

PROCLAMATION.

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 11, 1906.—DATED 20th JUNE, 1906.

Preamble.

WHEREAS the testimony of persons residing within the Bechuanaland Protectorate (hereinafter called the Protectorate) is frequently required in the Courts of Law of neighbouring Colonies and Territories, and it is necessary lest the ends of justice be defeated that provision should be made for compelling the attendance of such persons before the said Courts and for their examination in the Protectorate by means of interrogatories;

And whereas by virtue of Proclamation No. 13 of 1898 provision has been made for compelling the attendance of such persons before the Courts of the Colony of the Cape of Good Hope and of the Territory of Rhodesia:

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

PART I.

Subpoenas issued by officer of competent Court in any Colony to which this Proclamation has been applied shall be served in the Protectorate on witnesses required by such Court.

1. Whenever a subpoena purporting to be issued by the proper officer of a competent Court in any Colony or Territory in South Africa to which this part of this Proclamation applies has been transmitted by such officer to the Resident Commissioner of the Protectorate or to an Assistant Commissioner or Resident Magistrate or Assistant Resident Magistrate of any district in which there resides or is a person whose attendance is required as a witness in such Court aforesaid, it shall be the duty of any such official to whom the said subpoena has been transmitted as aforesaid to endorse thereon his order that the same be served on the person named therein, and the subpoena so endorsed shall thereupon be delivered to the officer proper for the service of the process of the Court of the said Resident Commissioner, Assistant Commissioner, Resident Magistrate, or Assistant Resident Magistrate, as the case may be, or to such other person as the official endorsing shall specially appoint for the purpose, and it shall be the duty of such officer or other person to serve such subpoena as soon as practicable on the person named therein; provided always that the necessary expenses of such service and the necessary expenses to be incurred by the person subpoenaed in going to and returning from the Court named in such subpoena, and to be incurred during his detention at the place where his evidence is given, shall have been transmitted to the official to whom the subpoena shall have been transmitted together with the said subpoena; and provided further that the portion of the expenses aforesaid assigned to the person named in the said subpoena shall have been paid to him by the officer or other person serving the same.¹

Tariff of witness expenses to be framed by the High Commissioner.

2. The High Commissioner may from time to time make alter or rescind a tariff of such expenses as are mentioned in the last preceding section in respect of any Colony or Territory to which this part of this Proclamation applies.²

¹ Declared to be of effect so far as the Transvaal and Basutoland are concerned by High Commissioner's Notices Nos. 75 and 107 of 1906.

² See High Commissioner's Notice No. 34 of 1906.

Penalty for neglecting to attend when subpoenaed.

3. Any person who shall have been served with such subpoena as in section *one* is provided and shall not have attended at the time and place mentioned therein shall be liable to a penalty not exceeding one hundred pounds unless he shall offer a valid and lawful excuse for such non-attendance; and every such penalty shall be recoverable in the Court of the Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate in which he shall be residing at the instance of the Government of the Protectorate.

Proof of non-attendance.

4. The return of the person who under section *one* of this Proclamation is authorised to serve a subpoena showing that service has been duly made together with a certificate under the hand and seal of the presiding Judge or Magistrate or other judicial officer of the Court from which the said subpoena was issued showing that the person so served did not attend when called upon and did not establish any valid and lawful excuse for his default shall be deemed sufficient proof of such person's non-attendance for the purpose of enforcing the penalty in the last preceding section mentioned.

No witness while attending Protectorate Courts may be arrested for any debt due or offence formerly committed.

5. No person resident in any Colony or Territory to which this part of this Proclamation applies who may be summoned as a witness before any Court of the Protectorate and whose attendance before such Court shall be enforced by any law of such Colony or Territory shall be liable while so attending to be arrested upon any civil or criminal process for any debt formerly due or for any offence formerly committed by him in the Protectorate.

PART II.

On receipt of interrogatories from Magistrate in Colonies to which this Proclamation has been applied, Magistrate in Protectorate shall summons witness before him and take his evidence.

6. If any civil cause or matter be pending in a Court of Resident Magistrate of any Colony or Territory in South Africa to which this part of this Proclamation applies and the Resident Magistrate of such Court shall certify that the evidence of a person resident or being in the Protectorate is required in such cause or matter and shall transmit such certificate to the Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate of the district in which such person resides or is together with any interrogatories duly and lawfully framed which it is desired to put such person, it shall be the duty of such Assistant Commissioner or Magistrate as the case may be upon receipt:¹

- (1) of such certificate and interrogatories;
- (2) of the expenses payable to such person for his appearance as herein provided;
- (3) of the amount payable in fees or stamps for the issue and service of the summons herein mentioned to summon such person to appear before him and upon such appearance to take the evidence of such person as if he were a witness in a civil case in the Court of such Assistant Commissioner or Magistrate and to put to such person the interrogatories aforesaid together with any other questions calculated to obtain full and true answers to such interrogatories and to take down or cause to be taken down the evidence so obtained and to transmit the same certified as correct to the Resident Magistrate in whose Court such civil cause or matter is pending.

¹ Rendered operative as far as the Cape Colony and Southern Rhodesia are concerned by High Commissioner's Notice No. 67 of 1906; and as far as the Transvaal is concerned by High Commissioner's Notice No. 97 of 1906.

Such evidence and certificate of costs shall be transmitted to Magistrate from whom interrogatories received.

It shall further be the duty of the Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate who has obtained such evidence to transmit to the Resident Magistrate in whose Court the said cause or matter is pending a certificate showing the amount paid to the person aforesaid in respect of the expenses of appearance and the cost of the issue and service of any summons aforesaid.

Definition of term "Resident Magistrate."

The term "Resident Magistrate" in this section when used in reference to a Court of a Colony or Territory in South Africa to which this part of the Proclamation applies shall include an Assistant Resident Magistrate, Resident Commissioner and Assistant Commissioner or other judicial officer of such Colony or Territory having like jurisdiction.

Tariff of expenses payable under section 6 to be framed by the High Commissioner.

7. The High Commissioner may from time to time make, alter and rescind a tariff of expenses payable to persons summoned before an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate under the provisions of the last preceding section and of the fees and stamps payable in respect of the issue of service of any such summons.

Penalty for failure to attend when summoned under the provisions of section 6.

8. Any person required to appear before an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate under the provisions of section six shall be summoned in like manner and be liable to like penalties in the event of his non-attendance as if he had been summoned to give evidence before the Court of an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate in the Protectorate.

Evidence taken by means of interrogatories to be accepted in civil cases.

9. Whenever under any law in force in any Colony or Territory of South Africa to which this part of this Proclamation applies the evidence of persons who reside or may be in such Colony or Territory has been taken by means of interrogatories for the purpose of using the same in any civil cause of matter pending in a Court of an Assistant Commissioner, Resident Magistrate or Assistant Resident Magistrate in the Protectorate such evidence if certified by the proper officer as having been taken in accordance with the law of such Colony or Territory shall (subject to all lawful objections) be received as evidence in such civil cause or matter.

GENERAL.

When Part I. shall take effect so far as any Colony or Territory is concerned.

10. (1) Part I of this Proclamation shall take effect so far as concerns any Colony or Territory in South Africa as soon as the High Commissioner shall by notice in the *Gazette* declare that such Colony or Territory has made due provision to compel the attendance of persons resident in such Colony or Territory as witnesses before the Courts of the Protectorate.¹

When Part II. shall take similar effect.

(2) Part II of this Proclamation shall take effect so far as concerns any Colony or Territory in South Africa as soon as the High Commissioner shall by notice in the *Gazette* declare that such Colony or Territory has made due provision for taking by interrogatories the evidence of persons resident in such Colony or Territory when such evidence is required in civil cases in Courts of the Protectorate.²

¹ Applied to Transvaal by H.C. Notice No. 75 of 1906. To Basutoland by H.C. Notice No. 107 of 1906.

² Applied to Cape of Good Hope and Southern Rhodesia by H.C. Notice No. 67 of 1906. To the Transvaal by H.C. Notice No. 97 of 1906.