

BECHUANALAND PROTECTORATE.

No. 3 of 1922.

[Promulgated 27th January, 1922.]

PROCLAMATION

BY HIS ROYAL HIGHNESS THE HIGH COMMISSIONER

To facilitate the reciprocal enforcement of judgments and awards in the United Kingdom and the territory of the Bechuanaland Protectorate.

Whereas it is expedient to facilitate the reciprocal enforcement of judgments and awards in the United Kingdom and the Territory of the Bechuanaland Protectorate;

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

1. (1) Where a judgment has been obtained in the High Court in England or Ireland or in the Court of Session in Scotland the judgment creditor may apply to a Court of Assistant Commissioner or Magistrate, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in the Bechuanaland Protectorate, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section, if—

- (a) the original court acted without jurisdiction; or
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or
- (d) the judgment was obtained by fraud; or
- (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
- (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

(3) Where a judgment is registered under this section—

- (a) the judgment shall, as from the date of registration, be of the same force and effect and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;
- (b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;
- (c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(4) The High Commissioner shall by Rules of Court provide—

- (a) for service on the judgment debtor of notice of the registration of a judgment under this section; and
- (b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and
- (c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

(5) In any action brought in a Court of Assistant Commissioner or Magistrate on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused, or unless the court otherwise orders.

2. Where a judgment has been obtained in a Court of Assistant Commissioner or Magistrate against any person, the court shall, on an application made by the judgment creditor and on proof that the judgment debtor is resident in the United Kingdom issue to the judgment creditor a certified copy of the judgment.

3. Provision may be made by the High Commissioner by rules of court for regulating the practice and procedure (including scales of fees and evidence), in respect of proceedings of any kind under this Proclamation.

4. In this Proclamation, unless the context otherwise requires—
the expression "judgment" means any judgment or order given or made by a court in any civil proceedings, whether before or after the taking effect of this Proclamation, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

the expression "original court" in relation to any judgment means the court by which the judgment was given;

the expression "registering court" in relation to any judgment means the court by which the judgment was registered;

the expression "judgment creditor" means the person by whom the judgment was obtained, and includes the successors and assigns of that person;

the expression "judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given.

5. (1) Where the High Commissioner is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's Dominions outside the United Kingdom for the enforcement within that part of His Dominions of judgments obtained in a Court of Assistant Commissioner or Magistrate in the Bechuanaland Protectorate the High Commissioner may by notice in the *Gazette* declare that this Proclamation shall extend to judgments obtained in a superior court in that part of His Majesty's Dominions in the like manner as it extends to judgments obtained in a superior court in the United Kingdom, and on any such notice being published this Proclamation shall extend accordingly.

(2) For the purpose of this section the expression "part of His Majesty's Dominions outside the United Kingdom" shall be deemed to include any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

(3) A notice under this section may be varied or revoked by a subsequent notice.

6. This Proclamation shall have force and take effect on the date on which there shall be published in the *Gazette* an Order-in-Council by His Majesty declaring that Part II of the Administration of Justice Act of 1920 (of the United Kingdom) has been applied to the Bechuanaland Protectorate.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Seventeenth day of January One thousand Nine hundred and Twenty-two.

ARTHUR FREDERICK,
High Commissioner.

By Command of His Royal Highness
the High Commissioner.

H. J. STANLEY,
Imperial Secretary.