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No. 213.

1st Session, 4th Parliament, 16th Victoria, 1852.

B I L L.

**An Act to amend the Law of Upper
Canada with respect to the Solemniza-
tion and Registration of Matrimony.**

Received and read first time, Saturday, 6th
November, 1852.

Second reading, Tuesday, 15th Feb., 1853.

(1000 Copies.)

HON. MR. ROLPH.

S. Debishire & G. Desbarats, Queen's Printer.

BILL.

An Act to amend the Law of Upper Canada with respect to the Solemnization and Registration of Marriages.

WHEREAS it is expedient to make better provision Preamble.
 respecting the Celebration and Registration of Marriages
 in Upper Canada: Be it therefore enacted by the Queen's Most
 Excellent Majesty, by and with the advice and consent of the
 5 Legislative Council and of the Legislative Assembly of the
 Province of Canada, constituted and assembled by virtue of
 and under the authority of an Act passed in the Parliament of
 the United Kingdom of Great Britain and Ireland, and intituled,
An Act to re-unite the Provinces of Upper and Lower Canada,
 10 *and for the Government of Canada,* and it is hereby enacted by
 the authority of the same, That so much of the Act of the Le- So much of
 gislature of Upper Canada, passed in the thirty-third year of Acts of U. C.
 the Reign of King George the Third, and intituled, *An Act to* 33 G. 3, c. 5.
confirm and make valid certain Marriages heretofore contracted and
 15 *in the Country now comprised within the Province of Upper Ca-*
nada, and to provide for the future Solemnization of Marriages
within the same, or of the Act of the said Legislature, passed
 in the thirty-eighth year of the same Reign, and intituled, *An* 38 G. 3, c. 4.
Act to extend the provisions of an Act passed in the second session
 20 *of the first Provincial Parliament of Upper Canada, intituled,*
'An Act to confirm and make valid certain Marriages heretofore
contracted in the Country now comprised within the Province of
Upper Canada, and to provide for the future solemnization of
 25 *Matrimony within the same,'* in the eleventh year of the Reign
 of King George the Fourth, and intituled, *An Act to make valid* 11 G. 4, c. 36.
certain Marriages heretofore contracted, and to provide for the
future Solemnization of Matrimony in this Province, or of the
 Act of the Legislature of this Province, passed in the Session
 held in the tenth and eleventh years of Her Majesty's Reign, And of Cana-
 30 and intituled, *An Act to extend the Provisions of the Marriage* da 10 & 11 V.
Act of Upper Canada to Ministers of all denominations, or of c. 18, or of
 any other Act, as empowers any person validly to celebrate any other
 Marriage so as to give the Marriage any legal effect for civil Act, as is
 purposes, other than the persons hereby authorized to receive inconsistent
 35 the Contract of Marriage, or as requires or authorizes any with this Act,
 Register or Record of any Marriage to be made or kept in repealed.
 any other manner than that hereby provided and prescribed, or
 as would give any legal effect for civil purposes, to any Mar-
 riage contracted in Upper Canada after the
 40 day of _____, in any way other than that hereby
 prescribed and provided, or as may be in any way inconsistent
 with this Act, shall be, and is hereby repealed.

II. And be it enacted, That from and after the time when Marriage in
 this Act shall be in force, Marriage, as a Civil Contract, shall the form pro-
 45 be valid in law, when such Contract is executed by the vided by this
 contracting parties in the manner and before the parties herein- Act to be
 after mentioned. valid.

III. And be it further enacted, That it shall and may be Who may re-
 lawful for any Minister, Priest, Pastor, Religious Teacher ceive the mar-
 50 recognized by any Church or Religious Denomination, or riage contract.

the Mayor or any Alderman of any City or Town, a Judge of any County Court, the Warden of any County Council, or the Reeve of a Township, for the time being, under this Act to receive from the contracting parties the Marriage Contract, which shall be executed in duplicate, in the presence of the person so receiving the same, who shall make a record thereof in the form C, to this Act appended. 5

Former marriage may be avowed under this Act.

IV. And be it further enacted, That any parties who heretofore have contracted, or hereafter may contract Marriage according to any law of this Province, or of any other Province or Country, or whose Marriages are hereinafter confirmed by this Act, may proceed under this Act according to the form of Contract hereto appended, and in like manner, and with like privileges and effect, as if they were making an Original Marriage Contract, and the like duties shall be incumbent upon, and the like responsibilities shall appertain to the person receiving such avowed Contract under this Act, as if it were an Original Contract. 10 15

Two witnesses required to the Contract.

V. And be it further enacted, That the Marriage Contract shall be in writing, and subscribed by the parties in the presence of at least two witnesses, one of whom shall be personally known, and both of whom shall be known or vouched to be of satisfactory credit, to the person to whom, by virtue of this Act, such Contract shall be delivered, and in whose presence it shall have been executed. 20 25

Declaration to be signed by the person receiving the contract.

VI. And be it further enacted, That the person receiving any such Marriage Contract executed before him in duplicate as aforesaid, shall subscribe a declaration, that the identity of the parties thereto is to him known, or satisfactorily vouched for, and that it is also known or has been also satisfactorily vouched to him that there is no legal impediment to interfere with or make void the Contract, and that all the facts mentioned in the contract have been satisfactorily vouched to him, and that one of the Witnesses is personally known, and both of them known to him to be or vouched to him as being worthy of credit in the matter they have attested. 30 35

If the witnesses be of doubtful sufficiency other information must be obtained.

VII. And be it further enacted, That if the Witness or Witnesses shall, in the belief of the person about to receive such contract, be of doubtful sufficiency to satisfy him of the identity of the respective parties, and of the truth of the facts set forth in the declaration in the last preceding section mentioned he shall otherwise first satisfy himself thereof by such further inquiries as he may institute before receiving such Contract. 40

Penalty for receiving a contract knowing it illegal.

VIII. And be it further enacted, That every person who shall by authority of this Act receive a Marriage Contract when either of the parties shall be known to him or he shall have reason to believe either of them to be under any legal impedi-

ment shall be deemed guilty of a misdemeanor, and punishable by fine or imprisonment, or both, at the discretion of the Court before which he shall be tried.

IX. And be it enacted, That if any party to a Marriage Contract shall wilfully make any false statement therein, or if any witness to any such Contract, or any other person shall attest or vouch for the truth of any statement made or referred to in any such Contract, knowing the same to be false, or having no reasonable cause for believing the same to be true or if any person shall falsely assume or exercise authority under the third section of this Act, such party, witness, or other person shall be guilty of a Misdemeanor, and shall be punishable by fine or imprisonment or both, in the discretion of the Court before which he shall be tried.

Penalty for making any false statement in a contract, &c.

X. And be it further enacted, That every person receiving Marriage Contracts under this Act, shall keep an Alphabetical Record in the names of each of the parties, according to the form C to this Act appended, containing the names, residence and degree, or calling and parentage of the Contracting parties, and the same particulars of the witnesses, and the true date of the Contract.

Alphabetical record to be kept by persons receiving contract.

XI. And be it further enacted, That every person authorized under this Act to receive the marriage contract, shall, once in every months, return a certified copy of his said Record, together with the Marriage Contracts perfected as aforesaid, to the Register of the County in which such Contracts shall have been made, and in default thereof he shall be deemed guilty of a misdemeanor, and shall be punishable by fine and imprisonment or either of them at the discretion of the Court in which the complaint may be made.

Contracts and copy of the record to be transmitted to the County Registrar.

XII. And be it further enacted, That it shall be the duty of the said Register of the County, on receipt of such Record and Contracts, to file the same in his Office, and he shall further prepare from the said Records of his Office a General Annual Alphabetical Registry in the names of each of the parties, in the form C appended to this Act, in duplicate, one of which together with one duplicate of the Marriage Contract he shall transmit on the day of each year, to the Provincial Registrar, and the other he shall keep of record in his Office.

County Registrar to transmit contracts, &c. yearly to Provincial Registrar.

XIII. And be it further enacted, That every person receiving such Contract for Registry under this Act, shall give to any person applying for it a certified copy of it or of the record thereof.

Persons receiving contracts for registration to give copies.

XIV. And be it further enacted, That a duly certified Copy of any Record kept by any of the persons authorized by the

Effect of duly certified co-

pies of con-
tracts or of the
record thereof.

third section of this Act to receive the Contract of Marriage and record the same, or their successors in office, or of the County Record from the County Register, or of the Provincial Record from the Provincial Registrar, shall be considered, *prima facie* evidence of the marriage, and of the facts therein stated, and a copy so certified of any such Contract shall be *prima facie* evidence of such Contract, and of the facts therein stated; and the persons in the said third section of this Act mentioned, and their successors in office, and the said County Register or Provincial Registrar are hereby required to give such certified Copy of such Record or Contract or of the Registry thereof, to any person demanding the same, and in case of refusal or neglect so to do, shall be deemed guilty of a misdemeanor, punishable by fine and imprisonment or either of them by the Court in which the complaint may be made.

Fees.

XV. And be it further enacted, That the person receiving the Contract and recording the same, shall be entitled to receive for the Contract, for recording, for transmittal, for a copy, and a further sum of on each Contract to be paid over to the County Register, and of to be paid over to the Provincial Registrar; and the County Register shall be entitled to receive for a copy, and the Provincial Registrar for a copy.

No religious
ceremony ne-
cessary or pre-
vented.

XVI. Provided always, and be it enacted and declared, That nothing in this Act shall be construed to interfere with any Religious Ceremony which the parties contracting Marriage may choose to observe, or to render necessary any Religious Ceremony with which they may choose to dispense, provided the Contract itself be made and registered as hereby required.

No Banns or
license re-
quired.

XVII. And be it enacted, That no publication of Banns or Marriage License, shall be necessary in order to the valid celebration of any Marriage in Upper Canada, after this Act shall be in force, any thing in any Act or Law to the contrary notwithstanding.

Certain mar-
riages con-
firmed.

XVIII. And be it enacted, That the Marriage or Marriages of all persons not under any legal disqualification to contract matrimony, that have been publicly contracted in Upper Canada before any Justice of the Peace, Magistrate or Commanding Officer of a Post, or before any Priest, Minister or Clergyman, or between or with any person or persons belonging to the Society of Friends commonly called Quakers, or persons professing the Jewish religion, according to the usages of the said Society and of the said persons respectively, before this Act shall come into force, shall be and are hereby confirmed, and shall be considered good and valid in law, and the parties to such Marriages and the issue thereof shall be entitled to all the rights and subject to all the obligations resulting from Marriage

and Consanguinity, any law usage or custom to the contrary notwithstanding: Provided that nothing in this Section contained shall extend to or affect any Marriage declared invalid by any Court of competent jurisdiction before this Act comes
 5 into force, nor any Marriage either of the parties whereto shall at any time afterwards during the lifetime of the other party have lawfully intermarried with any other person, nor any Marriage respecting which any criminal prosecution shall be depending at the time this Act comes into force: Provided further,
 10 that this section shall not extend or be construed to extend to or affect any act done before this Act comes into force, under the authority of any Court, or in the administration of any personal Estate or Effects, or in the Execution of any Will or Testament or the performance of any Trust.

15 XIX. And be it enacted, That except in those cases where it is otherwise herein expressly provided, this Act shall apply only to Marriages contracted in Upper Canada after this Act shall be in force; and that this Act shall come into force and
 20 effect upon, from and after the day of 185 . and not before.

To what marriages this Act shall apply.
 Commencement of Act.

SCHEDULES.

A.

FORM OF AN ORIGINAL CONTRACT.

Whereas A. B., of _____ in the County of _____
 in Upper Canada, bachelor, (or widower, as the
 case may be,) (Farmer,) son of _____ (Carpenter,) and
 of the Township of _____ in the County of _____
 25 and C. D., of _____ in the County of _____
 spinster, (or widow, as the case may be,) daughter of
 (Grocer,) and _____ of the Township of _____ in the
 County of _____ have a mutual purpose of marriage, for
 the carrying out of which they are desirous to enter into the
 30 Contract by Law in that case made and provided, severally
 declaring that there is no legal impediment against it: Now
 these presents witness that the said A. B. and C. D. have this
 day mutually agreed to enter into the relation of man and wife
 from henceforth, according to the laws of Upper Canada. In
 35 witness whereof the said A. B. and C. D. have hereunto set
 their hands in the presence of E. F., of _____ in the
 County of _____ (addition) and G. H., of _____ in
 the County of _____ (addition) and before J. K., Registrar,

(Judge of the Court, or Minister, of
may be,) of the County of

&c., as the case

Signed and delivered in duplicate }
 to the said J. K. in the presence of }
 the said E. F. and G. H. }
 on the day of 18

A. B.
 C. D.

5

E. F.
 G. H.

DECLARATION ON THE CONTRACT.

I, J. K., of the County of hereby declare that the above Marriage Contract was executed in my presence in duplicate and in the presence of the witnesses E. F. and G. H. therein named, who attested the same and the delivery thereof to me. I further declare that the said A. B. and C. D. are known, (*or satisfactorily vouched for to me,*) as the persons therein described, and that it is to me known (*or satisfactorily vouched*) that there is no legal impediment to their matrimonial union. And I further declare that the identity of the parties to 15 and all the facts mentioned in the above contract have been satisfactorily vouched to me; that (E. F.) one of the witnesses of the said contract is personally known to me, and that both of the witnesses thereto are known or satisfactorily vouched to me as worthy of credit respecting the matters above attested. 20

J. K.
 of the County of

B.

FORM OF AVOWAL OF A FORMER CONTRACT.

Whereas A. B. of in the County of in Upper Canada, (*Farmer,*) son of of in (*Carpenter,*) and C. D. his wife, daughter of of in (*Baker,*) were married in 25 the year , at in , as they hereby declare, and they are desirous of avowing and recording in Upper Canada the Marriage Contract into which they then entered, severally declaring that there is no legal impediment against it. Now therefore these presents witness that the said 30 A. B. and C. D. declare themselves to have entered as afore-said into the relation of man and wife, and do avow the Marriage Contract into which they entered as afore-said. In witness whereof, the said A. B. and C. D. have hereunto set their hands in the presence of E. F. of the 35

of _____ in the County of _____
 (Farmer,) and of G. H. of the _____ of _____ in the
 County of _____ (Tailor,) and before J. K. Registrar, (Judge
 of the Court, or Minister, as the case may be) of the County of _____

5 Signed and Delivered in duplicate)
 to the said J. K. in the presence of) C. D.
 the said E. F. and G. H.) A. B.
 on the _____ day of _____ 18 .

E. F.
 G. H.

DECLARATION ON THE SAME.

I, J. K., _____ of the County of _____ hereby declare
 10 that the above written Contract and Avowal of previous Mar-
 riage was executed in my presence and in the presence of the
 witnesses E. F. and G. H., who have attested the same and
 the delivery thereof to me, on the day and in the year therein
 mentioned. And I further declare that the said A. B. and
 15 C. D. are personally known to me (or, that the identity of
 the said A. B. and C. D. with the persons appearing before
 me, as the said A. B. and C. D. was satisfactorily vouched
 for to me or as the case may be), and that the said E. F.
 and G. H. satisfied me that they believed and had good reason
 20 for believing that the said A. B. and C. D. were married at the
 time mentioned in the said Contract and Avowal of marriage,
 and that there exists no lawful impediment to their union as
 man and wife. And I further declare that the said (E. F.) one
 of the witnesses aforesaid is personally known to me, and that
 25 both the said witnesses are known (or satisfactorily vouched
 for to me) as persons worthy of credit respecting the matters
 above mentioned, and that the identity of the person appearing
 before me as the said G. H. was satisfactorily vouched for to
 me or as the case may be.)

J. K.
 of the County of _____

30 Vary the wording of these forms according as one or both the
 parties or either of them, or one or both of the witnesses is or are
 known to the Functionary receiving the Contract, observing that
 one of the witnesses must be personally known to him, and the
 identity of the parties and of the other witness must be vouched
 35 for if they are not personally known to him, and that all the facts
 mentioned in the Contract must in all cases be satisfactorily
 vouched, and all the requirements of the Act complied with.

SCHEDULE C.

Form of Alphabetical Record of Contracts, and Avowals of Marriage under this Act.

Names of Parties.	Residence.	Degree or Calling.	Parentage.	Names of Witnesses.	Residence.	Degree or Calling.	Parentage.	Date of Contract or Avowal thereof.
Andrews, Thomas and	Town of Port Hope.	Carpenter.	Son of William Andrews and Mary Andrews of Port Hope.	Smith, John.	Town of Co-bourg.	Co-Tailor.	Son of Amos and Sarah Smith of Co-bourg.	24th June, 1854.
Thompson, Julia.	Town of Port Hope.	Spinster.	Daughter of Obediah and Rachel Thomson of Port Hope.	Ellis, James.	Town of Peterboro.	Grocer.	Son of Thomas James Smith of the Town of Peterboro.	Contract or Avowal of Marriage. <i>as the case may be.</i>

J. K. of the County of

The above will be the Entry under the letter A, and under the letter T, the Entry of the same Marriage Contract will be.

Thompson, Julia and	Town of Port Hope.	Spinster.	Daughter of Obediah and Rachel Thomson of Port Hope.	Ellis, James.	Town of Peterboro.	Grocer.	Son of Thomas James Smith of the Town of Peterboro.	24th June, 1854.
Andrews, Thomas.	Town of Port Hope.	Carpenter.	Son of William Andrews and Mary Andrews of Port Hope.	Smith, John.	Town of Co-bourg.	Co-Tailor.	Son of Amos and Sarah Smith of Co-bourg.	Contract or Avowal of Marriage. <i>as the case may be.</i>

J. K. of the County of