

*Marriage Customs*

THE LAW  
OF  
THE MARRIAGE CEREMONY  

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IN  
PENNSYLVANIA.

COMPILED BY  
REV. S. A. HEILNER, LL.B.  

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JAS. B. RODGERS PRINTING COMPANY,  
52 & 54 North Sixth Street.  
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MAUCH CHUNK, PA., December 15th, 1884.

DEAR BROTHER:

I present to you the accompanying compilation in the hope that it may be of service to you, and that it may lead to such action on the part of clergymen as shall secure the modification or repeal of a law manifestly not adapted to the present customs and habits of society.

Affectionately yours,

S. A. HEILNER.



# THE LAW

OF THE

## MARRIAGE CEREMONY IN PENNSYLVANIA.

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SEC. 1.—All marriages not forbidden by the law of God shall be encouraged; but the parents or guardians shall, if conveniently they can, be first consulted with, and the parties' clearness of all engagements signified by a certificate from some credible person where they have lived, or do live, produced to such religious society to which they relate, or to some justice of the peace of the county in which they live, and by their affixing their intentions of marriage on the court-house or meeting-house doors in each respective county where the parties do reside or dwell, one month before solemnization thereof; the which said publication, before it be so affixed as aforesaid, shall be brought before one or more justices of the peace, in the respective counties to which they respectively belong; which justice shall subscribe the said publication, witnessing the time of such declaration,

ACT OF  
1701.



ACT OF 1701. and date of the said publication, so to be affixed as aforesaid.

And all marriages shall be solemnized by taking each other for husband and wife, before twelve sufficient witnesses;<sup>a</sup> and the certificate of their marriage, under the hands of the parties and witnesses, at least twelve, and one of them a justice of the peace, shall be brought to the register of the county where they are married, and registered in his office. And if any servant<sup>b</sup> or servants shall procure themselves to be married, without consent of his or her master or mistress, such servant or servants shall, for such their offence, each of them serve their respective masters or mistresses one whole year, after their time of servitude by indenture or engagement is expired.

<sup>a</sup>The clauses which relate to the witnesses, the certificate, and the publication on the court-house or meeting-house doors, are merely directory. Their observance is not essential to the validity of a marriage. 2 W. 11. Marriage is a civil contract, and does not require any particular form of solemnization, but must be evidenced by words in the present tense, uttered to establish the relation of husband and wife. 3 P. F. S. 136.

<sup>b</sup>An apprentice is not such a servant. 3 R. 305. Servants were persons whose services had been sold for a stipulated period, to pay the expenses of their passage from Europe to America. They were a species of property, and could be sold from hand to hand. The laws for their correction were exceedingly severe. 2 Dall 197.

And if any person, being free, shall marry with a servant as aforesaid, he or she so marrying shall pay to the master or mistress of the servant, if a man, twelve pounds, and if a woman, six pounds, or one year's service; and the servant so being married, shall abide with his or her master or mistress, according to indenture or agreement, and one year after as aforesaid. And if any person shall presume to marry or be witness to any marriage, contrary to this act, such person, so married, shall forfeit twenty pounds to the proprietary and governor; and the witnesses being present at such marriage, shall forfeit and pay each of them five pounds, to the use of the proprietary and governor as aforesaid, and pay damages to the party grieved, to be recovered in any court of record within this government.

SEC. 2.—*Provided*, That this law shall not extend to any who shall marry or be married in the religious society to which they belong, so as notice shall be given by either of the parties, to the parents, masters, mistresses or guardians, one full month at least before any such marriage be solemnized.

SEC. 3.—No license or dispensation shall hinder or obstruct the force or operation of this act, in respect of notice to be given to parents, masters, mistresses or guardians, as aforesaid.

ACT OF 1701.



ACT OF  
1729-30.

SEC. 1.—No justice of the peace shall subscribe his name to the publication of any marriage within this province, intended to be had between any persons whatsoever, unless one of the persons, at least, live in the county where such justice dwells, and unless such justice shall likewise have first produced to him a certificate of the consent<sup>a</sup> of the parent or parents,<sup>b</sup> guardian or guardians, master or mistress of the persons, whose names or banns are to be so published, if either of the parties be under the age of twenty-one years,<sup>c</sup> or under the

<sup>a</sup>It is competent to prove that the parent had previously encouraged or assented to the marriage. But the defendant, whether a justice who has subscribed his name, or a clergyman who has solemnized marriage, without the certificate, need not show that such encouragement or assent was given directly to himself. Proof that it was given to the minor will defeat the action. 10 W. 82. 5 R. 209.

<sup>b</sup>The surviving mother is a parent within the meaning of the act. 1 Barr 431. The parent may sue, though the child be apprenticed to another. 3 R. 310. Rev. Joseph Pilmore was sued for marrying a minor, the apprentice to another person, and the verdict and judgment were rendered against him. A father who turns his daughter out of his house upon the world to shift for herself, deprives himself of the right of action. 7 W. & S. 362. But not the father who, by reason of moral degradation, is unfit to care for his minor child. 10 C. 324.

<sup>c</sup>The clergyman's misconception of the age of the person married is no defence. 5 R. 124.

ACT OF  
1729-30.

tuition of their parents, or be indented servants,<sup>a</sup> if such parent, guardian, master or mistress live within this province, or<sup>b</sup> can be consulted with; and also that no person or persons, of what character or degree soever he be, presume to publish the banns of matrimony or intentions of marriage, between any person or persons, in any church, chapel, or other place of worship, within this province, unless one of the parties at least live in the town, county or city where such publication shall be made, and unless the person or persons making or causing to be made such publication, shall have received such certificate of the consent of the parent, guardian, master or mistress, as is hereinbefore directed, if the parties who ought to grant such certificate live within this province.

SEC. 2.—And if any justice of the peace, clergyman, minister or other person, shall take upon him or them to join in marriage any person or persons, or if any justice of the peace shall be present at and subscribe his name as a witness to any marriage within this province, without such publication<sup>c</sup> being first made as aforesaid, such

<sup>a</sup> Apprentices are not included. 3 R. 305.

<sup>b</sup>The word "or" should be read "and." 2 J. 206.

<sup>c</sup>The penalty is imposed for joining in marriage without publication, and not for joining in marriage without a certificate of consent. A. 346. The burden of proving



ACT OF 1729-30. justice of the peace, clergyman, minister or other person, taking upon him to sign, make or cause to be made, any publication contrary to the directions of this act, or shall marry or join in marriage any person or persons not published, as in the aforesaid act of assembly, and by this act is directed, every justice of the peace, clergyman, minister or other person so offending, shall for every such offence forfeit the sum of fifty pounds,<sup>a</sup> to be recovered in any court of record within this province, by bill, plaint or information, by the person or persons grieved,<sup>b</sup> if they will sue for the same, wherein no essoin, protection or wages of law, nor any more than one imparlance shall be allowed.

SEC. 3.—*Provided*, That nothing herein contained shall be deemed to extend to any person

non-publication of banns rests upon the plaintiff; but want of publication may be shown by slight circumstances, as suddenness and privacy in the concoction of the marriage. 5 R. 212.

<sup>a</sup>The jury must give the exact penalty. A. 214. Only one penalty can be recovered. If the parent of one party has recovered it, no action can be maintained for it by the parent of the other party. 14 S. & R. 287.

<sup>b</sup>Actual damages need not be proved, as the law implies injury to the parent. 5 R. 209. The penalty is not recoverable by a citizen of another state, not resident within this commonwealth. 2 J. 205.

who shall be married in the religious society to which they belong, so as notice be given to the parent or parents, guardian or guardians, master or mistress of the person or persons so to be married, if such parent, guardian, master or mistress live within this province, at least twenty days before such marriage be solemnized; nor that this law shall extend to any person marrying by the authority of any lawful license, so as such consent or approbation in writing of the parent or parents, guardian or guardians, masters or mistresses, as by this act is directed, be first had and the same consent be certified in the body of the said license.

SEC. 1.—No justice of the peace, clergyman, minister or other person who shall take upon himself to perform the marriage ceremony, shall be liable for the penalty for joining in marriage persons under the age of twenty-one years, as provided in the second section of an act entitled, "An Act to prevent clandestine marriages," approved February 14th, Anno Domini 1729, unless such justice of the peace, clergyman, minister or other person performing the marriage ceremony, shall, at the time of joining them in marriage, knowingly or wilfully perform such marriage ceremony