

BECHUANALAND PROTECTORATE.

No. 50 of 1938.

(Promulgated 9th December, 1938.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate High Court
Proclamation, 1938.

Whereas it is desirable to establish a High Court for the Bechuanaland Protectorate (hereinafter referred to as "the Territory"):

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

1. Proclamation No. 40 of 1912 as amended by Proclamations Nos. 23 of 1914, 11 of 1928, 6 of 1929, 7 of 1934, 22 of 1935, 12 of 1937 and 54 of 1937 is hereby repealed.

2. (1) There shall be and is hereby established a Court to be called the High Court of the Bechuanaland Protectorate.

(2) The High Court shall be a Superior Court of Record, and in addition to any other jurisdiction conferred by this or any other Proclamation shall, within the limits of and subject as in this or any other Proclamation mentioned, possess and exercise all the jurisdiction, power, and authorities vested in the Supreme Court of South Africa.

(3) The jurisdiction vested in the High Court shall be exercised (so far as regards procedure, practice, and evidence in criminal cases) in the manner provided by the Bechuanaland Protectorate Criminal Procedure and Evidence Proclamation, 1938, and any amendment thereof.

3. There shall be a Judge assigned to the High Court who shall be appointed by the High Commissioner:

Provided that no person shall be appointed to be a Judge of the High Court unless—

(a) he is qualified to practise as an advocate in a Court in England, Scotland Northern Ireland or some other part of His Majesty's dominions having unlimited jurisdiction either in civil or criminal matters, and

Establishment of High Court of the Bechuanaland Protectorate.

Appointment and qualifications of the Judge of the High Court.

(b) he has been qualified for not less than five years to practise as an advocate or solicitor in such a Court.

Jurisdiction of High Court.

4. The High Court shall have jurisdiction in all causes and proceedings whatsoever, both civil and criminal, arising or which have arisen in the Territory, including all causes and proceedings pending in the Court of the Resident Commissioner and in the Special Court of the Bechuanaland Protectorate:

Provided always that, except in regard to the matters specified in section *twenty-eight* of the Bechuanaland Protectorate Subordinate Courts Proclamation, 1938, no civil cause or action to which natives only are parties, and no civil cause or action to which either party is a European and in which the amount claimed or the value of the subject-matter in dispute does not exceed five hundred pounds, shall be instituted in or removed into the High Court save with the leave of the Judge upon application made to him in Chambers.

Powers of review.

5. The High Court shall have full power, jurisdiction and authority to review the proceedings of all subordinate courts of justice within the Territory, and if necessary to set aside or correct the same:

Provided that whenever the High Court shall not be in session, its powers to review the proceedings of subordinate courts shall be vested in the Judge.

Powers on appeal.

6. The High Court shall be a Court of Appeal from all subordinate courts in the Territory with full power—

- (a) to reverse and vary all judgments, decisions and orders, civil and criminal, of any of the said subordinate courts;
- (b) to order a new trial of any cause heard or decided in any of the subordinate courts and to direct, if necessary, that such new trial shall be in the High Court;
- (c) to send back any cause heard and decided in a subordinate court with such instructions as to any further proceedings as the High Court may deem necessary; and
- (d) to impose such punishment (whether more or less severe than or of a different nature from the punishment imposed by the court below) as in the opinion of the High Court ought to have been imposed at the trial:

Provided that notwithstanding that the High Court is of the opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to the High Court that a failure of justice has in fact resulted therefrom.

7. If the Judge shall so direct, any trial civil or criminal may be held and any appeal heard with the aid of not more than two Administrative Officers to be appointed for that purpose by the Resident Commissioner by Notice in the *Gazette* for such sittings of the Court as may be specified in that Notice. The opinion of each officer so associated with the Court shall be given and shall be considered by the Court, but the decision shall be vested exclusively in the Judge.

Court to have assistance of Administrative Officers.

8. The High Court may call to its assistance one or more Native Assessors who shall be chosen by the Resident Commissioner from Chiefs, Sub-Chiefs, Headmen or other natives suitably qualified to aid the Court. The Assessor or Assessors shall give his or their opinion and such opinion shall be considered by the Court, but the decision shall be vested exclusively in the Judge.

Assistance of Native Assessors.

9. The Resident Commissioner may from time to time by Notice in the *Gazette*, after consulting the Judge, appoint the times at which the High Court shall sit for the trial of criminal and civil cases and the disposal of all other legal business pending. At such sittings (which shall be called "Sessions" and of which there shall be at least two in any one year) all criminal business shall as far as practicable be tried and determined in priority to all other business.

Sessions of Court.

10. (1) The pleadings and proceedings of the High Court shall be carried on and the sentences, decrees, judgments and orders thereof pronounced and declared in open Court and not otherwise: Provided however that at any time during a trial the Judge may, if he thinks fit, order the Court to be cleared or that any person or class of persons shall leave the Court.

Proceedings to be in open Court and in English language.

(2) The pleadings and proceedings of the Court shall be in the English language.

Limited jurisdiction of Assistant Resident Commissioner.

11. At any time when the High Court shall not be in session the Assistant Resident Commissioner shall have power and authority to exercise the civil and criminal jurisdiction of the Court in all motions and applications (including applications for arrests and interdicts of persons and things), in all actions for provisional sentence, and in all other causes in which either the plaintiff or the defendant is in default or in which consent to judgment is filed by the defendant.

High Court substituted for Court of Resident Commissioner and Special Court.

12. Subject to the provisions of this Proclamation, whenever in any law in force in the Territory the Court of the Resident Commissioner or the Special Court of the Bechuanaland Protectorate is required or empowered to do any act, the High Court established by this Proclamation shall be required or empowered to do the like; and where under any law in force the term "Resident Commissioner's Court" or "the Special Court" is used the said term shall be deemed to mean the High Court.

General powers of Judge.

13. Whenever in any law or Rule of Court any officer of the Administration, or the Special Court, is empowered to do any judicial act the said act may be done by the Judge of the High Court.

Rules of Court.

14. (1) The High Court may at any time and from time to time make Rules of Court for regulating the proceedings of the Court, and, without derogating from the general powers hereby conferred, may in particular make Rules in regard to the following matters—

- (a) the pleading, practice and procedure of the Court, including all matters connected with the forms to be used and the fees to be payable, their amount and the method and time of payment of the same;
- (b) the expenses of parties and witnesses, their amount and the method and time of payment of the same;
- (c) the qualification, admission, enrolment and conduct of barristers, solicitors and notaries, their fees and costs and the amount, taxation and recovery of the same;
- (d) the duties and powers of the several officers of Court and of Commissioners of the same;

(2) Every Rule as aforesaid shall be submitted to the High Commissioner for his approval, and on being so approved shall be published in the *Gazette* and shall thereupon take effect and have the force of law.

(3) Pending the making of such Rules as aforesaid the Rules now in force in the Special Court shall be the Rules of the High Court.

15. This Proclamation may be cited as the Bechuanaland Protectorate High Court Proclamation, 1938, and shall have force and take effect as from the first day of January, 1939.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Third day of December One thousand Nine hundred and Thirty-eight.

W. H. CLARK,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.