

BECHUANALAND PROTECTORATE.

No. 76 of 1921.

[Promulgated 21st October, 1921.]

PROCLAMATION

By HIS ROYAL HIGHNESS THE HIGH COMMISSIONER
Entitled the Maintenance Orders (Facilities for Enforcement)
(Bechuanaland Protectorate) Proclamation, 1921.

Whereas it is expedient to facilitate the enforcement in the Bechuanaland Protectorate (herein after referred to as "the territory") of Maintenance Orders made in England and Ireland and vice versa;

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 maintenance order has, whether before or after the taking effect of this Proclamation, been made against any person by any court in England or Ireland, and a certified copy of the order has been transmitted by a Secretary of State to the High Commissioner, the High Commissioner shall send a copy of the order to the Resident Commissioner, who shall transmit such copy to the registrar or clerk of a court in the territory for registration; and on the receipt of the said order by the said registrar or clerk of court he shall register the same in the prescribed manner, and it shall from the date of such registration be of the same force and effect, and, subject to the provisions of this Proclamation, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have the power to enforce the order accordingly.

(2) The court in which an order is to be so registered as aforesaid shall be a court of assistant commissioner or magistrate.

2. Where a court in the territory has, whether before or after the taking effect of this Proclamation, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Ireland, the court shall send to the Resident Commissioner for transmission through the High Commissioner to a Secretary of State a certified copy of the order.

3. (1) Where an application is made to a court of assistant commissioner or magistrate in the territory for a maintenance order against any person, and it is proved that that person is resident in England or Ireland, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in England or Ireland.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made the court shall send to the Resident Commissioner for transmission through the High Commissioner to a Secretary of State the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in England or Ireland for confirmation and the order has by that court been remitted to the court of assistant commissioner or magistrate which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Resident Commissioner and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a court of assistant commissioner or magistrate to vary or rescind that order; provided that on the making of a varying or rescinding order the court shall send a certified copy thereof to the Resident Commissioner for transmission through the High Commissioner to a Secretary of State and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal if any against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

4. (1) Where a maintenance order has been made by a court in England or Ireland, and the order is provisional only and has no effect unless and until confirmed by a court in the territory, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted through a Secretary of State and the High Commissioner to the Resident Commissioner, and it appears to the Resident Commissioner that the person against whom the order was made is resident in the territory, the Resident Commissioner may send the said documents to the clerk of a court of assistant commissioner or magistrate with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

(2) A summons so issued may be served in the territory in the same manner as if it had been originally issued or subsequently endorsed by the court of assistant commissioner or magistrate having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with a summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as to the court after hearing the evidence may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

5. (1) A court of assistant commissioner or magistrate in which an order has been registered under this Proclamation or by which an order has been confirmed under this Proclamation and the officers of such court, shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily.

(3) A writ of execution or a decree of civil imprisonment issued by a court of assistant commissioner or magistrate for the purpose of enforcing any order so registered or confirmed may be executed in any part of the territory in the same manner as if the writ or decree had been originally issued or subsequently endorsed by a court of assistant commissioner or magistrate having jurisdiction in the district where the writ or decree is executed.

6. The Resident Commissioner with the approval of the High Commissioner may make rules regulating the procedure of courts under this Proclamation, the manner in which cases may be remitted by a court authorized to confirm a provisional order to the court which made the provisional order and generally for facilitating communications between such courts. Save in so far as other provision is made by such rules or by this Proclamation proceedings under this Proclamation shall be subject to the same rules *mutatis mutandis* as apply to other proceedings before courts of assistant commissioner or magistrate.

7. Any document purporting to be signed by a judge or officer of a court in England or Ireland shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

8. Depositions taken in a court in England or Ireland may be received in evidence in proceedings before courts of assistant commissioner or magistrate under this Proclamation.

9. For the purposes of this Proclamation—
the expression

“British Possession” shall be deemed to include any Dominion, and any territory under His Majesty’s protection and any territory whereof His Majesty holds the mandate;

the expression

“Secretary of State” means one of His Majesty’s Principal Secretaries of State;

the expression

“maintenance order” means an order other than an order made against a father for the maintenance of an illegitimate child, for the periodical payment of sums of money towards the maintenance of the wife or other dependents of the person against whom the order is made, and in the case of orders made in Ireland shall include any order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Acts 1839 to 1914;

and the expression

“dependents” means such persons as that person is, according to the law in force in the part of His Majesty’s Dominions in which the maintenance order was made, liable to maintain;

the expression

“certified copy” in relation to an order of a court means a copy of the order certified by a proper officer of the court to be a true copy;

and the expression

“prescribed” means prescribed by rules of court.

10. Such provisions of the Roman-Dutch law in force in the territory as relate to maintenance orders and the provisions of the Deserted Wives and Children Protection Act 1895 (No. 7 of 1895)

of the Cape of Good Hope which is in force in the territory by virtue of Proclamation No. 5 of 1902 shall be and are hereby extended and modified so as to be consistent with the provisions of this Proclamation.

11. When the High Commissioner is satisfied that reciprocal provisions have been made by the legislative authority of any British Possession for the enforcement within such possession of maintenance orders made by courts in the territory, the High Commissioner may, by notice in the *Gazette*, extend this Proclamation to maintenance orders made by courts within such possession, and thereupon this Proclamation shall apply to such maintenance orders as if they had been made in England or Ireland.

12. This Proclamation may be cited as the Maintenance Orders (Facilities for Enforcement) (Bechuanaland Protectorate) Proclamation 1921 and shall come into force and have effect upon the publication in the *Gazette* of an Order-in-Council by His Majesty extending to the Bechuanaland Protectorate the Maintenance Orders (Facilities for Enforcement) Act 1920.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Ninth day of October One thousand Nine hundred and Twenty-one.

ARTHUR FREDERICK,
High Commissioner.

By Command of His Royal Highness
the High Commissioner.

C. L. O'B. DUTTON,
Acting Imperial Secretary.