

PROCLAMATION.

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 1 of 1917.—PROMULGATED 12th JANUARY, 1917.

Entitled the " Bechuanaland Protectorate Marriage Proclamation, 1917."

WHEREAS it is expedient to make further and better provision for marriages within the limits of the Bechuanaland Protectorate and to amend the existing laws with respect to marriages within the said limits;

Now, therefore, under and by virtue of the powers in me vested, I do hereby declare, proclaim and make known as follows:—

1. Section *twenty-two* of the High Commissioner's Proclamation of the 10th of June, 1891 and the whole of the High Commissioner's Proclamation of the 2nd December, 1892 as amended by Proclamation No. 9 of 1896 and No. 12 of 1898 shall be and are hereby repealed, save as to marriages already solemnized before the date of the taking effect of this Proclamation. The Marriage Order in Council of the 7th September, 1838 as amended by the Orders in Council of the 20th February, 1839 and of the 3rd of April, 1840, as in force in the Cape of Good Hope Province of the Union of South Africa and Acts No. 12 of 1856, No. 16 of 1860, and No. 9 of 1882 of the Province of the Cape of Good Hope shall not apply to marriages solemnized in the

Bechuanaland Protectorate after the taking effect of this Proclamation, and shall be taken to be repealed except as to penalties that may now be or hereafter become recoverable in respect of such marriages.

2. This Proclamation shall apply to all marriages solemnized in the Bechuanaland Protectorate after the taking effect thereof save and except marriages contracted in accordance with native law or custom and nothing herein contained shall be taken as in any manner affecting or casting doubts upon the validity of any such last-mentioned marriages contracted before or after the taking effect of this Proclamation.

Preliminaries of Marriage.

3. No marriage shall be valid unless within a period of not more than three months previous to its solemnization banns have been published as provided in section *four* or a special licence has been obtained as provided in section *five*.

4. Banns may be published either

- (a) in public in the ordinary manner on three successive Sundays during divine service in a church or other building habitually used for public worship by a congregation to which one or both of the parties to the intended marriage belong and in a district in which one or both of such parties reside; or
- (b) by posting them up for a period covering three successive Sundays in a conspicuous place to which the public have access at the office of the Assistant Commissioner or Resident Magistrate or Assistant Resident Magistrate in the district in which one or both of the parties to the intended marriage reside.

5. Parties desiring to obtain a special licence shall appear before an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate who on being satisfied if necessary by evidence under oath or by affidavit that there is no legal impediment to the marriage of such parties shall on payment of the sum of five pounds issue a special licence entitling such persons to be married without publication of banns. No Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate shall issue such licence, if it appears to him that the parties applying for the same are desirous of marrying in the Bechuanaland Protectorate to evade the law in force in any other Colony or Territory of South Africa.

6. No banns shall be published under section *four* and no special licence shall be issued under section *five* with respect to or for the marriage of any widower or widow having minor children of a former marriage unless a certificate shall be produced signed by the Master of Court or an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate to the effect that the inheritances which have devolved upon such minors have been settled by payment to the Master of Court or secured by the customary bond or obligation commonly called a "Kinderbewijs" duly registered at the Deeds Registry or to the effect that the value of such inheritance was under one hundred pounds; provided always that the provisions of this section shall not apply to the marriage of any widower or widow having minor children of a former marriage whose rights of inheritance are regulated accordingly to native law or custom.

Marriage Officers.

7. No marriage shall be valid unless solemnized by a marriage officer. The following shall be marriage officers:

- (1) Assistant Commissioners, Resident Magistrates and Assistant Resident Magistrates or any officer appointed to act as an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate;
- (2) any minister of religion or person holding a responsible position in any religious denomination or community, whom the High Commissioner has by notice in the *Gazette* appointed a marriage officer.

Any minister of religion or person holding a responsible position in any religious denomination or community desiring to be appointed a marriage officer shall make application in writing to the High Commissioner through the Resident Commissioner stating his qualifications. When a marriage officer has been guilty of an offence under this Proclamation, or for other good or sufficient reasons, the High Commissioner may by notice in the *Gazette* suspend or cancel his appointment as marriage officer.¹

8. No marriage officer shall solemnize a marriage unless on proof that the banns thereof have been published as required by this Proclamation or on production of a special licence for such marriage; and unless he is satisfied that there are no legal impediments to such marriage. Any marriage officer entertaining doubts as to whether he is legally entitled to solemnize a marriage may apply to the Resident Commissioner for legal advice thereupon.

9. Where a marriage is intended to be solemnized in the Bechuanaland Protectorate between a British subject residing therein and a British subject resident in the United Kingdom a certificate for marriage issued by a Superintendent Registrar in England and a certificate for marriage issued by a Registrar and a certificate of proclamation of banns in Scotland and a certificate for marriage issued by a Registrar in Ireland shall, in respect of the party resident in the United Kingdom, have the same effect in the Bechuanaland Protectorate as the publication of banns in the manner provided for under the law relating to marriages in the Protectorate.²

10. Where a marriage is intended to be solemnized in the United Kingdom between a British subject residing therein and a British subject resident in the Bechuanaland Protectorate the banns of such intended marriage in respect of the party residing in the Bechuanaland Protectorate may be published in like manner as if such marriage were intended to be solemnized in the Bechuanaland Protectorate and a certificate of such publication shall be given by the person by whom they were published.

Solemnization of Marriage.

11. Every marriage shall be solemnized in the presence of at least two witnesses competent to give evidence in a court of law; and between the hours of six o'clock in the morning and six o'clock in the afternoon. The public shall have access to any place or any part of any building in which a marriage is being solemnized.

12. In solemnizing a marriage any minister of religion, or person holding a responsible position in any religious denomination or community shall follow the formulary in use in the congregation to which he belongs.¹ Any Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate shall solemnize a marriage in the following manner:—

He shall require the bridegroom and bride to repeat separately after him the following words:—

“I (name of bridegroom or bride) do solemnly declare that I know not of any lawful impediment why I (name of bridegroom or bride) may not be joined in matrimony to (name of bride or bridegroom) here present,” and each of them the bridegroom and bride shall say to the other “I call upon these persons here present to witness that I (name of bride or bridegroom) do take (name of bridegroom or bride) to be my lawful wedded (husband or wife).” Thereupon the bridegroom and bride shall give each other the right hand and the Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate shall declare the marriage solemnized in these words:—

“I declare that (name of bridegroom) and (name of bride) here present are lawfully joined together in matrimony.”

¹Printed as amended by Proclamation No. 72 of 1922.

²Printed as amended by Proclamation No. 14 of 1917.

¹Printed as amended by Proclamation No. 72 of 1922.

Registration of Marriages.

13. (1) Every marriage officer shall keep a register of marriages solemnized by him; and immediately after solemnizing any marriage he shall enter in such register the solemnization of such marriage the place and date thereof the full names of the parties, their ages, condition (whether widowers or bachelors, widows or spinsters) and residence, whether the marriage was by banns or special licence, whether in the case of one or both of the parties being minors the marriage was with the consent of parents or guardians or by what authority and any other particulars that the Resident Commissioner may by notice in the *Gazette* direct. Such register shall thereupon be signed in duplicate by the parties (by name or mark) and by the marriage officer in the presence of two witnesses who shall also sign the register. The sum of two shillings and sixpence shall be paid to the marriage officer in respect of the registration of each marriage under this sub-section.

(2) A duplicate original of the register of every marriage together with the sum of two shillings and sixpence shall be transmitted by the marriage officer to the Government Secretary within one month after the solemnization of the marriage and all such duplicates shall be filed by him and carefully preserved in his office.

(3) Any person shall be entitled on payment of the sum of two shillings and sixpence to receive a copy of such register certified as correct by the marriage officer in whose custody it is or by or on behalf of the Resident Commissioner; and such copy shall in the absence of evidence to the contrary be legal proof of the due solemnization of such marriage. The sum of two shillings and sixpence so paid shall be transmitted by the marriage officer to the Government Secretary within one month after receipt.

Consecration of Marriages already Solemnized.

14. Any minister of religion may consecrate or resolemnize a marriage that has already been solemnized by a marriage officer and the provisions of this Proclamation shall not apply thereto.

Impediments to Marriage.

15. No person may marry who has previously been married to any other person still living unless such previous marriage has been dissolved or annulled by the sentence of a competent court of law.

16. No insane person who is incapable of giving consent to a marriage and no male person below the age of sixteen or female person below the age of fourteen years may marry.

17. No minor or person below the age of twenty-one years not being a widower or widow may marry without the consent in writing of his or her parents or guardians, provided that

- (1) when the parents of a minor disagree the consent of the father shall be sufficient;
- (2) when a minor is illegitimate the consent of the mother or other lawful guardian only shall be required;
- (3) when a minor has no parents or guardians, or when their consent cannot be obtained from other reason than their unwillingness to give the same or when such consent is manifestly unreasonably withheld the Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate in the district in which such minor resides or if the minor is resident outside the territory the Resident Commissioner may give an order in writing authorising the marriage of such minor.

18. No persons may intermarry who are related within the forbidden degrees. Persons are related within the forbidden degrees when they are related to one another as follows:—

- (1) In the direct ascending or descending line in any degree; as for example parent and child, parent and grandchild and so forth;

- (2) in the collateral line by being children of the same person or by one being a child and another a grandchild or more remote descendant of the same person; as for example brother and sister, uncle and niece or grand-niece and so forth;
- (3) by affinity as specified in sub-sections (1) and (2); that is when the former husband or wife of one of the parties was related to the other party as therein specified, provided that a man may marry his deceased wife's sister.

Offences and Penalties.

19. Any person who not being a marriage officer performs a ceremony purporting to solemnize a marriage between two persons except in the case mentioned in section *fourteen* shall be liable to a fine not exceeding two hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one year or to both such fine and such imprisonment.

20. Any marriage officer who solemnizes a marriage between parties one of whom is already to his knowledge lawfully married and any person knowingly aiding, abetting or procuring such a marriage shall be liable to a fine not exceeding two hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one year or to both such fine and such imprisonment.

21. Any marriage officer who solemnizes a marriage knowing or having reason to believe that there exists any of the legal impediments to such marriage specified in this Proclamation other than as specified in the last preceding section shall be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

22. Any marriage officer who shall omit

- (1) to make the entries in a register required in this Proclamation immediately after each marriage solemnized by him; or
- (2) to transmit in terms of this Proclamation a duplicate original of each register of a marriage solemnized by him together with a sum of two shillings and sixpence to the Government Secretary within one month of the solemnization thereof

shall unless he can show that there was a reasonable excuse for such omission be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

23. (1) Any person making a wilfully false statement to the Resident Commissioner, Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate in order to procure or prevent the issue of a special licence or an authorization for a minor to marry or to a marriage officer in order to procure or prevent the solemnization of a marriage shall be deemed to be guilty of the crime of perjury.

(2) Any person making or causing to be made a false entry in a marriage register or wilfully destroying or falsifying the same shall be deemed to be guilty of the crime of fraud.

24. This Proclamation may be cited for all purposes as the Bechuana-land Protectorate Marriage Proclamation, 1917 and shall have force and take effect from the first day of April, 1917.