

No. 3.—1871.

MARRIAGE ORDINANCE

ENACTED BY RESOLUTION OF THE VOLKSRAAD, ART. 308—334, DATED
THE 10TH OF NOVEMBER, 1871.

Art. 1. No marriage shall be contracted but after publication of the banns, either in public in the customary way on three consecutive Sundays, during divine service in a church or other lawful place of public worship, or by posting them during the same length of time on the door of the Landdrost Office, in the district or jurisdiction of which either of the parties or both do reside, unless special license shall have been obtained. Before the marriage can be contracted, the bridegroom and bride shall appear before the Landdrost of the district, who shall in his capacity of Marriage Commissioner investigate whether the provisions of the civil law have been complied with and if necessary grant the certificate.

2. The Landdrost of the respective districts shall marry the parties if they desire it. All the ministers, to whom the power has been granted by the Government shall also have the right to confirm and celebrate marriages on production of a certificate of the Landdrost that the provisions of this ordinance, in regard to civil law, shall have been complied with, on condition that the banns shall have been duly published as provided in art. 1 of this ordinance, or by special license, and further, that all the other provisions of this law shall have been complied with, and on condition that the officiating minister, together with the presbytery shall be responsible for any neglect or non-observance of the provisions of this ordinance by such minister.

3. Marriages can be celebrated without previously publishing the banns, as has been provided for by articles 1 and 2, on the parties producing and handing in a special license obtained for the purpose, and signed by the State President and State Secretary.

4. Persons desirous of being married by special license in accordance with the foregoing article, shall appear before the Landdrost, giving in their names and replying to such questions as the said official shall see fit to put them, in order to be satisfied.

1. That, in the case of minority the consent of the parents or guardians has been obtained.
2. That, if one of the persons intending marriage, has been married before and children been born during such marriage, a certificate signed by the Orphan Master shall be produced, declaring that the legal portions of such children have been secured or paid, and
3. That they, the persons intending marriage, are not related to each other in the forbidden degrees of blood or kinsmanship and that no other lawful impediments to the intended marriage exist.

Under the forbidden degrees of consanguinity are understood :—

- a. All persons in the ascending and descending line in continuity, and in the collateral line including the third degree. Consequently, uncle and niece, aunt and nephew, whether directly or by marriage.
- b. Own cousins, the parents of both of whom are related to each other as brothers and sisters.

Persons, who have not yet been living in the State one year, can not be married except on the production of a certificate or certificates of a competent official or minister of their last place of residence, showing that no impediments to such marriage exist.

5. The Landdrost shall have the right, on suspicion of anything illegal in the proposed marriage or any concealments of the truth, to examine the parties or either of them or any other persons on oath, with reference to the case.

6. The Landdrost shall keep proper minutes of his investigation, as stipulated in articles 4 and 5, and report thereon to the State Secretary, upon which the State President shall have the right to grant or refuse a special license, as he shall see fit.

7. When the banns of marriage shall have been published as stipulated in article 1, or a special license shall have been obtained and the parties have not been married within three months after the last publication of the banns, or after the date of the license, such banns or license shall be considered to have lapsed, and all shall be recommenced as if nothing had taken place.

8. It shall not be lawful for any Landdrost, under penalty of not more than £50 or less than £10, to grant marriage certificates to, or to marry persons who acknowledge to be minors, or may be considered as such on good grounds, and who cannot produce the consent of the father or guardian,—or in case of marriage of a Widower or Widow and where minor heirs have been left whose legal portion shall not have been secured according to certificates of the Orphan Master or other duly appointed Official,—or in case the parties wishing to be married are within the forbidden degrees of consanguinity,—or, that parties have come from other States purposely to get married here, being unable to do so lawfully in their own Country,—or that the banns have not been published or special license has been obtained according to law, upon all which it shall be competent for the Landdrost to proceed by examination, or otherwise, as provided for in art. 5 of this law.

9. No widower may re-marry within three months after the death of his last wife and no widow within 300 days after the death of her last husband, unless special dispensation in exceptional cases—be granted by Government.

10. All married persons being married within this Republic or otherwise, who shall contract a second marriage before the first has been annulled shall be punished with three years hard labour.

Any Landdrost who, having knowledge of the existence of a previous one, admits persons to a second marriage or grants a marriage certificate for the celebration of a marriage by a minister, shall be punished with three years hard labour.

Accomplices shall be punished in the same manner.

The last marriage shall be declared null and void by a penal sentence.

11. No marriage shall be considered legal when both parties residing in this State shall go to another State or country to be married there by a Minister or Government Official, unless special permission shall have been granted for the purpose by the State

President and the required documentary evidence of such marriage shall have been handed in to the State Secretary of this Country within six months after the celebration of such marriage.

12. At the celebration of a marriage the above mentioned Minister shall be at liberty to use the formulary or ritual of his church, but if the marriage is to be contracted civilly (without the consecration of a church) the Landdrost shall put the following questions to the bridegroom and bride each separately, to which they shall reply *Yes* in an audible voice :

“Do you A.B. declare solemnly, that to the best of your belief there is no impediment to your intended marriage with C.D. here present, and do you call on all here present as witnesses, that you acknowledge C.D. as your lawful wife (or husband) ?” After which they must join their right hands, and the Landdrost declares the parties duly married with these words :

“I declare that A.B. and C.D. here present are duly and lawfully married, according to the civil law of this State.”

13. No marriage can be celebrated earlier than at 8 o'clock in the morning or later than at 4 o'clock in the afternoon, and only in a church or other public building for worship, public office or private dwelling with open doors, and in presence of at least two duly qualified witnesses. It is only allowed in unforeseen circumstances to celebrate marriages at times beyond the stipulated hours.

14. Immediately after the celebration of the marriage and before the married couple leaves the apartment, the Minister or Landdrost before mentioned, who has celebrated the marriage, shall duly make the necessary entries in an original and duplicate marriage register, according to the undermentioned form, of the names of the married parties in full, and they, together with two proper and fit witnesses, as well as the Minister or Landdrost, shall sign them both. The original register shall remain at the office of the marriage officer and the duplicate has to be sent in to the State Secretary within a month. The married couple or any other person can get a certified copy of the same, on payment of 2s. 6d., and each copy of such original or duplicate register, certified by the Minister or Official, who celebrated the marriage, or his lawful successor, or by the State Secretary, shall have to be accepted in any Court of Justice, or wherever it may be required, as a full proof of the lawful contraction of such marriage, unless the contrary be proved.

15. Celebration of marriage at, district

FORM:

No.	When married.	Names and surnames in full of married couple.	Age.	Where born.	Civil condition.	With or without anti-nuptial contract.	Residence at time of marriage.	After banns or by license.	With whose consent.	Remarks.

This marriage has been contracted between us
and celebrated by me Landdrost or Minister
on the day of 18...

In the presence of the undersigned witnesses.

16. When a minor cannot obtain the consent of his parents or guardians to contract a marriage on account of unsurmountable difficulties, such as the prolonged absence of them out of the State or other unforeseen impediment, the Landdrost of the district in which the minor resides shall, after proper investigation of the aforesaid cases, be at liberty to grant or withhold consent.

17. No one shall be compelled to enter into a marriage by any judicial sentence or order for any reasons whatsoever, but the party wronged by a breach of promise of marriage, is at liberty to claim pecuniary damages and shall have the right to recover the same by the courts of law.

18. All marriages contracted out of this State by persons of whom one or both were not residents at the time of such marriage shall be acknowledged and considered as lawful in this State as in the country where such marriages shall have been contracted and when the lawfulness of such marriages shall be disputed by any heirs or other interested persons, it (the marriage) may be proved before any Court of Justice by the production of marriage registers or certificates, if it be customary to keep such registers in those countries or to grant certificates

thereof, or by duly certified copies thereof, or by witnesses, or by any other proofs acceptable in all other ordinary cases.

19. For the contraction of a marriage £2 shall be paid to the Landdrost, of which 3s. shall belong to the Landdrost, 3s. to the Landdrostelerk and 2s. 6d. to the Messenger. The balance must be accounted for to the State Treasury.

20. When a marriage shall have been contracted civilly before the Landdrost, it shall nevertheless be allowed to a minister aforesaid to celebrate such marriage (according to the rites of his church) without publication of banns and without the entry in a marriage register, or the transmission of a copy of it, as required in section 13 of this law, a certificate of the Landdrost that such marriage has been contracted before him being sufficient to that minister.

21. Nothing contained in this ordinance shall be construed or meant to prohibit any church or society in this State acknowledged by this State to introduce such regulations or laws with regard to the religious solemnization of marriages of members of such church or society acknowledged by the State, as shall be in accordance with the religious principles of such church or society acknowledged by the State, or to prevent them in applying the discipline of the church in any such case, or in the levying of any church fee for the celebration of any marriage, by such a church or society acknowledged by the State, on condition that such ecclesiastical power shall not infringe on the civil rights, privileges and duties of the subjects of the State.

22. Anyone being guilty of wilfully and maliciously destroying, damaging or making illegible any original or duplicate marriage register as before mentioned, or of falsifying it or any copy of it, shall be considered to have committed a crime; and after proper trial, be liable to imprisonment of not less than three or more than twelve months, with or without hard labour.

23. All marriages, contracted within or without the South African Republic before this law shall take effect, in a way for which no special provision shall have been made by law, shall, in case the legality of such marriages shall be contented or doubted before any competent court, be considered and declared legal, when it shall appear that such marriage was contracted in good faith and in a manner according to the usages of the place where they shall have been contracted.

24. In case of a contravention of this ordinance, for which no special provision has been made, the transgressor shall be liable to a penalty of not less than £5 or more than £15 sterling.

25. All the provisions contained in this ordinance have reference to white persons only, both as regards the persons who perform the marriage ceremony and those who contract the marriage, the marriages of coloured people to be regulated by a special ordinance.

26. All laws and provisions being in conflict with this ordinance are hereby repealed and annulled.

27. This ordinance shall take effect in accordance with Article 69 of the constitution.

D. J. ERASMUS, Acting State President.

By order,

N. J. R. SWART, State Secretary.

Government Office, Pretoria,
13 December, 1871.