

the file when added in red ink containing those slight
alterations and containing any other amendments which
you may consider desirable. ^{although essential}
I think that Mr. Barth's last list should be returned to the Post
for record there, as it will be sufficient if we keep
a typed copy of the list on file.

J. A. 1/5

Wm. May
at work

49 Sardus Rd 537
Kandworth (Ghana)
7.11.08

C. O.
12780
REC 11 APR 26

Dear Percy

Re an Edw. Leitch & wife
order for your revised heading for the
Prohibitory Restriction of Mohammedan
marriage & divorce

The question of such restriction was
raised in East Africa at the time when
certain objections were taken by the
Bishop of Uganda - some clauses of
the Edw. Marriage Ordinance of 1902
in December 1901 the leading British
Mohammedan authorities had consulted
& they strongly recommended the compulsory
restriction of marriage & divorce
provisions that nothing should affect the
validity of any marriage or divorce
under Mohammedan law

I drafted two short ordinances the first
dealing with the restriction of both
Christian & Mohammedan marriages & the
second with the restriction of Mohammedan
divorce.

The first ordinance was drafted
with the sanction of the provisions
relating to the restriction of both

Mohammedan

Mohammedan marriages in the U.S. states
 which they favoured the Indian system
 under which an attempt was made to
 provide by legislation that such kind
 marriages shall or shall not be
 solemnized. It may be said that at the
 at no time was any attempt made to
 interfere with the Mohammedan law of
 marriage or divorce. It was only proposed
 to make the legislative marriages &
 divorces in relation without interference
 in any way with the validity of
 Mohammedan marriages or divorces.
 But providing a sanction for the legislative
 the P.O. recommends the adaptation of the
 of the Statute Act, (No. 1, 1876), for the
 voluntary registration of Mohammedan
 marriages & divorces. It is under registration
 I think value 1 as of the opinion that it
 should be compulsory & this is borne out
 by the opinion of the leading learned
 Mohammedan scholars who are strongly in favour
 such registration. There is objection
 to the registration of a result of his report
 to the Council draft I have followed the
 Statute Act of 1876 making necessary
 in part only in sufficient & generally for
 effect of marriage & divorce (sect 9 & 10)
 I have left the form for registration in a separate
 form as given by rules under the Act
 for fees proposed. See P.O. for all

538
 marriage No 2 for - divorce
 P.O. is his, he gives for the registration of
 under Christian marriages
 which made the Act applicable to
 any one & to any sect or community
 in order that it might be applied
 generally to all Mohammedans, so that
 it may be subject of thought desirable
 to have Mohammedan
 Great benefit will be derived from
 the registration contemplated by the Act
 in checking the frauds of registration

J. S. P. S.
 Opp. S. P.

AN ORDINANCE.

ENACTED by His Majesty's Commissioner for the East Africa
Protectorate.

Mombasa.

H.M. Commissioner

The day of

1906.

NO. of 1906

REGISTRATION OF MOHAMEDAN MARRIAGES AND
DIVORCES.

It is hereby enacted as follows:

(1) This Ordinance may be cited as the
Mohamedan Marriage and Divorce Registration
Ordinance, 1906.

(2) In this Ordinance the following terms
shall have the meanings hereby assigned to
them that is to say "Registrar" shall mean a
Registrar of Mohamedan Marriages and Divorces
duly appointed under this Ordinance.

"Registrar General" shall mean the Registrar
General of Mohamedan Marriages and Divorces
duly appointed under this Ordinance.

"Purdah Nisheen" shall mean a woman who

according to the custom of the country might reasonably object to appear in a public office

(3) The Commissioner shall appoint suitable persons being Mohammedans to be Registrars of Mohammedan Marriages and Divorces and shall prescribe a District for each such Registrar within which he shall register Mohammedan Marriages and Divorces under this Ordinance. Provided that it shall be lawful for the Commissioner to appoint a Registrar for each sect or community in any District.

(4) The Commissioner shall appoint a Registrar General of Mohammedan Marriages and Divorces.

(5) The Registrar General and every Registrar shall use a seal bearing such inscription as the Commissioner may authorise.

(6) The Registrar General shall supply for the office of each Registrar the seal and books necessary for the purposes of this Ordinance

and

and the pages of such book shall be consecutively numbered in print and the number of pages in each book shall be certified on the title page thereof by the Registrar General.

(7) Every Registrar shall keep the following registers:-

(a) Register of Marriages in the form prescribed by Schedule I of this Ordinance.

(b) Register of divorces in the form prescribed by Schedule II of this Ordinance.

(8) All entries in each register prescribed by this Ordinance shall be numbered in a consecutive series which shall commence and terminate with each year, a fresh series being commenced at the beginning of each year.

(9) The parties to a Marriage or divorce recognised by Mohammedan law or if the man or the woman or both be minors their respective

lawful

lawful guardians shall register such marriage or divorce with a Registrar within seven days from the celebration of such marriage or the pronouncement of such divorce as the case may be.

(10) Every application for registration under this Ordinance shall be made to the Registrar orally as follows:-

(a) If the application be for the registration of a Marriage,

By the parties to the marriage jointly, provided that if the man or the woman or both be minors application shall be made on their behalf by their respective lawful guardians and provided further that if the woman be a *gurdah-nisheen* such application may be made on her behalf by her duly authorised *kafil*.

(b) If the application be for the registration of a Divorce,

By the parties to the Divorce jointly provided that if the woman be a *gurdah-nisheen* such

application may be made on her behalf by her duly authorised wakil.

(11) On application being made to a Registrar for registration under this Ordinance of a marriage or divorce the Registrar shall-

(a) Satisfy himself whether or not such marriage or divorce was effected by the person or persons by whom it is represented to have been effected

(b) Satisfy himself as to the identity of the persons appearing before him and alleging that the marriage or divorce has been effected;

(c) In the case of any person appearing as the representative of the man or woman (whether he appear as Guardian or Wakil) satisfy himself of the right of such person to appear.

If the Registrar be satisfied on the above points and not otherwise, he shall make an entry of the marriage or divorce in the proper register:

register;

Provided that no such entry shall be made otherwise than in the presence of every person who by Section 13 of this Ordinance is required to sign such entry.

(12) There shall be payable to the Registrar in respect of every registration of a marriage and in respect of every registration of a divorce such sum as the Commissioner by rules may prescribe.

(13) Every entry in a register kept under this Ordinance shall be signed as follows:-

(a) If the entry be of a marriage:-

(1) By the parties to the marriage or if either or both of them be minors by their lawful guardians respectively, provided that if the woman be a parda-wisheen the entry may be signed by her duly authorized wali.

(2) By two witnesses who were present at the marriage ceremony.

(3) In cases in which the woman is not

represented by a vakil by two witnesses to the fact of the vakil being duly authorised to represent her

(4) By the Registrar

(b) If the entry be a divorce

(1) By the parties to the divorce provided that if the woman be a purdah neeben the entry may be signed on her behalf by her duly authorised vakil

(2) By the person who identifies the man

(3) By the person who identifies the woman

(4) In cases where the woman is represented by a vakil by two witnesses to the fact of the vakil having been duly authorised to represent her

(5) By the Registrar

(14) On completion of the registration of any marriage or divorce the Registrar shall

deliver free of any charge to each of the

applicants

ies of entry to
given to parties.

applicants for registration an attested copy of the entry.

Index to be kept up.

(15) (1) Each Registrar shall prepare a current index of the contents of the Register of marriages and the register of divorces and every entry in such index shall be made, so far as practicable, immediately after the Registrar has made an entry in any such register.

Particulars in index.

(1) The Index shall contain the name, place of residence and father's name of each party to every marriage or divorce, and the date of registration. It shall also contain such other particulars and shall be prepared in such form as the Commissioner by rules may direct.

Copies of register and index to be sent to the Registrar General.

(16) Every Registrar shall at the expiration of every month send to the Registrar General certified copies of all entries made by him during the month in the Register of Marriages

and

and in the Register of Divorces and also of all entries made in the current index in accordance with the provisions of Section 15 of this Ordinance and the Registrar General shall on receiving such copies file them in his office and shall prepare alphabetical indexes of the marriages and divorces registered.

Custody of Registers.

(17) Every Registrar shall keep safely each register until the same shall be filled and shall then, or earlier if he ceases to act as Registrar in the District or for the Sect or Community prescribed by his appointment, make over the same to the Registrar General for safe custody.

Inspection of registers
indexes and copies
thereof. Provision for
copies of entries.

(18) (i) Any Register or index or the copy of any entries in a Register or index made and certified in accordance with the

provisions

provisions of section 16 of this Ordinance whether in the custody of a Registrar or the Registrar General shall on payment of the prescribed fee, be open to inspection by any person applying to inspect the same.

(II) A Registrar or the Registrar General as the case may be shall on payment of the prescribed fee furnish a copy of any entry made in any Register or Index in his custody or in any certified copy of the entries in any Register or Index made in accordance with the provisions of section 16 of this Ordinance and in his custody. Such copy shall be signed and sealed by the person making the same.

(III) (a) The fee payable for the inspection of any Register or Index or of the certified copy of the entries in any Register or Index shall be such sum as the Commissioner by rules may prescribe.

(b) The fee payable for a copy of any entry in a Register or Index other than the first copy referred to in section 14 of this Ordinance shall be such sum as the Commissioner by

rules may prescribe.

(19) The Registrar General shall exercise a general superintendence and control over all Registrars appointed under this Ordinance.

(20) Any Registrar refusing to register a marriage or divorce shall make an order of refusal and record his reasons for such order in a book to be kept for that purpose.

(21) An Appeal shall lie against the order of a Registrar refusing to register a marriage or divorce to the Registrar General if made within 21 days from the date of the order and the Registrar General may reverse or alter such order and the order passed by the Registrar General on appeal shall be final.

(22) (1) A Registrar or the Registrar General may correct any error in any register or index.

(2) Correction shall be made without erasing the original entry and shall be authenticated by the signature of the person making the same.

Commissioner may prescribe rules.

(23) The Commissioner may make rules with regard to the following matters and generally for carrying into effect the provisions of this Ordinance: -

- i. For regulating the attendance of Registrars at the celebration of marriages and their remuneration for such attendance.
- ii. For regulating the grant of copies by Registrars and the Registrar General.
- iii. Prescribing the amount of any fee, where a fee is authorized by this Ordinance.
- iv. For regulating the application of the fees levied under this Ordinance.

ing Clause.

(24) Nothing in this Ordinance contained shall be construed to -

- i. Render invalid, merely by reason of it not having been registered any Mahomedan marriage or divorce which would otherwise be valid.

ii. Render valid by reason of its having been registered any Mohammedan marriage or divorce which would otherwise be invalid.

iii. Authorise the attendance of any Registrar at the celebration of a marriage except at the request of all the parties concerned.

iv. Affect the religion or religious rites and usages of any person subject to this Ordinance.

v. Prevent any person who is unable to write from putting his mark instead of the signature required by this Ordinance.

enactment.

(25) Any person who being under an obligation to register a marriage or divorce under this Ordinance fails to do so within the prescribed period or refuses to state any of the prescribed particulars or wilfully gives any false information or particulars for the purpose of registration shall be guilty of an offence and shall

on conviction be liable to a fine not exceeding Rs. 1500 or to imprisonment of either kind not exceeding six months or to both.

Application and
commencement.

(26) The Commissioner may by Proclamation published in the Official Gazette apply this Ordinance to any area or to any tribe sect or community within any area and may by such Proclamation fix the day on which the Ordinance shall commence and take effect in such area or on such tribe sect or community.

Monoase

H. M. Commissioner

the day of 1906

SCHEDULE I

- (1) Consecutive No.
- (2) Names of the bridegroom and his father with their respective addresses.
- (3) Names of the bride and her father with their respective addresses.
- (4) Whether the bride is a spinster, widow or divorced from a former husband and whether she is adult or otherwise.
- (5) Name of the guardian of the bridegroom (if the bridegroom be a minor) and that of the guardian's father, the guardian's address and the relationship in which he stands to the bridegroom.
- (6) Name of the guardian of the bride (if she be a minor) and that of his father, the guardian's address and the relationship in which he stands to the bride.
- (7) Name of the vakil (if any) and of his father and their addresses and the relationship in which the vakil stands to the bride.
- (8) Names of the witnesses to the due authorisation of the bride's vakil (if any) with names of their fathers, their addresses and the relationship in which they stand to the bride.

- (9) Date on which the marriage was contracted
(English style and according to the
Mohammedan Calendar)
- (10) Amount of dower and method of payment.
- (11) Specification of property (if any) given in
lieu of dower.
- (12) Name of place and district where the marriage
took place.
- (13) Name of the person in whose house the marriage
ceremony took place and that of his
father.
- (14) Date of registration (English style)

SCHEDULE II.

Form of
 Register of Divorce (S.C. 7)

- (1) Consecutive No.
- (2) Names of the husband and of his father and their addresses.
- (3) Names of the wife and of her father and their addresses.
- (4) Date of divorce, (English style) according to the Mohammedan Calendar).
- (5) Description of divorce.
- (6) Manner in which divorce was effected.
- (7) Name of the place and district in which the divorce took place.
- (8) Name of the party in whose house the divorce took place and of his father.
- (9) Names of witnesses to the divorce, if any, the names of their fathers and their respective addresses.
- (10) Name of person identifying the husband before the Registrar and that of his father and their addresses.
- (11) Name of the person identifying the wife before the Registrar and that of his father and their addresses and the relationship, if any, of such person to the wife.
- (12) Date of registration (English style).

B
12780
E.A.P.

556

8 May 1866

DRAFT

Sir,

Ind.

at of Pub. Co. 238

I have the honour
to transmit to you

Col. Hoyer Saddle C.S.

the accompanying copy

MINUTE.

^{MS} draft of an

Mr. Norton 7/5

Ord^r to provide for

Mr. Read 8/5

the Registration of

Mr. Antrobus

Prohemedon Marriages

Mr. Cox

and Divorces in the

Mr. Lucas

E.A.P. which has been

Mr. Graham

prepared by W. J. W.

Sir H. Osmund

Barth during his

Mr. Churchill

leave of absence in

The Earl of Ely

the country.

at of Pub. Co. 238
(initials)
21/5

I suppose of the

draft of Ord^r
(initials)

content of the

Ord^r subject to the