

An Ordinance to amend the Laws of Marriage in the Kandyan Provinces.

- Preamble.** WHEREAS it is expedient to amend the Laws of Marriage in the Kandyan Provinces of this Island : IT IS THEREFORE HEREBY ENACTED BY THE GOVERNOR OF CEYLON, with the advice and consent of the Legislative Council thereof, as follows :—
- Short title.** 1. THIS Ordinance may be cited for all purposes as “ *The Amended Kandyan Marriage Ordinance, 1870.*”
- Commencement.** 2. THIS Ordinance shall come into operation on such day as the Governor shall, by Proclamation, appoint.
- Repeal of former Ordinances.** 3. THE Ordinances set out in the Schedule A. hereto are hereby repealed, except so far as respects rights which shall have accrued, acts which shall have been done, or shall have been declared valid, and all proceedings or matters which shall have taken place before this Ordinance shall come into force, and except so far as such repeal would be inconsistent with the provisions of this Ordinance.
- Interpretation Clause.** 4. THE following words and expressions in this Ordinance shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction.
- Kandyan Provinces.** THE expression “Kandyan Provinces” shall mean the Provinces enumerated in the Schedule B. hereto annexed.
- Marriage.** THE word “Marriage” shall mean Marriage contracted by and between residents in the Kandyan Provinces, other than Marriages under the Marriage Ordinances in force in the Maritime Provinces of this Island, or Marriages between persons commonly known as Europeans or their descendants, or persons commonly known as Burghers, or Marriages between any such persons and any Sinhalese (whether of the Maritime or Kandyan Provinces), or Marriages between persons professing the Mohammadan faith.
- Department.*
- Division of Kandyan Provinces into Districts.** 5. IT shall be lawful for the Governor, with the advice of the Executive Council, by Proclamation, to divide the Kandyan Provinces into Districts, for the purposes of the Registration of Marriages under this Ordinance, and, from time to time, to alter and amend such division. PROVIDED that the division made under the Ordinance No. 13 of 1859 shall continue in force until the same shall be so altered.
- Appointment of Registrar-General, Provincial Registrar, and District Registrar.** 6. FOR the purposes of this Ordinance, the Registrar-General, appointed under the Marriage Ordinances in force in the Maritime Provinces shall also be and act as Registrar-General; the Government Agent of any existing Province which includes within its limits any portion of the old Kandyan Provinces shall be and act as Provincial Registrar for such portion as aforesaid, and the Assistant Government Agent of each District, which includes within its limits any portion of such old Kandyan Province, shall be Assistant Provincial Registrar for such portion as is last aforesaid. It shall further be lawful for the Governor, from time to time, to appoint one or more Registrars for each District into which the Kandyan Provinces may be divided under the preceding section, and such Registrars so appointed at pleasure to remove. PROVIDED that the Provincial Registrar shall also be deemed to be, and shall exercise the powers of Registrar in every such District as shall belong to his Revenue Province as Government Agent, and the Assistant Provincial Registrar shall also be deemed to be, and shall exercise the powers of Registrar in every such District as shall belong to his Revenue District as Assistant Government Agent. PROVIDED further that the persons heretofore appointed Registrars for Districts under the Ordinance No. 13 of 1859, shall continue to act (at pleasure as aforesaid) as such under the present Ordinance.
- Residence and Office of District Registrars.** 7. EACH Registrar (other than the Provincial and Assistant Provincial Registrars) shall dwell within the District of which he is Registrar, and shall cause his name and Office to be placed in some conspicuous place, in the English and Sinhalese

languages, on or near the outer door of the house appointed by the Government Agent as the Office of the Registrar of that District.

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Marriages before the Ordinance No. 13 of 1859.

8. ALL Marriages contracted in any District before the Ordinance No. 13 of 1859 came into operation in such District shall be deemed to have been valid, if they were contracted according to the Laws, Institutions, and Customs in force amongst the Kandyans at the time of the contract.

Marriages contracted before the Ordinance No. 13 of 1859 declared valid.

9. IT shall be lawful for the Provincial Registrar or the Assistant Provincial Registrar, in his capacity as District Registrar, and he is hereby required, on being applied thereto by the parties, to register any such Marriage, if it be shown to his satisfaction that the same was contracted according to the Laws, Institutions, and Customs in force amongst the Kandyans at the time of the contract, and that the man and woman, parties to such Marriage, have respectively no other wife or husband living except the wife or husband with whom they desire to register their Marriage.

Registration of such Marriages.

10. THE Registrations of such Marriages heretofore made by Registrars without the legal proof of Marriage required by the 19th section of the Ordinance No. 13 of 1859, shall be deemed good and valid Registrations, anything in the said section of the Ordinance to the contrary notwithstanding.

Certain past Registrations made valid.

Marriages since the Ordinance No. 13 of 1859.

11. EXCEPT as is hereafter provided no Marriage contracted since the Ordinance No. 13 of 1859 came into operation, or to be hereafter contracted, shall be valid unless registered in manner and form as is hereinafter provided, in the presence of any Registrar for the District where such Marriage is contracted, and at the appointed Office of the Registrar, or at such other place, as the Provincial or Assistant Provincial Registrar shall, in any special case, direct and appoint.

Marriage not valid unless registered.

12. NO such Marriage shall be valid, to which the male party is under Sixteen years of age, or the female under Twelve years of age. But if the parties shall have continued to cohabit as Husband and Wife for one year after they shall have attained these ages respectively, or if a child shall have been born to them during the non-age of both or either of them, such marriage shall, in either case, cease to be impeachable and invalid on the ground of non-age.

What deemed full age.

13. THE father, if living, of any male under Eighteen years of age not being a widower, and of any female under Sixteen years of age not being a widow; or, if the father shall be dead, the mother; or if both father and mother shall be dead, the guardian or guardians of the party so under age, or one of them shall have authority to give consent to, and to forbid the registering of such Marriage in respect of such party; and such consent is hereby required for the Marriage of such party so under age. In case any party, whose consent is hereby made necessary as aforesaid, to the Marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the Island, or shall, without good reason, withhold his or her consent, then it shall and may be lawful for the person desiring to marry to apply to the Provincial Registrar or Assistant Provincial Registrar, who is hereby empowered, after summary enquiry, to give or withhold his consent, as to him shall appear right; then no consent shall be deemed to be required. PROVIDED that after any Marriage shall have been contracted, it shall not be necessary in support of any such Marriage to give any proof of the consent of any party whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such Marriage.

Consent.

14. NO such Marriage shall be valid, where either party shall be directly descended from the other; or where the female shall be the sister of the male, either by the full or the half blood, or the daughter of his brother, or of his sister by the full or the half blood, or a descendant from either of them, or the daughter of his wife by another father, or his son's, or grandson's, or father's, or grandfather's widow; or where the male is the son of the brother or sister of the female by the full or half blood, or a descendant from either of them, or the son of her husband by another mother or her deceased daughter's, granddaughter's, mother's, or grandmother's husband. And any marriage or cohabitation between parties, standing towards each other in any of the above-enumerated degrees of relationship, shall be deemed to be an act of

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incest, and shall be punishable with imprisonment, with or without hard labour, for a period not exceeding one year.

Notice of Marriage.

15. In every case of intended Marriage, each of the parties shall give notice of such intention to some Registrar of the District in which he or she shall have dwelt for not less than twenty-one days, then next preceding, and every such notice shall set forth fully and truly all the names of each such party, and the names (where they shall be different) by which they are commonly known, and their respective places of abode, and whether the Marriage is to be contracted in Binnu or Diga; and shall be, substantially, according to the form in the Schedule C. hereto; and every Registrar is hereby required to give, gratis, a form of such notice to each party applying for the same. And every party giving such notice, shall subscribe his or her signature or mark to the same, in the presence of two or more witnesses, who shall be known to him or her. PROVIDED, that in all cases of Marriage intended to be registered, where both of the parties shall be resident in the same District, one notice subscribed by both the parties shall be sufficient.

Registrar to file Notice,

16. THE Registrar shall, on receiving such notice as aforesaid, forthwith file such notice, and keep it with the records of the Office, and shall, at the same time, enter a fair copy of it in a Book, to be called "The Marriage Notice Book"

Publications of Notice.

17. THE Registrar shall cause publication of every such entry of Notice to be made within Seven days after such entry, by affixing a copy thereof at some conspicuous place in his Office, and by continuing the same so affixed for at least Fourteen days; and every person wilfully removing, altering, defacing, or destroying any such copy so affixed, within such period, shall be guilty of an offence, and be liable, on conviction thereof, to a fine not exceeding Five Pounds.

Proceeding where the Marriage is forbidden.

18. IF the registration of any Marriage shall be forbidden, the Registrar shall forthwith make report thereof to the Provincial or Assistant Provincial Registrar, and shall suspend such registration until it shall have been decided, whether such Marriage ought to take place or not; on the receipt of such report it shall be the duty of such Provincial or Assistant Provincial Registrar to issue notices to the person who forbade the intended Marriage, and to the parties intending to marry, to appear, with their witnesses, on a day to be named in such notice, and which shall not be more than seven days from the day of the receipt of the report. On the day named, or any other day, to which the said Provincial or Assistant Provincial Registrar shall, for good cause shewn, adjourn the enquiry, he shall, after hearing the parties, and, if need be, their witnesses, decide whether such Marriage shall take place or not. If he shall decide, that the Marriage shall not take place, then the notice of Marriage and all proceedings thereupon shall be null and void. And if he shall decide that there exist no grounds for stopping such Marriage, then the notice of Marriage and all other proceedings relating thereto, shall be held to be valid and sufficient, and the District Registrar shall forthwith, or as soon as twenty-one days shall have elapsed since the entry of Notice of Marriage as aforesaid, register such Marriage.

Marriage where and when registered.

19. NO Registrar shall register any Marriage except at the Office of the Registrar, or such other place as may be appointed in pursuance of the provision in Section 11, nor except between the hours of eight in the morning and six in the afternoon.

Particulars to be asked of the parties

20. THE Registrar by whom any Marriage is to be registered under this Ordinance, shall ask of the parties to be married, the several particulars required to be registered touching such Marriage, that is to say, their names, age, rank or calling, residences at time of the Marriage, the nature of the Marriage (whether contracted in Diga or in Binnu). Nothing appearing to hinder the registration of the Marriage, the Registrar shall, in the presence of the witnesses, say to the man in the language of the parties, and causing him to take the woman by the hand.

"Do you take this woman to be your wedded wife?"

On the man answering in the affirmative, the Registrar shall say to the woman in the language of the parties, and causing her to take the man by the hand.

"Do you take this man to be your wedded husband?"

As to the form of and particulars to be entered into the Books of Registry.

And on the woman also answering in the affirmative, the Registrar shall forthwith proceed to register, in duplicate, in two of the Marriage Register Books, the several particulars relating to such Marriage, substantially according to the form D. in the

Schedule hereto, and shall sign every such entry himself, and shall cause the parties married, and two witnesses to sign, or, if they cannot sign, to affix their mark thereto. Every such entry shall be made in the same order from the beginning to the end of each Book, and the number of the place in each duplicate Marriage Register Book shall be the same, and a copy of such entry shall be furnished to each of the parties to such Marriage, at the time of the said Marriage, with the Certificate in Schedule E. hereto.

Power to refuse to register Marriage.

21. IN all cases where the Registrar ascertains, or has good reason to believe, that any Marriage proposed to be registered will be void, it shall be lawful for him to refuse to register such Marriage, but he shall in that case forthwith refer the matter to the Provincial or Assistant Provincial Registrar, to whom it shall be competent, after due enquiry made and, if he see fit, to register such Marriage, or to cause the same to be registered by the Registrar for the District.

Registration of future Marriages omitted to be registered.

22. ANY person contracting such Marriage, which, without fault of the parties to the Marriage, may have been omitted to be registered, or may have been erroneously registered, may at any time before any suit in respect of such Marriage, or property affected thereby, or after suit, demand to have such Marriage correctly registered; and the Registrar of whom such registration is demanded, shall refer such question also to the Provincial or Assistant Provincial Registrar to whom it shall be competent, after due enquiry, to register such Marriage or to cause the same to be registered by the Registrar for the District.

Dissolution of Marriages.

Dissolution of Marriage.

23. THE following shall be the grounds for granting a dissolution of Marriage:—

- (1.) Adultery by the wife after Marriage;
- (2.) Adultery by the husband, coupled with incest or gross cruelty;
- (3.) Complete and continued desertion for two years;
- (4.) Inability to live happily together, of which actual separation from bed and board for a year shall be the test;
- (5.) Mutual consent.

Either party who has a right to apply for such dissolution on the 1st, 2nd, 3rd, and 4th grounds, or both parties who may desire to apply on the 5th ground, may make such application to the Provincial Registrar or Assistant Provincial Registrar, and if such Provincial Registrar or Assistant Provincial Registrar shall, upon enquiry, be satisfied of the existence of good cause for the dissolution of Marriage, he shall order such dissolution and make an entry thereof in substantially the Form F. to the Schedule hereto annexed, in a Book to be called the Register of Dissolutions, to be by him kept for that purpose in the Registry of the said District. And the Marriage of the parties shall, from that time, be held to be dissolved: without prejudice, however, to the children of such marriage, born subsequent to its dissolution. If the parties to such dissolution shall have agreed upon any compensation to be made to either or both, owing to such dissolution, it shall be the duty of the Provincial or Assistant Provincial Registrar to enter the same in the Register of Dissolutions. And the entry so made shall have all the effect of the order or decree of a competent Court, and may be enforced as such.

Case of parties to existing Marriages who, from ignorance, have registered Marriages with others without obtaining a decree from the District Court.

24. AND whereas it is made manifest that parties to unions which were declared valid by Section 28 of the Ordinance No. 13 of 1859 have, from ignorance of the provisions of the said Ordinance, separated from each other since that Ordinance came into operation, and have caused Marriages to be registered between them and others, without having previously obtained a decree of divorce from the District Court, as required by that Ordinance, and it is expedient to save them, and the issue of the subsequent connection, from the consequences of such their acts, so far as the same can be legitimately done: IT IS ENACTED that in all cases in which either party to an existing Marriage under the said Section 28 of the said Ordinance, and not dissolved by the decree of a District Court as required by Section 30 thereof, has registered another Marriage either as "existing" or "future," mutual consent to the dissolution of the existing Marriage shall be presumed, and such registration shall be held to operate also as a dissolution of their previous existing Marriage, and the registered Marriage shall be deemed to be and to have been valid, and the issue thereof legitimate, whether procreated before or after registration.

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Marriages void, owing to non-registration or invalid registration, are made valid.

Proviso.

25. IN all cases where a Marriage has been contracted since the Ordinance No. 13 of 1859 came into force, according to the Laws, Institutions, and Customs in force in Kandy before that date, and which is void in consequence either of the want of registration, or of invalid registration, such Marriage shall be deemed and taken to have been a good and valid Marriage, and to operate as a dissolution of any former Marriage. PROVIDED that no person, who shall have heretofore lawfully come into possession of any property, moveable or immoveable, by reason of the non-registration or of the invalid registration of any Marriage shall be dispossessed thereof, and that the rights of such person, and of all others claiming under him, shall not be in any way affected by reason of such Marriage being by this Ordinance made good and valid.

General Provisions.

Polygamy, &c. illegal.

26. ANY Marriage which shall be contracted during the life of a former husband or wife, shall, for all purposes, be illegal and void, except where the party to such second Marriage shall have been divorced from the bond of the first Marriage, or where the first Marriage shall have been declared void by the decree of some competent Court.

Penalty on Polygamy, &c.

27. ANY person, resident in the Kandyan Provinces, being married, who shall marry any other person during the life of the former husband or wife, whether the second Marriage shall have taken place in such Kandyan Provinces or elsewhere, and every person counselling, aiding and abetting such offender, shall be guilty of an offence, and being convicted thereof, shall be liable to be imprisoned, with or without hard labour, for a period not exceeding Three years. And any such offence may be dealt with, inquired of, tried, determined, and punished in the District where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that District. PROVIDED always that nothing herein contained shall extend to any second Marriage contracted out of Ceylon by any other than a subject of Her Majesty, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second Marriage, shall have been divorced from the bond of the first Marriage, or to any person whose former Marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Where Polygamy may be punished.

Suspension and dismissal of District Registrar.

28. THE Provincial Registrar is empowered to suspend any Registrar for any breach or neglect of duty or other act that he may deem deserving of suspension; and on suspending any Registrar, he shall immediately report the suspension and the reasons thereof, to the Governor, and the Governor, with the advice of the Executive Council, shall have power to remove such suspension, or to continue the same for a period, or to dismiss him.

Penalties for certain acts of Registrars.

29. ANY Registrar carelessly losing or injuring any Register Book, or carelessly allowing a Register Book to be injured while in his keeping, or registering any Marriage before all or any of the formalities or matters required by this Ordinance have been duly complied with, or contrary to any of the provisions of this Ordinance, or neglecting to perform any duty hereby imposed upon him, and for which no punishment is otherwise specially provided, shall be liable to a fine not exceeding Twenty pounds. Any Registrar wilfully destroying or injuring any Register Book, or wilfully permitting or causing any such book to be destroyed or injured, or falsely making or counterfeiting, or permitting or causing to be falsely made or counterfeited any part of a Register Book, or wilfully inserting or permitting, or causing to be inserted in any Register Book, or certified copy thereof, any false entry, or wilfully giving a false certified copy of a register book, or permitting or causing any such false certified copy to be given, or certifying any writing to be a copy or extract of a Register Book, or permitting or causing such false certified copy to be given, or certifying any writing to be a copy or extract of a Register Book, knowing the said portion so copied or extracted to be false in any part thereof, shall be guilty of an offence, and be liable, on conviction, to imprisonment, with or without hard labour, for a period not exceeding Seven years. PROVIDED that nothing herein contained shall be held to absolve the Registrar from any Civil responsibility in damages to any person, who may be aggrieved, in consequence of any negligence, irregularity of proceeding, abuse of authority, or other act of commission or omission on his part.

Proviso.

30. EVERY Marriage registered under the provisions of this Ordinance, shall render legitimate any children who may have been procreated by the parties thereto, previous to their intermarriage; and such children shall become, and be entitled to the same and the like rights, as if they had been procreated by the said parties, subsequent to their intermarriage.

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Children legitimized by subsequent Marriage of parents.

31. NOTHING in the Ordinance No. 6 of 1847, intituled "*An Ordinance to amend in certain respects the Law of Marriages, and to provide for the better Registration of Marriages, Births, and Deaths,*" or in any other Ordinance, relating to Marriages in the Maritime Provinces, shall be deemed to extend, or to have at any time extended to Marriages contracted in the Kandyan Provinces, by residents thereof, according to the laws, manners, and customs, existing, and in force amongst the Kandians.

No. 6 of 1847, &c. of no force in Kandyan Provinces.

32. WHENEVER it shall be necessary for Provincial and Assistant Provincial Registrars to make any enquiry under the provisions of this Ordinance, it shall be lawful for them, and they are hereby empowered, to enforce the attendance of any person whom they may desire to examine by summons and warrant, and to examine them on oath. And any person failing or refusing to attend, or, having attended, refusing to be sworn, or to give information, or giving false information, shall be guilty of an offence, and shall be liable to fine not exceeding Ten pounds, or to imprisonment, with or without hard labour, for any period not exceeding One year, or to both; and it shall be lawful for the Provincial Registrar or Assistant Provincial Registrar to order the payment of any fine to be made in the Police Court of the District in which such person resides; and, if such payment shall not be made, as directed, the said Police Court shall proceed to enforce the same, and the charges relating to the recovery thereof, and to deal with the person liable to make the same, in such manner as if the said fine had been imposed by such Court.

Provincial and Sub-Provincial Registrars empowered to enforce attendance and evidence of persons to be examined.

Register Books, Extracts, Returns, &c.

33. THE Provincial Registrar shall cause to be printed a sufficient number of Books for making entries of Notices and Marriages, and Dissolutions, according to the forms in the Schedule hereto; and such Register Books shall be of durable materials, and in them shall be printed, on each side of every leaf, the heads of information herein required to be known and registered; every page of each book shall be numbered progressively from beginning to end, beginning with number one; and every place of entry shall be also numbered from the beginning to the end, beginning with number one; and every entry shall be divided from the following entry by a printed line. Each Registrar shall be furnished with Books of Registry in duplicate, and a sufficient number of forms of certified copies thereof, according to the forms in the Schedule to this Ordinance annexed.

Register Books.

34. EACH Registrar shall, in the months of January, April, July, and October, respectively, make and deliver to the Provincial or Assistant Provincial Registrar, a true copy, certified by him under his hand as in Schedule G. hereto annexed, of all the entries of Marriages in the Registry Book kept by him since the last certified copy. If there shall be no Marriage entered in a Register Book before the first day of the above-mentioned months, after this Ordinance shall have been brought into operation in any particular Districts, or in subsequent periods since the last certified copy, the Registrar shall, at the time aforesaid, certify the same under his hand to the Provincial or Assistant Provincial Registrar.

Duplicates, Extracts and Returns, to be made by Registrars to the Government Agent.

35. IT shall be lawful to the Provincial Registrar or Assistant Provincial Registrar to inspect the Registry Books from time to time, and to cause any mere clerical errors therein or in any copy furnished to him to be amended.

Provincial Registrar may inspect Books and amend errors.

36. THE Registrar shall keep the Marriage Book safely, in duplicate; and when the Register Books are filled, the Registrar shall deliver one of the books to the Provincial Registrar or Assistant Provincial Registrar, and the other he shall keep safely in the place appointed as his Office.

Books how disposed of.

37. IT shall be lawful for the Governor, from time to time, with the advice of the Executive Council, to make Regulations for the direction of the Registrars in the discharge of their duties, and for the maintenance of such Officers or establishments as may be necessary thereto, and from time to time to amend the forms given in the Schedules to this Ordinance annexed.

The Governor to make Regulations.

E.

(§ 20.)

FORM OF CERTIFICATE to be appended to copies of entries furnished to private individuals.

I, *Punchi Appuhámi*, Registrar of the *Kandy* District, in the *Central* Province, do hereby certify, that this is a true copy of the entry of the Marriage of *A. B.* and *C. D.* therein-mentioned.

Witness my hand, this *first* day of *August*, A. D. *One thousand Eight hundred and Sixty-nine*.

(Signature of Registrar.)

[Note.—The words and figures in *Italics* are to be filled up as the case may be.]

F.

(§ 23.)

FORM OF DISSOLUTION OF MARRIAGE.

I hereby order that the Marriage between *A.* and *B.* (*describe Registry, if any, or how Marriage contracted*) be dissolved on the following ground; to wit (*here insert ground*).

I certify that, according to the representations of the parties, they have had during their marriage children, as follows: (*name and age*.)

I further certify that the parties have agreed that the following compensation shall be made (*describe compensation agreed to*).

This order is registered in Registry of dissolution (*give number, page, and district*.)

This day of 1870.

A. B.
Provincial Registrar.

G.

(§ 34.)

FORM OF CERTIFICATE to be forwarded with the certified copy to the Government Agent.

I *Punchi Appuhámi*, Registrar of the *Kandy* District, in the *Central* Province, do hereby Certify, that this is a true copy of the entries of Marriage registered in my office from the entry of the Marriage of *A. B.* and *C. D.* number *one*, to the entry of the Marriage of *E. F.* and *G. H.* number *fourteen*.

Witness my hand, this *second* day of *October*, *One thousand Eight hundred and Seventy*.

(Signature of Registrar.)

Passed in Council, the Twelfth day of January, One thousand Eight hundred and Seventy.

JAMES SWAN,
Clerk to the Council.

Assented to by His Excellency the Governor, the Twelfth day of January, One thousand Eight hundred and Seventy.

HENRY T. IRVING,
Colonial Secretary.