

No. 6.—1881.

2nd May.

AN ORDINANCE to make provision as to the
Marriages and Divorces of Indian Immigrants.

(L. S.) S. FREELING, *Governor.*

10th May, 1881.

WHEREAS it is expedient to make provision as to the Marriages and Divorces of Indian Immigrants and the evidence thereof: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows:—

Preliminary.

Short title.

1. This Ordinance may be cited for all purposes as “The Immigrants’ Marriage and Divorce Ordinance, 1881.”

Commence-
ment.

2. This Ordinance shall not come into operation until the first day of July, 1881, which day is in this Ordinance referred to as the commencement of this Ordinance.

3. In this Ordinance,

Interpreta-
tion.

The term “Immigrant” means

(1) Any Indian Immigrant introduced into the Colony for the purpose of being indentured; and

(2) Any descendant of an Indian Immigrant so introduced, none of whose male ancestors residing in the Colony has professed or professes Christianity;

The term “The Marriage Ordinance, 1863,” means the Ordinance No. 11 of 1863, intituled, “An Ordinance to amend the Law with regard to the Solemnization and Registration of Marriages;”

The terms “Registrar of Marriages” and “District Registrar,” have the same meanings as in The Marriage Ordinance, 1863;

The term “Chief Registrar” means the Registrar of Marriages appointed under the same Ordinance:

The term “Registrar” includes the Chief Registrar and any District Registrar.

4. For the purposes of this Ordinance the Chief Registers. Registrar shall keep a Colonial Register of Indian Immigrants' Marriages and a Colonial Register of Indian Immigrants' Divorces, and each District Registrar shall keep a District Register of Indian Immigrants' Marriages and a District Register of Indian Immigrants' Divorces.

Marriage and Divorce.

5.

(1) An immigrant who at the time of his arrival in this Colony professes Christianity shall immediately upon such arrival, and

Marriage of
Christian
immigrants.

(2) An immigrant who at any time after his arrival in this Colony is converted to Christianity shall immediately upon such conversion as to marriage capacity or incapacity to contract marriage, and the conditions subject to which and the manner in which marriage may be contracted, be subject to the general law of the Colony.

Abandonment of Christianity shall not affect the operation of this section.

6. A marriage contracted after the commencement of this Ordinance between immigrants, both of whom at the date of the marriage profess the same religion, not being the Christian religion, and are subject to the same personal law, shall, if contracted according to the religion and personal law of such immigrants, and registered according to this Ordinance, be deemed to be valid as from the date of marriage specified in the register, or if no such date is specified, as from the date of registration: Provided that both of the following conditions are satisfied (that is to say):

Marriage
according to
personal law

(1) The man at the date of the marriage must be not under the age of sixteen years; and

(2) The woman at the date of the marriage must be not under the age of thirteen years.

7. Every application for the registration under this Ordinance of any marriage contracted after the commencement of this Ordinance, must be made to the

Application to
register
marriage.

Registrar of the district in which the marriage was effected, by both parties to such marriage, and within six months from the date thereof :

Provided that if either of the parties to the marriage is an infant, and has a father or guardian living and resident in the Colony, the application on behalf of such infant party must be made by such father or guardian.

Divorce
according to
personal law.

8. A divorce effected after the commencement of this Ordinance, between two immigrants, both of whom at the date of the marriage thereby dissolved, professed the same religion, not being the Christian religion, and were subject to the same personal law, shall, if effected according to such religion and personal law, and registered according to this Ordinance, be deemed valid for all purposes as from the date of divorce specified in the register, or if no such date is specified, as from the day of registration.

Application
to register
divorce.

9. Every application for the registration under this Ordinance of a divorce must be made to the Registrar of the district in which the divorce was effected by one or both of the parties to the marriage dissolved, and within six months from the date of the divorce.

Conditions of
registration.

10. On application being made to a Registrar to register under this Ordinance any marriage or divorce, the Registrar shall

- (1) Satisfy himself whether or not such marriage or divorce was effected by the person or persons by whom it is represented to have been effected ;
- (2) Satisfy himself as to the identity of the persons appearing before him and alleging that the marriage or divorce has been effected between them ;
- (3) In the case of any person appearing as guardian, satisfy himself as to the right of such person so to appear.

If the Registrar is satisfied on the above points and not otherwise, he shall make an entry as follows :—

- (a) Of a marriage, in the District Register of Indian Immigrants' Marriages :

(b) Of a divorce, in the District Register of Indian Immigrants' Divorces :

Provided that such registration shall not be made otherwise than in the presence of every person who by this Ordinance is required to sign the same.

11. The mode of registering under this Ordinance a marriage contracted after the commencement of this Ordinance shall be as follows :— Mode of registering marriage.

(1) An entry according to Form 1 in the Schedule to this Ordinance shall be made in the District Register of Indian Immigrants' Marriages; and

(2) Such entry shall be signed—

(a) By the Registrar, and

(b) By each of the parties to the marriage if both are of full age, or by the guardian of either of the parties who is not of full age, and

(c) By two witnesses present at the marriage ceremony.

12. The mode of registering a divorce under this Ordinance shall be as follows :— Mode of registering divorce.

(1) An entry according to Form 2 in the Schedule to this Ordinance shall be made in the District Register of Indian Immigrants' Divorces; and

(2) Such entry shall be signed—

(a) By the Registrar; and

(b) In the case of Mahomedans of the Suni sect, by the party or parties who have effected the divorce, and by the witness or witnesses who identify such party or parties; or,

(c) In the case of persons other than Mahomedans of the Suni sect, by the party or parties who have effected the divorce, and by two witnesses of the same religion and subject to the same personal law as the party or parties who have effected the divorce, such witnesses

having immediately before, and in the presence of the Registrar made and signed a declaration according to Form 3 in the Schedule to this Ordinance.

Limit of time for registration.

13. Registration under this Ordinance of any marriage contracted or divorce effected after the commencement of this Ordinance may be made at any time within six months after such marriage or divorce is contracted or effected and not later.

Marriages of Immigrants before Arrival.

Registration of marriages upon arrival of immigrants.

14. Upon the arrival of any ship having immigrants on board, the Protector of Immigrants shall inquire whether any of such immigrants stand in the relation of husband and wife. The declaration of a male and female immigrant that they stand in this relation shall, if uncontradicted by other evidence, be admitted by the Protector as evidence of such relation. Such declaration may be according to Form 4 in the Schedule to this Ordinance.

The Protector, if after such inquiry it appears to him that a male and female immigrant stand in the relation of husband and wife, shall make entry of such marriage in a Register to be kept by him, and called the Protector of Immigrants' Register of Immigrants' Marriages.

Marriages contracted before Ordinance.

Registration of marriage contracted before Ordinance.

15. Where two immigrants allege that they were duly married before the commencement of this Ordinance and desire that their marriage be registered, the Protector of Immigrants, if he is satisfied by evidence taken either by himself or by some one appointed by him in this behalf that such immigrants were before the commencement of this Ordinance duly married in manner sanctioned by some religion professed by them both at the time of such marriage not being the Christian religion, and that such marriage is still subsisting, shall enter such marriage in the Protector of Immigrants' Register of Indian Immigrants' Marriages, and shall also register the date thereof as nearly as such date can be ascertained: Provided that

1. No marriage shall be registered under this section after the expiration of a period of one year from the commencement of this Ordinance, unless one of the parties to such marriage by letter addressed to the Protector of Immigrants bearing the proper stamps for free transmission by the post, and posted before the expiration of the said period of one year, desires such Protector of Immigrants to register such marriage; and
2. Non-registration under this section shall be no evidence for or against any marriage.

Any person taking evidence under this section shall take a full and accurate note thereof, of which the Protector of Immigrants shall take charge and custody.

Correction of Register.

16. Where, upon an application to register under this Ordinance any marriage or divorce, a Registrar or the Protector of Immigrants, as the case may be, refuses to make such registration, the applicant or either of the applicants whose application is refused may apply to the Supreme Court to have such registration made, and upon such application, if it appears that the registration ought to be made, the Court shall order the Registrar or the Protector of Immigrants to make such registration, and may make such order as to costs as seems just.

Appeal where registration refused.

17. Where registration under this Ordinance has been made of any marriage or divorce, any person aggrieved by such registration may apply to the Supreme Court to have such registration cancelled, and upon such application, if it appears that the registration ought not to have been made, the Court shall order the Registrar or the Protector of Immigrants, as the case may be, to cancel such registration, and may make such order as to costs as seems just.

Cancelling registration.

18. Any application to the Supreme Court under this Ordinance and the subsequent proceedings thereupon shall be as prescribed by general orders made by the Court under this Ordinance, or if no such orders are

Procedure.

made, and subject to such orders (if any), the application shall be by motion and the subsequent proceedings shall be according to the usual practice of the Court on motions.

Transmission
of note of
evidence.

19. The Protector of Immigrants shall, upon the request of the Registrar of the Supreme Court, forward to such Registrar for the use of the Judges of the Supreme Court any note in his custody of evidence taken upon an application for the registration of a marriage contracted before the passing of this Ordinance.

Colonial Register.

Entries in
Colonial
Register.

20. Every Registrar not being the Chief Registrar shall transmit to the Chief Registrar a copy of every entry of a marriage or divorce made by him in his District Register of Indian Immigrants' Marriages or his District Register of Indian Immigrants' Divorces within one week after such entry is made, and the Chief Registrar shall forthwith enter in the Colonial Register of Indian Immigrants' Marriages a copy of every entry of a marriage made by him in his District Register of Indian Immigrants' Marriages and of every copy of an entry of a marriage transmitted to him by any other Registrar pursuant to this Ordinance, and shall forthwith enter in the Colonial Register of Indian Immigrants' Divorces a copy of every entry of a divorce made by him in his District Register of Indian Immigrants' Divorces and of every copy of an entry of a divorce transmitted to him by any other Registrar pursuant to this Ordinance.

Marriages
registered by
Protector.

21. A copy of every entry of a marriage made in the Protector of Immigrants' Register of Indian Immigrants' Marriages shall, within one week after such entry is made, be transmitted by the Protector of Immigrants to the Chief Registrar, who shall make a corresponding entry in the Colonial Register of Indian Immigrants' Marriages, distinguishing such entry as made upon the information of the Protector of Immigrants.

Proof of Marriage or Divorce.

Proof of
marriage or
divorce.

22. An entry, whether purporting to be an original entry or not, in any register directed by this Ordinance

to be kept, shall be conclusive evidence till the contrary is proved of the marriage or divorce of the parties to whom the entry relates, and also of the date of such marriage or divorce, if the same is specified in the entry, and no other evidence of a marriage or divorce between immigrants effected after the commencement of this Ordinance, but not effected under the Marriage Ordinance, 1863, or other general law of the Colony relating to marriage shall be admissible.

Offences.

23. Whoever takes or entices away any female immigrant who is and whom he knows or has reason to believe to be the wife of any other immigrant from such immigrant, or from any person having the care of her on behalf of such immigrant, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such female immigrant, shall be guilty of a misdemeanour, and on conviction thereof before the Supreme Court may be fined in any sum not exceeding one hundred pounds, or imprisoned with or without hard labour for any term not exceeding two years, or, subject to the limitations aforesaid, may be punished both by fine and imprisonment.

Enticing
away
married
female
immigrant.

No proceeding under this section shall be taken before any Court or magistrate except with the consent of the husband of the female immigrant, or of the person having the care of such female immigrant on behalf of her husband.

24. Every person making, signing, or attesting any declaration or certificate by this Ordinance required or authorised to be made or given, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be guilty of a misdemeanour, and on conviction thereof may be imprisoned with or without hard labour for any term not exceeding five years.

Signing false
declarations
or certificates.

25. Any person who forges or alters in any material particular, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered in a material particular, any certificate by this Ordinance required or

Forgery of
certificates.

authorised to be given, shall be guilty of a misdemeanour, and on conviction thereof may be imprisoned with or without hard labour for any term not exceeding five years.

Offences by
Protector of
Immigrants.

26. The Protector of Immigrants,

1. If he fails to enter forthwith in the Protector of Immigrants' Register of Indian Immigrants' Marriages any marriage which he is required to enter therein, or
2. If he fails to transmit to the Chief Registrar a copy of any entry of marriage made in the Protector of Immigrants' Register of Indian Immigrants' Marriages within one week after the entry was made, or
3. If he fails to cancel any entry of marriage within one week after the certified copy or order authorising such cancellation reaches or is produced to him,

shall be guilty of an offence punishable on summary conviction and liable to a penalty not exceeding ten pounds.

Offences by
Chief
Registrar.

27. The Chief Registrar,

1. If he fails to enter in the Colonial Register of Indian Immigrants' Marriages
 - (a) a copy of any entry of a marriage made in his District Register of Indian Immigrants' Marriages immediately after such entry was made, or
 - (b) a copy of any copy of an entry of a marriage transmitted to him pursuant to this Ordinance within one week after such copy reaches him, or
2. If he fails to enter in the Colonial Register of Indian Immigrants' Divorces
 - (c) a copy of any entry of a divorce made in his District Register of Indian Immigrants' Divorces immediately after such entry is made, or

(d) a copy of any copy of an entry of a divorce transmitted to him pursuant to this Ordinance within one week after such copy reaches him, shall be guilty of an offence against this Ordinance, and be liable to a penalty not exceeding ten pounds.

28. Any Registrar guilty of any of the following offences (that is to say), Offences by Registrars.

1. Who fails to register forthwith any marriage or divorce which he is by this Ordinance required to register, or
 2. Who fails to transmit to the Chief Registrar a copy of any entry of a marriage or divorce made in his District Register of Indian Immigrants' Marriages, or in his District Register of Indian Immigrants' Divorces, pursuant to this Ordinance, within one week after such entry was made, or
 3. Who fails to cancel any entry of marriage or divorce within one week after the certified copy or order authorising such cancellation reaches or is produced to him,
- shall be guilty of an offence punishable on summary conviction, and be liable to a penalty not exceeding ten pounds.

29. It shall be lawful for all persons at all reasonable times to search the entries in the Colonial or any District Register or the Protector of Immigrants' Register of Indian Immigrants' Marriages, and in the Colonial or any District Register of Indian Immigrants' Divorces, in the presence of the person in whose custody such registers respectively are, and to have true copies certified under the hand of such person of any such entries: Provided that before allowing any such search or furnishing any such certified copy, any such person shall be entitled to demand the following fees, that is to say:—

For every search —Two Shillings.
For every certified copy—Two Shillings.

30. Where any entry is required by this Ordinance to be made in any register, *prima facie* evidence may be Proof of entries in registers and certificates.

given of such entry in all Courts of Justice and in all legal proceedings by production of a writing purporting to be certified by the person having the custody of such register, to be a true copy of such entry.

Where any certificate is by this Ordinance required or authorised to be given, *primâ facie* evidence of such certificate may be given in all Courts of Justice and in all legal proceedings by production of a certificate apparently in accordance with this Ordinance, and purporting to be signed as required by this Ordinance.

No proof shall be required of the handwriting or official position of the person signing any certificate under this section.

Every certificate given under this Ordinance shall be *primâ facie* evidence of the facts therein certified.

The provisions of this section shall be deemed to be in addition to and not in derogation of any powers of proof under any existing law or Ordinance.

Publication of
general
orders.

31. All general orders made by the Judges of the Supreme Court under this Ordinance shall be published in the *Royal Gazette*. Production of a copy of the *Royal Gazette* purporting to contain any such orders shall be *primâ facie* evidence of the making and tenor of such orders.

Passed in Council this second day of May, in the year of Our Lord one thousand eight hundred and eighty-one.

A. C. ROSS,
Clerk of the Council.

THE SCHEDULE.

FORM 1.

THE IMMIGRANTS MARRIAGE AND DIVORCE ORDINANCE 1881.
MARRIAGES REGISTERED UNDER THE ORDINANCE.

Entry of Marriage.

Consecutive Number.	Name and Address of the Bridegroom.	Name and Address of the Bride.	Whether the Bride is a Spinster, Widow or Divorced, and whether she is adult or not.	*Name and Address of the Guardian of the Bridegroom and his relationship to the Bridegroom (if any).	†Name and Address of the Guardian of the Bride and his relationship to the Bride (if any).	Date of the Marriage.	Special conditions (if any).	House, Estate, or other place and Ward in which the marriage took place.	Date of registration.

* This Column will be blank if the Bridegroom is not represented by a Guardian.

† This Column will be blank if the Bride is not represented by a Guardian.

FORM 3.

THE IMMIGRANTS MARRIAGE AND DIVORCE ORDINANCE 1881.

[*Declaration of Witnesses to a Divorce.*]

We, *A.B.*, of &c., and *C.D.*, of &c., severally declare as follows :—

1. Each of us is of the same religion and subject to the same personal law as *E.F.* of &c., and *G.H.* of &c., both of whom are now present, that is to say [of the Shiah sect of Mahomedans and subject to the personal law imposed by the religion of such sect].

2. We were present on the day of at
when a divorce between the said *E.F.* and *G.H.* was effected in the following manner (that is to say) [*describe manner of effecting divorce*] and we severally say that such divorce was well and truly effected according to the religion and personal law [of the Shiah sect of Mahomedans].

3. We are aware that if the statements made by us respectively are false and if in making such statements we either know or believe them to be false or do not believe them to be true we are liable to imprisonment.

A.B.
C.D.

Before me,
E. H. F.,
Registrar for the district of

FORM 4.

THE IMMIGRANTS MARRIAGE AND DIVORCE ORDINANCE 1881.

[*Declaration of Marriage by two Immigrants on Arrival.*]

We *A.B.* and *C.D.* declare that :—

1. We profess the [*Hindu*] religion and were before our embarkation duly married in manner sanctioned by that religion at [*Agra in British India*] [*or, and were during our voyage to this Colony duly married in manner sanctioned by that religion.*]

2. We are aware that if any statement made by us respectively in this declaration is false, and if in making such statement we either know or believe it to be false or do not believe it to be true we are liable to imprisonment.

A.B.
C.D.

Before me,
H.M.
Protector of Immigrants.