

1931

Kenya

1

No. 17216

SUBJECT

C O 533/413

Native Christian Marriage and Divorce Ordinance, 1931

Previous

Order 9 of 1904.

Subsequent

18058/32.

Hand to
Library

1. Bar Agate 260 8 May 2
Enclosed copy of Native American Marriage and
Divorce Bill, 1931. comments on need for bill
and request section to publish and introduce
it into legislative council

I have no comment

Subject to legal committee
~~the~~ copies to the committee

V. B. Cole

J. B. Smith
20/6/31

I have no objection to this.

M. C. [unclear] [unclear]
seen

J. B. Smith
20. 6. 31

W. B. [unclear]
23/6/31

to legal committee

A. J. [unclear]

20. 6. 31

We shall be interfering with
native law & custom. It will
be a violation of the principles
of the constitution, although it may
be the desire of the
State to do so while
it deprives the brotherhood
of equal rights, it will
impose the duty of
suppressing the widow.
There is a duty to the

general agreement reached as to the rightness of the provisions now made in the Bill -
is based on proposals

Declaration
1901

Sir A Russell

G.P. 20-6-11

There are two features of this bill which I don't like

(1) The unequal standards for men and women for which we are being urged, we in England but which have not been in practice in Scotland

(2) The decree nisi method which again, is an English one, and in my view, is not nearly so suitable for Africa as the Scottish method, where the decree takes effect right off upon pronouncement

I think the six months wait tends to all kinds of difficulties and will hardly be understood by the Africans. It also increases the Court work and makes a double job.

I presume (1) is a concession to polygamy but does it not mean in fact, that the man can only have one legal wife but can have as many concubines as he likes without penalty? I would be glad of your views on these points. B.S. 8.7.31

In resolutions written in any state as a guide for divorce law in Africa

W. P. Pastoor
Secretary to the
Africa has been laid out
circulated in 1904
H.P.S.
216

Dr. Shields

11/3

Please see page 50 & 51 of V.11/26

Dr. Shields
28.7.11

Dr. Shields

You will see that when you were dealing with this before, you had the wrong Ordinance before you. After the trouble about the Indian divorces, we amended the Kenya Ordinance, and took the opportunity of placing men and women on an equal footing. That therefore disposes of your point No. 1.

As regards your second point, so long as English law requires proof of certain things before a divorce may be granted, and prohibits collusion, connivance, and so on, so long, I suppose, will it be necessary to have an interval between decree nisi and decree absolute for investigation. That, at any rate, is the general provision, and I think it would not be desirable to have a different system for Native Christians. Perhaps some day our Government will take in hand the Divorce Law and remedy some of its absurdities and anomalies.

I am not quite convinced about the second point but I agree some law for and more precise decision before we do the best system in an isolated case like this. But I would be quite prepared to introduce it into all our colonies as opportunity offered.
W.P. Pastoor
28.7.11

3 Editor East Africa 2/1/31
has heard that a bill for the
Amendment of the "National" Christian
Marriage Ordinance has been introduced
in the Kenya Legislative Council. He if he
can borrow a copy of the Order as
he is preparing a symposium on views
of Missionary Societies

He has the bill was
published on 15 Sept
Graham
9/11

(He means the Native Marriage
Bill (No. 9 of 1930))

4 Editor East Africa 3/1/31
DESTROYED UNDER STATUTE

5 R Hamilton has seen the
Bill in E.A. (17 Dec)
Regarding the Bill of the
much disturbed & clause to
by the absence of any
reference to native opinions
have been consulted especially
in view of para 80 of 80's
Report. It is erroneous
clear that the Bill will
have to be revised under
the R.I. after opening

6 To C. B. B. than drafts the
cc: Rd to the Gov

1931
22/1/31
stance

5 To Gov Tel No 376 - Cons - 20/1/31
Sent
1931

6 For Kenya - 1st Sept - 1931
Progressive native opinion particularly that
of prominent members of the Christian Church was
freely consulted on the Ordinance and is definitely
favourable to Section 10. Uninformed pagan opinion
was not consulted & such opinion would be valueless
on this issue. Persons married by native law and
custom remain unaffected by the Section. Ordinance
passed its third reading on the 3rd December and was
assented to by me on the 17th December.

A. I have been very busy in
regard to the maintenance of the
maintenance
B. The intention of clause that the
Bill is not affect marriages according
to native law & custom
But it can not reach the
Bill - & developments (7 Jan) have
been (so far as I am aware) from no
criticisms toward those in the article in
East Africa (2/3/31 issue of 17 Dec)

Mr. Donberg has
sent me a copy of
the Bill

1931
2/1/31

REPORT
OF

A SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT ON THE PROVI-
SIONS OF A BILL TO PROVIDE FOR THE MARRIAGE OF
NATIVE CHRISTIANS AND FOR THE DISSOLUTION OF
SUCH MARRIAGES.

14/11/31
✓
Your Excellency,

We, the Members of the Select Committee appointed to consider the provisions of the Native Christian Marriage and Divorce Bill, have the honour to report that on the 28th instant we met and considered the provisions of the Bill in detail.

2. We recommend that the Bill be amended in the following respects:

(a) That clause 5 be amended by adding at the end thereof the following:

"If any person whose consent is required refuses his consent, a Provincial Commissioner may, on application being made, consent to the marriage, and the consent of the Provincial Commissioner so given shall have the same effect as if it had been given by the person whose consent is so refused."

(b) That clause 10 be amended by inserting after the word "marriage" in the second line of sub-clause (2) the words "and shall, so long as she remains a Christian, continue to be the guardian of such children."

(c) That clause 11 be amended by deleting the words "and second" in the first line of the clause, and by inserting the words "or of the Native Christian Marriage Ordinance" after the word "Ordinance" in the third line of the clause.

We have the honour to be,
Your Excellency's most obedient servants,

A. D. A. MACGREGOR (Chairman),
A. DE V. WADE,
C. W. WAY HARVEY,
HARRY LEAKEY.

NAIROBI,

30th November, 1931.

DECO

68

RECEIVED
1 JAN 1932
COL OFFICE

TELEGRAM from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 20 December, 1931. Received 2.46 p.m. 31 December 1931.

1726/31

Yes

No. 394. Your telegram No. 378. Native Christian Marriages and Divorce Ordinance. Progressive native opinion particularly that of prominent members of the Christian Church was freely consulted on the Ordinance and is definitely favourable to Section 10. Uninformed pagan opinion was not consulted as such opinion would be valueless on this issue. Persons married by native law and custom remain unaffected by the Section. Ordinance passed its third reading on the 3rd December and was assented to by me on the 17th December.

A
B

22 DEC 1951

5/9

C. O.

X/17216/1931 Kenya.

*Coded & Sent
4 50 pm
22.12.51
C/O*

23 DEC 1951

Mr. *W. Hill 22/12*
Mr. *atance*
Mr.

No. 378

- Mr. Tomlinson.
- Sir O. Doolanley
- Sir J. Shuckburgh
- Sir G. Grindle
- Perms. U.S. of S.
- Party U.S. of S.
- Secretary of State.

(1) My despatch 12th August 51
 It is not clear from your despatch
 of 3th May 50 that native opinion
 has been consulted on Bill par-
 ticularly on clause 10 which
 definitely overrides native law and
 customs. Consider it important
 that there should be such consulta-
 tion especially in view of paragraph
 60 of Joint Committee's report.
 If native opinion has not yet been
 consulted it may be possible to
passing
 delay ~~progress~~ of Bill or to with-
 hold your assent until this has been
 done. Telegraph your views.

DRAFT Tel
Lammasate
Governor

Nairobi.

6
[Handwritten signature]

*Sy R. Hamilton to
see after despatch*

ack'd pc. 31/12/31
10 3

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5 DEC 1931
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91, GREAT TITCHFIELD STREET

2nd December, 1931.

LONDON, W. 1.

The Under Secretary of State for the Colonies,
Colonial Office,
S.W. 1.

News cables that I received in London state that a Bill
for the Amendment of the National Christian Marriage Ordinance
has been introduced in the Kenya Legislative Council,
but a far any text has not reached me.

May I inquire whether you have a spare copy of the
text in London which I might borrow for a few days. It happens
that I have just received a statement of the views of
various Missionary societies on this subject, and had intended
to publish a little symposium next week. If in the meantime
I could consult the text of the Ordinance, I should be very
glad.

Thanking you in anticipation for any assistance you can
give in this matter,

Yours obedient servant,

H. Jackson
Editor.

KENYA:

No. 260



GOVERNMENT HOUSE,
NAIROBI,
KENYA:

5th May, 1951.

RECEIVED
30 MAY 1951

My Lord,

I have the honour to forward three copies of "the Native Christian Marriage and Divorce Bill, 1951" and to ask for Your Lordship's sanction to the publication of this Bill, with a view to its introduction in Legislative Council in due course.

2. The purport of the Bill is sufficiently explained under the objects and reasons.

3. This Bill is the outcome of prolonged consideration and discussion and is very largely due to representations made by various missionary bodies.

4. In 1925 a Committee was appointed to enquire into and to take evidence concerning the working of the marriage and divorce laws of the Colony in their application to Africans. On this Committee were representatives of all the great Christian missions in Kenya, together with a Crown Counsel, an Administrative Officer and the Deputy Chief Native Commissioner. This Committee was unable to arrive at complete agreement, and the result was that a report and a minority report were submitted to Government. After - consideration -

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
LONDON, S.W. 1.

12 AUG 1951

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consideration of these reports the Governor, on the advice of Executive Council, decided that there was no pressing need to proceed with the contemplated legislation and in consequence the Committee for a time ceased to function. In 1927 the Committee was revived and was strengthened by the addition among others of the Bishop of Mombasa and Monsignor Brandsma. This re-constituted Committee submitted a unanimous report recommending certain reforms some of which could be effected by administrative action, while others necessitated legislation. This Bill has been drawn to deal with the legislative side of the problem and has, it is believed, the full support of all Christian missionary bodies. It certainly has the support of the Bishop of Mombasa, Monsignor Brandsma and Dr. Arthur.

5. The most important clauses in the Bill are 6 and 10.

6. Clause 6 should be instrumental in leading to natives, who have come to recognise that monogamy is a higher state than polygamy, due recognition of a monogamous marriage previously contracted and entered upon under Native law and custom. The desire of natives in these circumstances to have an honourable union honourably recognised is one with which I am in the fullest sympathy, and I am assured that the provision in the Bill will be not only effective in raising among the native population the general conception of marriage but will also be cordially welcomed by a large number of deserving individuals who are doing their best to escape from the polygamous usages of their tribal culture.

7. Clause 10 introduces a much needed reform designed to improve the status of native widows. As Your Lordship is aware, it is a general rule

-among-

among the native tribes of Kenya that a widow is inherited together with the rest of her late husband's property, by his next-of-kin, and by native law and custom she has little or no voice in the disposal of her person. This position is of course intolerable to a Christian widow inherited by a pagan brother-in-law. Naturally this Administration wherever possible has stepped in to prevent abuses consequent upon this native custom when attempts have been made to enforce it against the will of a Christian widow, but it is from every point of view desirable that such widows should be protected by law, and it is desired to give them the necessary protection by declaring that on widowhood they shall be deemed to have obtained majority.

8. By sub-section 2 of the same clause protection is afforded to children of a widowed mother by giving her the guardianship, which under native law and custom would have devolved upon her late husband's next-of-kin.

I have the honour to be,

My Lord,

Your Lordship's most obedient,
humble servant,

BRIGADIER-GENERAL

GOVERNOR

COLONY AND PROTECTORATE OF KENYA



A BILL TO PROVIDE FOR THE MARRIAGE
OF NATIVE CHRISTIANS AND FOR THE
DISSOLUTION OF SUCH MARRIAGES.

1164—50—A.C.—1343

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI.

A Bill to Provide for the Marriage of Native Christians and for the Dissolution of such Marriages.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:

- 1. This Ordinance may be cited as the Native and Christian Marriage and Divorce Ordinance, 1931.
- 2. This Ordinance shall apply only to the marriages of natives one or both of whom profess the Christian religion and to the dissolution of such marriages. Nothing herein contained shall prevent any native marrying under the provisions of the Marriage Ordinance, but if one of both parties to a marriage under that Ordinance are natives professing the Christian religion, the provisions of this Ordinance relating to dissolution of marriage shall apply to such marriage as if it were a marriage under this Ordinance.
- 3. Except as otherwise provided in this Ordinance the saving provisions of the Marriage Ordinance shall apply to all marriages celebrated under this Ordinance.
- 4. The formalities preliminary to marriage, established, usual, or customary for native Christians in the denomination to which one or both of the parties belong, shall apply to marriages under this Ordinance, and sections 7 to 18 inclusive of the Marriage Ordinance shall not apply, but no minister shall celebrate any marriage under this Ordinance unless he considers that adequate notice has been given of the intended marriage.
- 5. Where the consent of any person to the intended marriage is necessary, the minister to celebrate the intended marriage shall be deemed to be a registrar of marriages for the purpose of such consent; and if there be no parent or

Consent.

guardian in any particular case capable of consenting, then such minister upon being satisfied after due inquiry that the marriage is a proper one may consent in writing to such marriage.

Marriages may be contracted before registrars.

6. Whenever any persons already married or professing to be married to each other by native law and custom desire to convert that marriage into a marriage by which they are legally bound to each other as man and wife so long as both shall live they may, subject to the provisions of sections 4 and 5 of this Ordinance, contract a marriage before a registrar in the presence of two witnesses, in his office with open doors, between the hours of 10 o'clock in the forenoon and 6 o'clock in the afternoon and in the following manner:

The registrar shall either directly or through an interpreter address the parties thus:

"I do understand that you, A.B. and you, C.D. have been hitherto married to each other by native law and custom, and that you come here for the purpose of binding yourselves legally to each other as man and wife so long as both of you shall live."

If the parties answer on the affirmative, he shall proceed as follows:

"Whereas you, A.B. and you, C.D. profess that you have hitherto been married to each other by native law and custom and whereas that marriage does not bind you by law to each other as man and wife so long as both of you shall live and whereas you desire to bind yourselves legally to each other as man and wife so long as both of you shall live, know ye that by the public taking of each other as man and wife so long as both of you shall live in my presence and in the presence of the persons now here, and by the subsequent attestation thereof by signing your names to that effect, you become legally bound to each other as man and wife so long as both of you shall live although no other rite of a civil or religious nature shall now take place, and that hereafter your marriage cannot be dissolved during your lifetime, except by a valid judgment of divorce, and if either of you before the death of the other shall illegally contract another marriage while your marriage to each other remains undissolved, you will be thereby guilty of bigamy, and liable to punishment for that offence."

Each of the parties shall then say to the other:

"I call upon all persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wife (or husband) so long as both of us shall live."

7. The Governor may prescribe the forms of marriage certificates for marriages celebrated under this Ordinance.

8. For the purposes of this Ordinance the Governor shall appoint ministers to be registrars, and they shall be deemed to be registrars of marriages within the meaning of the Marriage Ordinance, except that it shall not be necessary for them to transmit to the Registrar-General a certified copy of the entries made by them in any marriage register book more than once in three months.

9. Notwithstanding anything contained in the Marriage Ordinance there shall be chargeable in respect of marriages under this Ordinance the fees set out in the Schedule hereto.

10. (1) Any native woman married in accordance with the provisions of this Ordinance or of the Marriage Ordinance or of the Native Christian Marriage Ordinance, whether before or after the commencement of this Ordinance, shall be deemed to have attained her majority on widowhood and shall not be bound to cohabit with the brother or any other relative of her deceased husband or any other person or to be at the disposal of such brother or other relative or other person, but she shall have the same right to support for herself and her children of such marriage from such brother or other relative as she would have had if she had not been married as aforesaid.

Status of native Christian widows. Cap. 107. Cap. 103.

(2) Any such woman shall upon the death of her husband become the guardian of any children of the marriage until such children, if males, attain the age of sixteen years, or, if females, attain the age of sixteen years or marry; and shall be competent to dispose of such children in marriage, but in such event the customary bride price shall on demand be paid to such person as is entitled thereto by native law and custom.

11. Subordinate courts of the first and second class shall have the same jurisdiction, in the case of marriages solemnized or contracted under the provisions of this Ordinance, as is vested in the Supreme Court by virtue of the Divorce Ordinance.

Jurisdiction of subordinate courts of first and second class. Cap. 170.