

PROCLAMATION.^{1, 2}

BY

HIS EXCELLENCY SIR ALFRED MILNER, &c., &c.

No. 13, 1898.—DATED 1st JULY, 1898.

Preamble.

WHEREAS the testimony of persons residing within the limits of Her Majesty's Order in Council of May 9th, 1891, being the territories known as the Bechuanaland Protectorate and Rhodesia, is from time to time required in the Courts of the Colony of the Cape of Good Hope:

And whereas there exists no power by law to compel the attendance of such persons before such courts, and in consequence the ends of justice are rendered liable to defeat:

And whereas it is desirable to make legal provision for compelling the attendance of such persons before such Courts:

And whereas for reasons similar to the above it is desirable to make the attendance of witnesses resident in the Bechuanaland Protectorate compulsory before the Courts of Rhodesia and *vice versa*:

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

¹ See Proclamation No. 11 of 1906.

² Amended by Proclamation No. 23 of 1914.

Compelling attendance of persons living in the Protectorate before the Courts of the Cape Colony when properly subpoenaed.

1. Whenever a subpoena purporting to be issued by the proper officer of any competent Court in the Colony of the Cape of Good Hope, and to require the attendance of any person resident within the limits of Her Majesty's Order in Council of May 9th, 1891, as a witness before such Court, shall be transmitted by such officer in the case of a person residing within the Bechuanaland Protectorate, to the Resident Commissioner of the Bechuanaland Protectorate, or to any Assistant Commissioner or Resident Magistrate thereof having jurisdiction over the locality or district in which such person resides, or in the case of a person resident within Rhodesia to any resident Magistrate or Assistant Resident Magistrate therein having the like jurisdiction, it shall be the duty of the said official to whom such subpoena shall be transmitted as aforesaid to endorse thereon his order that the same shall be served upon the person therein named: and the subpoena so endorsed shall thereupon be handed to the officer proper for the service of the process of the Court of the aforesaid 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 appoint for the purpose by further endorsement on the subpoena: and it shall be the duty of such officer or other person so soon as may be after receiving the said subpoena so endorsed as aforesaid to serve the same upon the person therein named: 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 or to be incurred during his detention at the place where evidence is required to be given by him, according to such tariff or tariffs¹ referring to the aforesaid territories or portions thereof as may from time to time be framed and notified by the High Commissioner, shall be transmitted to the official to whom the said subpoena shall be transmitted, together with the said subpoena, and the portion of such expenses assigned to the person named in such subpoena shall be paid to him by the officer or other person serving the same.

Compelling persons resident in Rhodesia to attend as witnesses before Protectorate Courts and vice versa.

2. The provisions of the foregoing section shall apply, *mutatis mutandis*, whenever a subpoena purporting to be issued by the proper officer of any competent Court in the Bechuanaland Protectorate, and purporting to require the attendance of any person resident in Rhodesia as a witness before such Court, shall be transmitted by such officer to any Resident Magistrate or Assistant Resident Magistrate in Rhodesia having jurisdiction over the locality or district within which such person resides; and shall also apply, *mutatis mutandis*, whenever a subpoena purporting to be issued by the proper officer of any competent Court in Rhodesia, and purporting to require the attendance of any person resident in the Bechuanaland Protectorate, as a witness before such Court, shall be transmitted by such officer to the Resident Commissioner of the Bechuanaland Protectorate or any Assistant Commissioner or Resident Magistrate therein having jurisdiction over the locality or district within which such person resides: Provided that the High Commissioner may from time to time frame such tariffs, applicable to such territories or portions thereof, with regard to the expenses of the witnesses in this section referred to as he may deem expedient.

Penalty for persons neglecting to attend.

3. Every person who shall have been served with a subpoena as in either of the previous sections mentioned, shall be bound to attend on the day and at the place therein named, and in case he shall fail to do so and shall also fail to prove any lawful and valid excuse for such non-attendance,

¹ See H.C. Notice No. 34 of 1906.

he shall be liable to a penalty not exceeding one hundred pounds sterling, which shall be recoverable at suit of the Government in the Court of Assistant Commissioner, Resident Magistrate, or Assistant Resident Magistrate having jurisdiction over the locality or district within which such person resides.

Proof of persons' failure to attend.

4. The return of the officer or other person authorised to serve such subpoena, in manner provided in the first section of this Proclamation, showing that such service has been duly made, and a certificate under the hand and seal of the presiding Judge, Magistrate, or other judicial officer of the Court from which the said subpoena was issued, that the person served did not attend and give evidence when called upon at the time and place specified in such subpoena, and did not establish any valid or legal excuse for his default, shall be deemed to be sufficient proof of such person's non-attendance, for the purpose of enforcing the penalty provided in the last preceding section.

Persons attending as witnesses not liable to be arrested upon any prior civil or criminal process.

5. No person residing in the Colony of the Cape of Good Hope, who may be summoned as a witness before any Court within the limits of Her Majesty's Order in Council of May 9th, 1891, and whose attendance before such Court shall be enforced by any law of the said Colony, and no person resident within the Bechuanaland Protectorate, attending a Court within Rhodesia as a witness in obedience to a subpoena issued under the provisions of this Proclamation, and no person resident within Rhodesia attending a Court within the Bechuanaland Protectorate as a witness in obedience to a subpoena issued under the said provisions, shall be liable while so attending to be arrested upon any civil or criminal process for any debt due or offence committed by him within the limits of Her Majesty's Order in Council of May 9th, 1891, before the service upon him of the subpoena or summons under which he attends such Court.

Commencement of Proclamation.

6. This Proclamation shall take effect from date of its publication in the *Gazette*.
