NORTH CAROLINA MARRIAGE RECORDS AND LEGAL REQUIREMENTS
Summarized and adapted from
General Statutes of North Carolina
Chapter 51, "Marriage"
(Raleigh: State of North Carolina Department of Justice, 1984)
And
The North Carolinian
North Carolina Marriage Bonds: (December 1956)

NORTH AND SOUTH CAROLINA MARRIAGE RECORDS: From the Earliest Colonial Days to the Civil War, Compiled and Edited by William Montgomery Clemens, Editor of Genealogy Magazine, 1927.

Pg. ix – xi:
INTRODUCTION:
This collection of North Carolina marriages cover the period 1741 through 1800 and will be found most useful by genealogist and family historians. Unfortunately, no official North Carolina marriage records have been preserved for the earliest period of the state's history, 1663 to 1741. Marriage laws were in effect during that early period, but no legal requirements were in force for their filing or recording.

Other records of marriage for the earliest period of North Carolina history might be found in sources with the family and in the home, in old newspapers, or in church records, so you should also consult them for possible additional marriages.

Considering marriage records in general, a variety of documents might indicate that a particular marriage took place; including family and home sources, church sources, compiled secondary sources, or public and official sources. Those from the family might include Bibles, diaries, journals, letters and photographs, as well as other historical records compiled by family members. The local church or minister may also have recorded the marriage in the parish register, on a minister's list, as proclamations or banns, or in some other form. Marriage information might also be found in compiled secondary sources such as published and manuscript genealogies and family histories, biographical works, genealogical indexes and compendia, in periodical literature, or as a special marriage publication such as this work.

NORTH CAROLINA MARRIAGE RECORDS AND LEGAL REQUIREMENTS[1]
The first settlers in North Carolina were scattered along the Chowan River and Albemarle Sound, and as far as marriage was concerned, they were under the laws of Virginia, which required that all marriage rites be solemnized by a clergyman of the Church of England. There were apparently no clergymen in North Carolina at first, so the lawmakers of Albemarle soon enacted laws to authorize legal marriage.

The first law enacted was "an Act Concerning Marriages" in 1669, which was ratified by the Assembly of Albemarle and confirmed by the Proprietors on the 20th of January 1669/70. It authorized the Governor or one of the Council to perform marriage

ceremonies "…as if they (the parties) had been marryed by a minister according to the rites and Customs of England." The law specified that a certificated should be given and that it should be registered "…in the Secretary's Office or by the Register of the Precinct or in such other Office as shall hereafter for that use be provided…" Many marriages were undoubtedly performed under these circumstances, but if they were, in fact, recorded, none for this period have been preserved.

The Act of 1669/70 was the first of six marriage acts passed prior to 1715, and in that year they were confirmed anew and remained in force until 1741, when marriage bonds first came into existence. It is from the Act of 1741 that we find the first marriage bonds and marriage records preserved.

The Act of 1741 allowed people to be married by either license or banns (publication or announcement). The Clerk of the Court in the county where the bride-to-be resided was authorized to issue a marriage license to the groom-to-be and was also required to take a bond. The marriage bond was for the sum of "Fifty Pounds, Proclamation Money," (raised to "Five Hundred Pounds" under an Act of 1778) and was to guarantee that there was no lawful cause to obstruct the marriage. The groom and his bondsman, usually a close friend or relative, signed the bond, and it was witnessed by a relative or the clerk. The name of the bride was also recorded on the bond.

After the license was issued, it was presented to the clergyman or the civil official who could then perform the ceremony, but no provisions were made under the early laws for the return or filing of licenses issued. It was not until 1850 that ministers and magistrates were required to send marriage certificates to the Clerk of Court for recording. And in 1868, the Register of Deeds acquired the duty of keeping a register of marriages and of filing licenses. Since 1868, marriage records are fairly complete.

Persons under twenty-one were required to have consent of their parent or guardian, unless they had been previously married, but none of these documents of the early period of North Carolina history have been preserved. With respect to marriage and consanguinity, it was not until 1852 that marriages between nearer kin than first cousins were declared to be illegal.

The marriage bond was retained by the Clerk of Court, and those bonds that have been preserved constitute the only record of marriages performed until 1850, when marriage licenses were recorded on a state-wide basis. Even though the 1741 law directed the Clerk of Court to take a marriage bond, it did not specify that the bonds be either registered or filed by the Clerk, and likewise, the 1778 law failed to make provisions for the preservation of the marriage bonds. Some Clerks filed the bonds and kept them, but others evidently discarded them.

It is estimated that about two-thirds of North Carolina's early marriages were accomplished by banns rather than by license. Under marriage by banns, and announcement to marry was read before the congregation for three consecutive Sundays, and if no objections arose, a certificate was issued at the end of the three weeks

authorizing the minister or civil official to perform the ceremony. The fee for banns was only one shilling and six pence compared to twenty shillings paid to the Governor for each license and taking the bond. Also, if married by a minister, the fee by license was ten shillings but was only five shillings by banns. Further, marriage by banns eliminated the time and expense of journeying to the county seat to obtain a license and post bond.

Interestingly, in spite of the fact there was friction between the clergy of the Church of England and dissenters, the Quaker marriage ceremony was accepted, or at least tolerated, and thousands of Quaker marriages, dating form 1677, have been recorded in various Quaker Monthly Meetings in North Carolina. It was not until 1778 that Quaker marriages were legalized, however, and no Quaker marriages appear in published marriage bond digests.

The Presbyterian clergy also married numerous couples in North Carolina in the early period without either a marriage license of the publication of banns. It was not until 1766 that the General Assembly passed an Act requiring them to abide by the marriage laws of the State.

It is also interesting to not that the Marriage Acts of 1715 and 1741 concerned themselves with the intermarriage of whites and blacks. The law said "….Any white person who married an Indian, Negro, Mustee or Mulatto…or any Person of Mixed Blood to the Third Generation was subject to a fine…" as were the justices of the peace or ministers who performed the ceremonies.

Also, Chapter 51, Section 5 States;
Persons, both or one of whom were formerly slaves, who have complied with the provisions of section five, Chapter 40, of the acts of the General Assembly, ratified March 10, 1866, shall be deemed to have been lawfully married.

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