

PROCLAMATIONS.

PROCLAMATION.^{1, 2}

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 48, 1907.—DATED 21st DECEMBER, 1907.

Preamble.

WHEREAS it is expedient to provide for the establishment and proclamation of public roads and ways or roads of necessity in the Bechuanaland Protectorate for the closing and diversion thereof and for the fencing of lands through which such roads may pass, and to define the proper width of public roads;

Now, therefore, under and by virtue of the powers in me vested, I do hereby proclaim and make known as follows:—

Establishment of public roads.

1. It shall be lawful for the Resident Commissioner from time to time and at any time to establish and proclaim public roads on to or over any land situated within the Bechuanaland Protectorate by notice published in three successive issues of the *Gazette*. Such notice shall define the general course, situation and width of the road or roads included therein either by reference to an existing road or roads, or in the case of a new road by describing in general terms the course thereof. Any such notice may be from time to time revoked, altered or varied as the Resident Commissioner shall think fit.³

Compensation payable if improved land damaged.

2. If any road established and proclaimed by the Resident Commissioner under the provisions of this Proclamation shall pass over any land improved by cultivation, irrigation or otherwise and shall cause any actual damage thereto, compensation shall be payable to the person or persons suffering such damage, the amount thereof to be determined by the Resident Commissioner in his sole discretion.

Ways of necessity.

3. If at any time it shall be made to appear to the Resident Commissioner upon the petition of any adjacent or neighbouring owner or occupier, that such owner or occupier requires a way or road of necessity on to or over any land situated in the Bechuanaland Protectorate it shall be lawful for the said Resident Commissioner by notice to be published in the *Gazette* to grant such way or road of necessity, and to determine the direction and width thereof; provided that compensation for the right-of-way, and any damage done shall be paid by the person or persons for whose benefit, and upon whose application the said road is made, the amount thereof to be determined by the Resident Commissioner in his sole discretion.

Closing and diverting of public roads by Resident Commissioner.

4. It shall be lawful for the Resident Commissioner from time to time by notice to be published twice in the *Gazette*, to declare that any road or part of any road shall cease to be a public road, and such road or part of a road, as the case may be, shall thereupon cease to be such road accordingly; or to declare that any public road shall be diverted or closed at such time as shall be specified in that behalf in any such notice, and such road shall thereupon be so diverted or closed, as the case may be, accordingly;

¹The marginal notes (now paragraph headings) to this Proclamation were published as part of it.

²See Proclamation No. 50 of 1924.

³See Notice of the 28th January, 1929.

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provided that the right of the public to travel along any public road or part thereof which has ceased to be such road shall continue unless and until such road or part thereof shall have been diverted or closed.

Closing and diverting of public roads on application of owner affected.

5. The owner or owners of any land in the Bechuanaland Protectorate, or any person authorised thereto by any such owner or owners may make application to the Resident Commissioner, to declare that any public road which passes over the property of such owner or owners, shall be closed or diverted. Notice of the intention to apply for the closing or diverting of any public road shall be posted for general information at some conspicuous place outside the office of the Assistant Commissioner¹ of the District in which the property is situated, and published in the *Gazette* once in each month for a period of three months, and once a week during six weeks in some newspaper published within the district, or if there be none such, in some newspaper circulating within the district. Such notice shall in some part thereof clearly describe the road sought to be closed or diverted, and the situation thereof, and shall call upon any person objecting thereto to file his objection in writing at the office of the Resident Commissioner within one month after the date of latest publication of such notice in the *Gazette*. After the expiration of such period of one month the Resident Commissioner may close or divert such road in manner provided in the preceding section of this Proclamation with or without such modification or alterations as he may think fit or may refuse such application.

Fencing of public roads.

6. Whenever the owner or occupier of any land over which a public road shall pass, shall be desirous of fencing such land he shall be at liberty to do so if he provides a swing gate in such fencing so as to allow persons entitled to use such road free passage, and such gate shall at all times be kept in proper repair by the owner or occupier of such land; provided that any gate placed across any public road which is not a swing gate substantially constructed and properly hung shall be deemed to be unlawfully so placed, and the owner or occupier of the property whereon such gate is placed shall in every such case be liable to all such penalties and obligations as would be incurred by any person wilfully obstructing such public road as mentioned in section *eleven* hereof.

Penalties for unauthorised opening of gates and for damage done to same.

7. Any person not being such owner or occupier, or not being thereto duly authorised by such owner or occupier who shall open or unfasten any gate erected or provided in pursuance of the provisions of the last section except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, or who shall pass through any such gate, and shall fail or neglect forthwith after so passing through the same to close and fasten such gate, or cause it to be so closed and fastened shall upon conviction be liable to a penalty of not exceeding five pounds, or in default of payment thereof to imprisonment with or without hard labour for any term not exceeding thirty days unless such fine be sooner paid. And any person who shall damage or destroy such gate, whether in passing through or otherwise, shall forthwith make the same good, and in case of failure or neglect shall upon conviction be liable to a penalty of not exceeding ten pounds, or in default of payment thereof to imprisonment with or without hard labour for any term not exceeding two months unless such fine be sooner paid.

Width of public roads.

What shall be considered public roads.

8. It shall also be lawful for the Resident Commissioner to notify by notice in three successive issues of the *Gazette* what shall be the width of every public road within the said Protectorate for the use of wheeled

¹See Proclamation 31 of 1930.

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vehicles, and also the width to be allowed on each side of such roads for the purpose of removing stock in cases where such roads are not enclosed; and for the purpose of this Proclamation every road over which a right-of-way shall exist in favour of some person or persons other than the owner or occupier of the land on which such road is situate, shall be taken to be a public road.¹

Removal of encroachments on public roads.

9. Within a reasonable time after such notice shall have appeared in the *Gazette*, the Assistant Commissioner² of any district in the said Protectorate shall if necessary, remove or cause to be removed, all fences or obstructions which shall in any way encroach upon the roads of which the width has been defined as hereinbefore provided for.

Penalties for encroachment on public road.

10. Any person who shall erect any fence or raise any obstruction which shall encroach upon the width of any road as defined under the provisions of this Proclamation, shall be called upon immediately to remove the same, and in case of his neglect to do so such fence or other obstruction shall be removed by the Assistant Commissioner² or any person duly authorised by him at the expense of such person.

Penalty for damage to public roads.

11. If any person maliciously destroy or wilfully obstruct or in any way do damage to any public road he shall be liable upon conviction to a penalty not exceeding £3 or in default of payment thereof to imprisonment with or without hard labour for any term not exceeding thirty days for every such offence, and shall also make full satisfaction for the damage that may have been done thereby.³

Title and commencement of Proclamation.

12. This Proclamation may be cited for all purposes as the Public Roads Proclamation, 1907, and shall have force and effect from the date of its publication in the *Gazette*.
