
6. It is therefore further ordered, that in every such case and whenever the same shall happen in any of the said Colonies, it shall be lawful for the Governor of such Colony to appoint by writing under his hand and official seal, one or more such fit and proper person or persons as he shall from time to time deem necessary or expedient, to be called the Marriage Officer, to solemnize Marriages within such part or parts of the Colony in which such appointment shall be made, as the Governor shall from time to time direct; and it shall be lawful for the Governor at any time, and from time to time to revoke and cancel any such appointment or appointments, and to alter, vary, enlarge, or contract the district or districts in which any person so appointed shall have power or jurisdiction to celebrate Marriage, for any cause which to him shall seem meet; and every such appointment shall specify the part of district within which the persons thereby appointed shall have power and jurisdiction to celebrate Marriage: and until some law shall be made, passed, allowed, and promulgated for regulating Marriages by persons so appointed, it shall be lawful for the Governor and he is hereby required to direct, declare and promulgate the manner by which the intention of parties to marry before any such Marriage shall be made public; Provided always, that it shall not be lawful for any such Marriage Officer to solemnize Marriage between persons, one or both of whom shall be under lawful age (unless in the case of a widow or widower) after such marriage shall be forbidden, and notice thereof given to him by any person having lawful authority to forbid the same; provided always, that in every marriage before any such Marriage Officer not celebrated according to the form of the United Church of England Ireland, the parties shall, in some part of the ceremony, respectively make the declarations hereinbefore set forth, as in the case of Marriage by any such Minister as aforesaid; provided also, that every such Minister as aforesaid may nevertheless publish Banns and celebrate Marriage under and by virtue of this Order in any part or district within which any such Marriage Officer shall have power or jurisdiction to celebrate Marriage, as fully as if no such Marriage Officer had ever been appointed.
7. "And whereas it may happen that the parents or parent, guardians or guardian of one or both of the parties to be married may be *non compos mentis*, or absent from the Colony, or otherwise incapable in law or in fact of consenting, or may be induced unreasonably and improperly to withhold his, her, or their consent to a proper Marriage, or may be dead."
8. It is therefore hereby ordered, that in case any such parent or guardian whose consent is necessary to a Marriage, shall be *non compos mentis*, or absent from the colony, or otherwise incapable as aforesaid of consenting, or shall withhold his, her, or their consent to any Marriage; or in the case there shall be no person capable of consenting, it shall be lawful for any person desirous of Marriage, to who Marriage such consent is necessary, but cannot be given, or is withheld, to apply, by petition, to the chief Civil Judge, or person officiating as such for the time being, of the Colony, who is hereby empowered to proceed upon such petition in a summary way, and in case the marriage proposed shall, upon examination, appear to him to be proper, the said chief Civil Judge, or person officiating as such, shall judicially declare by his order, in writing, that such Marriage is proper and may be solemnized forthwith; and every Marriage duly solemnized in pursuance, or under the

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For every search for a particular entry Two Shillings
For every search for two or more particular entries, and not exceeding four entries ---- One Shilling each
For every search for any number of particular entries not exceeding four ---- Four Shillings
For every such certificate Copy as aforesaid ---- Two Shillings

Provided always, that nothing herein contained shall prevent any Clergyman of the Established Church of England and Ireland from receiving, for any duty performed by him under this Order, such fees or payments as have heretofore been customarily paid to such Clergyman, according to the rules of the said Church, for the performance of such duties respectively: Provided always, that nothing in this Order contained shall authorize or require any nothing in this Order contained shall authorize or require any Clergyman of the Established Church aforesaid, to solemnize marriage in any other manner than is prescribed by the Rubrick; Provided also, that it shall be lawful for the Governor to authorize such Marriage Officers as aforesaid, to receive such further or other remuneration as he shall from time to time think the nature of their duties shall reasonably require.

15. And, it is hereby further ordered that if any person shall unlawfully, wilfully, and maliciously erase, obliterate, or destroy, or cause or procure to be erased, obliterated, or destroyed, any such Original Register and Duplicate Original Register as aforesaid, such person shall be deemed guilty of a misdemeanour, and on being duly convicted thereof, shall be liable to be imprisoned in the Common Gaol in the jurisdiction in which he shall be tried and convicted thereof, for any term not less than three nor exceeding twelve calendar months; and if any person shall unlawfully and wilfully forge or alter, or falsely make or cause or procure, or permit to be forged or altered, or falsely made, any such Original Register, or Duplicate Original Register, or any certified copy thereof respectively, or shall knowingly, and wilfully deliver, offer, utter, or put off any such forged, false or altered copy, he shall be liable for such his offence, on conviction thereof, to be imprisoned in such Gaol as aforesaid, for any term not exceeding eighteen months, nor less than six months.

16. And it is hereby further Ordered, that it shall and may be lawful for the respective local Legislatures of the said Colonies of British Guiana, Trinidad, St. Lucia, the Cape of Good Hope, and Mauritius, by any Ordinance to be by them for that purpose made to provide for the better adaptation of this present Order to the local circumstances of such Colonies respectively; Provided that such Ordinance be not in contradiction or repugnant to any of the provisions of this Order, and that all such Ordinances be made, confirmed, or disallowed, as the case may be, in the manner and according to the rules provided by law in reference to any other Ordinances of the said respective local Legislatures.

17. And whereas since the Abolition of Slavery in the British Colonies, Plantations, and Possessions abroad, doubts have arisen and exist as to the validity of certain marriages contracted and solemnized previous to the Abolition of Slavery in the said Colonies, Plantations, and Possessions, between slaves, and between parties one of whom was a slave, and also in some cases between free persons of colour, and, since the Abolition of Slavery, between apprentices and other persons of free condition, by Ministers of the Christian Religion other than Clergymen of the United Church of England and Ireland; and it is expedient and necessary that all such doubts should be removed, and such Marriages and reputed Marriages should be ascertained and confirmed, and that all persons who may have solemnized any such Marriages or reputed marriages, or who have in any manner assisted thereat, should be indemnified from and against all pains, penalties, forfeitures, and proceedings to which such persons or any of them may be liable therefore. It is therefore further Ordered, that all Marriages which at any time before the taking effect of this Order shall have been solemnized in any of the Colonies to which this Order applies, by or before any such Minister of the Christian Religion as aforesaid, shall be, and the same are hereby declared to be and to have been from the time of the solemnization thereof, good, valid, and effectual to all intents and purposes whatsoever, any law or usage to the contrary thereof in anywise notwithstanding; and all pains, penalties, forfeitures, and proceedings of whatsoever kind or description which any such Christian Minister may have incurred or become liable to before the taking effect of this Order, by reason of his having solemnized or assisted at any Marriage whatsoever, or in anywise in relation thereto, is and are hereby remitted, released, repealed, and made void.

18. And whereas in the Colonies in which Marriages have been celebrated as aforesaid, Registers thereof have been duly made and kept by such Ministers as aforesaid who officiated thereat, it is therefore further ordered, that all such registers and all copies thereof respectively certified under the hand of the person for the time being having the lawful care of the same to be true copies, shall be and are hereby declared to be good evidence of such Marriages as aforesaid respectively, as fully as if such Registers had been made and kept, and such certified copies had been made respectively by person appointed by law to make and keep the same, and shall be received in evidence in all Courts, and before all Judges and Magistrates.

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19. And it is hereby further ordered, that the better to preserve evidence of Marriages so registered, and to facilitate the proof thereof, every person in whose custody any Register lawfully is or shall be at the time, shall, within six months after promulgation of this Order, to which the same extends, respectively make or cause to be made, a fair and correct copy of every such Register, and of every entry therein contained. And it shall be lawful for any such Christian Minister as aforesaid, to examine, verify and correct (if anywhere found incorrect) by the original, any such copy of a Register kept by the persuasion to which he belongs, and to take the same before any Magistrate, and make and sign the following Declaration, which any Magistrate to whom the same shall be tendered, is hereby authorized and required to receive, and to certify in manner following, that is to say:

I, A.B., [describe the persuasion to which he belongs], do hereby solemnly, sincerely, and truly declare, that I have carefully examined this copy, beginning the _____ day of [month and year], and ending on the ____ day of the [month and year], and containing ____ pages and ____ entries of Marriage, with the original Register, and I believe the same to be throughout a true and faithful copy of the original Register of which it purports to be a copy.

[Signed] A.B.

The said A.B. appeared this ____ day of ____, before me, C.D., one of Her Majesty's Justices of the Peace, in and for _____ and made and signed the above Declaration in my presence.

[Signed] C.D.

Which Declaration and Magistrate's Certificate thereof, shall be entered and signed at the end of the copy to which it related, and the copy shall be then securely sealed up and forthwith sent to the Colonial Secretary as aforesaid, to be by him kept with the Registers of Marriages in his office, where the same may be searched and every copy of any entry therein certified under his hand to be a true copy, shall be of the same force and effect as any certified copy whatsoever made by him, is or can be, and which certified copies he is hereby required to make, and may receive payment for as in other cases.

20. And if any such Minister as aforesaid shall wilfully make and sign any such Declaration, knowing the same to be false, he shall be liable to the pains and penalties to which persons guilty of wilful and corrupt perjury are liable.

21. And whereas, in consequence of imperfect instruction in the Christian Religion, and from other causes, many Marriages, *de facto*, have taken place between persons, one or both of whom were in the condition of slavery, but which Marriages, *de facto*, have never been sanctioned by a public ceremony, or formerly registered; and in many such cases the parties have had offspring of such last-mentioned Marriages; and it is expedient that provision should be forthwith made for enabling such persons to confer upon their children the benefit of children born in lawful wedlock; It is therefore further ordered, that it shall be lawful for all persons having contracted Marriage as last aforesaid at any time with one year after the coming into operation of this Order, duly to solemnize the Marriage ceremony before any Clergyman of the Established Church, or in any other manner authorized by this Order; and every person so recognizing a previous Marriage, *de facto*, shall at the same time make and sign the following declaration, which shall also be attested by the witnesses present, and signed by the Minister or Marriage Officer before whom the ceremony is performed.

We, A.B. and C.D., do hereby severally, solemnly, sincerely, and truly declare, that on the ____ day of ____, the year ____, or thereabout, at _____, We, the said A.B. and C.D., intermarried with each other, and that we have had issue of the said Marriage, ____ Children, and no more, namely: [Here state the names and ages of the children and if any be dead, state the fact.]

[Signed] A.B. C. D. X.Y.

And such Marriage ceremony shall have relation back to the time of the Marriage, *de facto*, and all such children shall be deemed and taken to have been born in holy wedlock, and shall possess and enjoy all the rights, privileges, and advantages of persons born in lawful wedlock; and to preserve evidence thereof a Duplicate Original Declaration shall then and there, before the parties depart, be made, signed, and attested in the same manner, and the Original Declaration shall be appended to and kept with the Original Register; and the Duplicate Original Declaration shall be appended to, sent, and kept with the Duplicate Original Register, and shall, for all purposes of evidence, be deemed part thereof respectively; Provided always, and it is hereby declared, that such last mentioned ceremony and declaration may be performed and made without the previous publication of banns or a licence.

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22. And it is hereby further Ordered, that where, in any Colony to which the Order applies, any other language than English shall be commonly used, the Governor shall cause a true and faithful translation of this Order, and particularly of the several Forms and Declaration herein contained to be made, expressing the true intent and meaning thereof; and such translation, when promulgated, by the Governor, may be lawfully used by all persons speaking such language; and everything done under this Order, by means of such translation, shall be as valid and effectual, to all intents and purposes whatsoever, as if the same had been done in the original language of this Order, any law or custom to the contrary notwithstanding.

23. And it is hereby further Ordered that the word "Governor" in this Order, shall be taken to mean the Governor or other Officer lawfully administering the Government of such Colony; and the word "Parish", in Colonies divided into Parishes, shall be taken in its ordinary sense, and in Colonies not divided into Parishes shall be taken to mean such other districts or divisions as for civil purposes are equivalent to Parishes. And the term "Extra-Parochial Place" shall be taken to mean any place not included in any such Parish, District or Division. And if in any case there be no such District or Division, or if it be uncertain to what kind of District or Division the word "Parish" is hereby intended to apply, the same shall be determined and officially declared by the Governor.

24. And it is further Ordered, that his Order shall take effect and come into operation in the Colony of Mauritius on the first day of February, one thousand eight hundred and thirty-nine; in the Colony of the Cape of Good Hope, on the said first day of February, one thousand eight hundred and thirty-nine; and in all other colonies to which it applies or extends, on the first day of December, one thousand eight hundred and thirty-eight.

25. And it is further Ordered and declared that within the meaning of and for the purposes of this Order, all Islands and Territories dependent upon any of the Colonies to which this Order applies or extends, and constituting parts of the same Colonial Government, shall respectively be taken to be parts of such respective Colonies.

26. And the Right Honourable Lord GLENELG, one of the Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.