



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. 19.

An Act to legalize the marriage of a Man with the Sister of his deceased Wife.

[Reserved, 27th January, 1858.]

WHEREAS doubts have arisen as to the validity in this Province of the marriage of a man with the sister of his deceased wife, and it is expedient to remove such doubts: Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province in this present Parliament assembled—

Preamble.

*not appointed to
by the Council -
Dec 19-1860
which was
disallowed -*

1. That all marriages which have been heretofore, or which shall be hereafter duly solemnized, within the said Province, between any person and his deceased wife's sister, shall be deemed, and are hereby declared valid, and of full force and effect, any law or custom to the contrary notwithstanding: Provided always that it shall not be compulsory for any officiating minister to celebrate such marriages.

Marriages with deceased wife's sister valid.

*Not any act of the Imperial Parliament to the contrary - !!
including those which have been solemnized
in past time -*

*See next page
The Governor's Dispatch transmitting the above
Bill to the Secretary of the Colonies & the
Reply of the latter -*

No. 211.

Government House, Adelaide, 28th January, 1858.

Sir—1. I herewith transmit an Act intituled "An Act to legalize the marriage of a man with the sister of his deceased wife," together with the opinion of the Attorney-General thereon.

2. I have reserved this Act for the signification of Her Majesty's pleasure, in accordance with an arrangement made between the opponents and advocates of that Act when it was before the Legislative Council, of which arrangement the enclosed Address from that body may be regarded as evidence.

3. In reference to the views of myself and my Executive Council on the subject, I enclose copy of the proceedings in Executive Council, on two occasions when I referred the Act for the consideration of my responsible advisers.

4. I cannot but feel that, in future, it will be desirable to avoid following, as a precedent, the course pursued in reference to this Bill. It appears to me that the functions of the Legislature should, as a general rule, terminate with the passing or rejection of every Bill; and that subsequent addresses on the mode in which the Queen's Representative should deal with a measure which has once passed the Legislature, may, if encouraged, cause much irregularity and inconvenience.

5. In reference to the policy of the measure, I think it my duty to state that the Act may be regarded as assimilating the law in South Australia to that which prevails in the neighboring Colonies; for as the Statute Law, by which marriages with the sister of a deceased wife are now prohibited in England, was not passed at the time when the Colonies of New South Wales and Port Phillip were founded, the original common law of England was in those Colonies practically the only law on the subject, for there existed then no means of annulling such marriages. In South Australia, however, the English Statute law prohibiting marriage with a deceased wife's sister is supposed to have attached at the moment of the proclamation of the Colony, 28th December, 1836.

6. Under these circumstances, and seeing that the enclosed Act only legalizes here that which is practically law in the neighboring Provinces, Her Majesty's Government may perhaps think it sound policy to confirm it, especially as the feeling of a numerically large majority of the community is in its favor.

I have, &c.,

RICHARD GRAVES MACDONNELL, Governor.

The Right Honorable H. Labouchere, M.P.,

Her Majesty's Principal Secretary of State.

Vide Minutes of Legislative Council, December 8, 1857.

4 & 5 Wm. IV.

Vide 6 & 7 Vict., No. 2.

Gov. in Despatch

What is to be done of confirming it? The answer is not to be done, if it is void by being repugnant to laws which it changes in the North's Case.

See also the opinion of the Public Examiner in the North's Case.

The Right Honorable Lord Stanley to Sir Richard Graves MacDonnell, C.B.

No. 17.

Downing-street, 15th May, 1858.

Sir—I have to acknowledge your Despatch, No. 211, of the 28th January last, transmitting an Act passed by the Legislature of South Australia "to legalize the marriage of a man with the sister of his deceased wife," which you have reserved for the signification of Her Majesty's pleasure thereon. You are probably aware that legal proceedings are now pending, in which the effect of such marriages (when solemnized out of the United Kingdom) is under consideration. As I have reason to believe that those proceedings will be carried into the House of Lords, and perhaps shortly decided there, Her Majesty's Government have delayed, for the present, their decision upon the Act before them, as they are of opinion that the judgment of the House of Lords in the question may have an important bearing on that decision.

I have the honor, &c.

STANLEY.

Governor Sir R. G. MacDonnell, C.B., &c., &c., &c., South Australia.

Reply

another act was passed similar to that above referred to by the colonial legislature No. 19 - 1850 - which was disallowed by the Queen the Queen's of the House of Lords having been given that the marriage of a man with his deceased wife's sister was illegal & void. See Judgment of House of Lords in 1850 at the end of Col. facts of 1850 -