

PROCLAMATIONS.

PROCLAMATION.

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 40, 1912.—DATED 12th SEPTEMBER, 1912.

Preamble.

WHEREAS it is expedient to establish a Special Court for the Bechuanaland Protectorate for the trial of such cases (civil and criminal) as are hereinafter mentioned and (save as is herein otherwise provided) to exclude such cases from the jurisdiction of the Courts of Resident Commissioner, Assistant Commissioner and Resident Magistrate.

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

**Special Court for the Protectorate established.
Constitution of.**

1. (1) There shall be and is hereby established for the Bechuanaland Protectorate a Court to be called "The Special Court of the Bechuanaland Protectorate," which shall be held at such time and at such place or places as the Resident Commissioner shall publicly notify, and shall consist of a Judge of the Supreme Court of South Africa or of the High Court of one of the South African Territories, or an Advocate duly admitted to practise in any such Court appointed by the High Commissioner, to be President of the Court, and any two Assistant Commissioners or Resident Magistrates, or Acting Resident Magistrates, nominated in writing by the Resident Commissioner.¹

Jurisdiction of.

(2) Such Court shall have jurisdiction in respect of the following cases:—

- (a) Civil actions in which either party is a European and in which the claim or value of any property in dispute exceeds one thousand pounds or in which the action is for the divorce of persons joined in matrimony or for a declaration of nullity of marriage;
- (b) Criminal cases in which the accused is charged on indictment with the offence of treason, and criminal cases in which the accused is a European and is charged on indictment with any of the following offences or with an attempt to commit any such offence: murder, culpable homicide, rape, perjury, arson, offences relating to the coinage or currency and any other offence with which such accused may be charged before a Court of Resident Magistrate which that Court may consider to be from its nature or magnitude subject to the jurisdiction or more proper for the cognisance of the Special Court.²
- (c) Any case at any time pending in the Court of Resident Commissioner on appeal or in the Court established under section four of Proclamation No. 2 of 1896 as amended by Proclamation No. 48 of 1920, which such Courts may on their own mere motion remove to the said Special Court.²
- (d) Such civil actions pending in any Court of Assistant Commissioner or Resident Magistrate in which either party is a European as such Court may either on application to it by either party to the action or on its own mere motion remove to the said Special Court.

¹Printed as amended by Proclamation No. 6 of 1929.

²Printed as amended by Proclamation No. 11 of 1928.

PROCLAMATIONS.

- (e) Any civil action in which natives only are concerned which may at any time be pending in any Court of Resident Magistrate under the provisions of section *eight* of the Proclamation of 10th June, 1891, which the Court may on its own mere motion remove to the said Special Court by reason either of the magnitude of the issues involved or of considerations affecting the peace and good government of the Protectorate.¹

Judgment of majority to prevail.

(3) Whenever the members of the said Special Court differ in judgment, the judgment of the majority shall be the judgment of the Court; provided that in every criminal case in which the majority find the accused guilty the member dissenting shall state his reasons in writing for the information of the High Commissioner.

Section 10 of Proclamation of 10th June, 1891, not to be affected.

(4) Nothing herein contained shall be taken to affect or interfere with the provisions of section *ten* of the Proclamation of 10th June, 1891, but the provisions of section *eleven* of the said Proclamation shall not apply to the said Special Court.

Right of appeal to Privy Council not interfered with.

(5) Nothing in this Proclamation contained shall be deemed to deprive any person of any right of appeal to His Majesty in his Privy Council against any final judgment, decree, sentence, or order of the said Special Court.

Existing Courts not to have jurisdiction in cases coming within jurisdiction of Special Court.

2. Notwithstanding anything contained in the Proclamation of 10th June, 1891, Proclamation No. 2 of 1896 or any Proclamation amending either of such Proclamations no Court of Resident Commissioner, Assistant Commissioner, or Resident Magistrate established in the Bechuanaland Protectorate and no Court established under section *four* of Proclamation No. 2 of 1896 shall have jurisdiction in any case mentioned in sub-section (2) (a) of section *one* of this Proclamation, or in any case mentioned in sub-section (2) (b) of the said section otherwise than for the purpose of conducting a preliminary examination unless both of the parties or the accused as the case may be shall apply to have such case tried before such Court and such Court shall grant such application provided that such Court shall not grant such application except in cases which but for the provisions of this Proclamation would have been within the jurisdiction of such Court.²

Such application shall in civil cases be made before the pleadings are closed and in criminal cases before the indictment is filed in the said Special Court. On the grant of such application all documents filed in the said Special Court in connection with any such case shall be removed to the Court to which such case has been transferred and the proceedings in respect thereof shall be deemed to be in such Court.

Existing Courts may when Special Court is not sitting hear and determine.

3. (1) Notwithstanding anything contained in the last preceding section it shall be lawful for any Court of Assistant Commissioner or Resident Magistrate at any time when the said Special Court is not sitting to hear and determine

¹This sub-section inserted by Proclamation No. 11 of 1928.

²For limitations of this power see Section 2 of Proclamation No. 11 of 1928.

PROCLAMATIONS.

Motions and applications.

- (a) all motions and applications (including applications for arrests and interdicts of persons and things) in respect of any claim debt or matter in dispute which is within the jurisdiction of the said Special Court whether an action in respect thereof is pending in the said Special Court or not;

Actions for provisional sentence.

- (b) all actions for provisional sentence which are within the jurisdiction of the said Special Court;

Cases commenced in Special Court where either party is in default.

- (c) all trial cases commenced in the said Special Court in which either the Plaintiff or the Defendant is in default or in which consent to judgment is filed by the Defendant; where such Court would but for the provisions of the last preceding section have had jurisdiction to hear and determine such case.

And existing Courts may take cognizance of documents filed in Special Court.

(2) For the purpose of exercising the jurisdiction referred to in this section a Court of Assistant Commissioner or Resident Magistrate may take cognizance of all documents filed in the said Special Court in respect of any such case as is herein mentioned in the same way as if such documents had been filed in such Court.

Appeal to Special Court.

(3) In all such cases as are mentioned in this section an appeal shall lie from the decision of a Court of Assistant Commissioner or Resident Magistrate to the said Special Court, and the provisions of section five of Proclamation No. 2 of 1896 shall apply to any such appeal.

High Commissioner may make rules of Court.

4. The High Commissioner may from time to time make alter and rescind rules respecting the manner and form of procedure, and the fees and charges to be taken by officers and practitioners in the said Special Court: Provided always that until such rules are made the rules of the Cape of Good Hope, Provincial Division of the Supreme Court of South Africa in force at the date of the taking effect of this Proclamation shall apply *mutatis mutandis* to such matters in the said Special Court.¹

Special Court to be a Court of the Protectorate for purposes of Proclamation No. 15 of 1904.

5. The said Special Court shall be deemed to be one of the Courts of the Protectorate referred to in the High Commissioner's Proclamation No. 15 of 1904 dated 25th of May, 1904, for all purposes of the said Proclamation and all advocates and attorneys entitled or admitted to practise as advocates and attorneys of the Courts of the Protectorate under the said Proclamation may practise as advocates and attorneys respectively of the said Special Court.²

Removal of proceedings pending in existing Courts to Special Court.

6. Any proceedings in any case, civil or criminal, pending in any Court lawfully established in the Bechuanaland Protectorate at the date of the taking effect of this Proclamation which is by the provisions of this Proclamation excluded from the jurisdiction of such Court shall except in the case of any preparatory examination in a criminal case be taken to be removed as from such date to the said Special Court and shall be dealt with and determined by the said Special Court; provided that in the taxation of bills of costs in any such proceedings the fees recoverable in respect of any matter

¹For Rules see H.C. Notice No. 127 of 1929.

²Printed as amended by Proclamation No. 23 of 1914.

PROCLAMATIONS.

or thing done prior to such date shall be in accordance with the tariff of fees prescribed for the Court in which such proceedings were pending.

Short title.

Commencement of Proclamation.

7. This Proclamation may be cited for all purposes as the Bechuanaland Protectorate Special Court Proclamation, 1912, and shall have force and effect from the first day of October, 1912.
