

PROCLAMATION.²

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 14, 1908.—DATED 3rd MARCH, 1908.

Preamble.

WHEREAS it is expedient to make provision for the surrender of fugitive criminals in the Bechuanaland Protectorate (hereinafter referred to as "the Protectorate");

¹See Proclamation No. 45 of 1915.

²The marginal notes (now paragraph headings) to this Proclamation were printed as part of it.

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

Short title and date of taking effect.

1. This Proclamation may be cited as "The Fugitive Criminals Surrender Proclamation, 1908," and shall have force and take effect from the date of its publication in the *Gazette*.

Where an arrangement for surrender of criminals made Proclamation to apply.

2. Where an arrangement has been made between His Majesty the King and the ruler of a foreign State under which the Protectorate is to surrender to that State or to its Protectorate any fugitive criminals, the High Commissioner may, by notice in the *Gazette*, direct that this Proclamation shall apply in the case of that State during the continuance of the arrangement, and after such notice has been published in the *Gazette* this Proclamation shall, subject to the terms of the arrangement, apply accordingly. No such notice shall remain in force for any longer period than the arrangement, and the High Commissioner may, by the same or any subsequent notice, limit the application of this Proclamation or render the operation thereof subject to such conditions, exceptions and qualifications as may be deemed expedient.¹

Restrictions on surrender of criminals.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals²:—

- (1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the Court of Assistant Commissioner, or of the Court of the Resident Commissioner before which he is brought upon an application for release, or to the High Commissioner that the requisition for his surrender has in fact been made with a view to try, or punish him for an offence of a political character.
- (2) A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored, or had an opportunity of returning to the Protectorate, be detained or tried in that foreign State for any offence committed prior to his surrender other than the crime proved by the facts on which the surrender is grounded.
- (3) A fugitive criminal who has been accused of some offence within His Majesty's jurisdiction not being the offence for which the surrender is asked, or is undergoing sentence under any conviction in the Protectorate, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise.
- (4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

¹See High Commissioner's Notices Nos. 83 of 1908; 78 of 1909; 37 of 1911; 40 of 1911; 13 of 1912; 36 of 1912; 42 of 1912; 22 of 1915; 88 of 1915; 102 of 1916; 77 of 1921; 9 of 1924; 142 of 1925; 3 of 1926; 129 of 1926; 17 of 1927; 101 of 1927; 105 of 1927; 144 of 1928. See also Orders in Council, dated 2nd May, 1925, 12th October, 1925, 20th November, 1926, 26th May, 1927, 27th June, 1927, 13th July, 1928.

²Printed as amended by Proclamation No. 53 of 1908.

Liability of criminal to surrender.

4. Where this Proclamation applies in the case of any foreign State, every fugitive criminal of that State who is in, or suspected of being in any part of the Protectorate, shall be liable to be apprehended and surrendered in manner provided by this Proclamation whether the crime in respect of which the surrender is sought was committed before or after the coming into operation of this Proclamation, and whether there is or is not any concurrent jurisdiction in any Court of His Majesty's dominions or of the Protectorate over that crime.

Order of High Commissioner for issue of warrant if crime is not of a political character.

5. A requisition for the surrender of a fugitive criminal of any foreign State, who is in or suspected of being in the Protectorate, shall be made to the High Commissioner by some person recognised by the High Commissioner as a diplomatic representative of that foreign State. The High Commissioner may by order under his hand signify to an Assistant Commissioner that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the High Commissioner is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

Issue of warrant by Assistant Commissioner.

6. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in or on the way to the Protectorate may be issued

- (1) by an Assistant Commissioner on the receipt of the said order of the High Commissioner and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in the Protectorate; and
- (2) by an Assistant Commissioner on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the Protectorate in which he exercises jurisdiction.

Any Assistant Commissioner issuing a warrant under this section without an order from the High Commissioner shall forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to the High Commissioner who may, if he think fit, order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal apprehended on a warrant issued without the order of the High Commissioner shall be discharged by the Assistant Commissioner issuing such warrant unless the Assistant Commissioner within such reasonable time, as with reference to the circumstances of the case he may fix, receives from the High Commissioner an order signifying that a requisition had been made for the surrender of such criminal.

Hearing of case and evidence of political character of crime.

7. When a fugitive criminal is brought before any Court of Assistant Commissioner such Court shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before it charged with an indictable offence committed in the Protectorate.

Such Court shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not a crime in respect of which his surrender may be granted.

Committal or discharge of prisoner.

8. In the case of a fugitive criminal accused of a crime in respect of which his surrender may be granted, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Proclamation) would, according to the law of the Protectorate, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in the Protectorate, the Court of Assistant Commissioner shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of a crime in respect of which his surrender may be granted if such evidence is produced as (subject to the provisions of this Proclamation) would according to the law of the Protectorate prove that the prisoner was convicted of such crime, the Court of Assistant Commissioner shall commit him to prison, but otherwise shall order him to be discharged.

If such Court commits such criminal to prison, it shall commit him to a prison or other place of safe custody in the Protectorate there to await the warrant of the High Commissioner for his surrender, and shall forthwith send to the High Commissioner a certificate of the committal and such report on the case as he may think fit.

Surrender of fugitive to foreign State by warrant of High Commissioner.

9. If any Court of Assistant Commissioner commits a fugitive criminal to prison it shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for his release if he can show good and sufficient ground therefor.

Upon the expiration of the said fifteen days or, if application for release is made after the decision of the Court of the Resident Commissioner upon such application (such Court having power to decide the same anything to the contrary in Proclamation No. 2 of 1896 notwithstanding) as the case may be, or after such further period as may be allowed in either case by the High Commissioner, it shall be lawful for the High Commissioner, by warrant under his hand and seal, to order the fugitive criminal (if not delivered on the decision of the said Court) to be surrendered to such person as may in his opinion be duly authorised to receive the fugitive criminal by the foreign State from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorised as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign State the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of the Protectorate may be retaken upon an escape.

Discharge of persons apprehended if not conveyed out of Protectorate within two months.

10. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the Protectorate within two months after such committal, or, if application for release is made after the decision of the Court upon such application it shall be lawful for the Court of the Resident Commissioner (anything to the contrary in Proclamation No. 2 of 1896 notwithstanding) upon application made to it by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to the High Commissioner to order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Execution of warrant of Assistant Commissioner.

11. The warrant of an Assistant Commissioner issued in pursuance of this Proclamation may be executed in any part of the Protectorate in the same manner as if the same had been originally issued or subsequently endorsed by an Assistant Commissioner having jurisdiction in the place where the same is executed.

Depositions to be evidence.

12. Depositions or statements on oath taken in a foreign State, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of a conviction, may, if duly authenticated, be received in evidence in proceedings under this Proclamation.

Authentication of depositions and warrants.

13. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purpose of this Proclamation if authenticated in manner provided for the time being by law or authenticated as follows:—

- (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign State where the same was issued;
- (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign State where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
- (3) If the certificates of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign State where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates and judicial documents (as the case may be) are authenticated by the oath of some witnesses or by being sealed with the official seal of the Minister of Justice, or some other Minister of State; and all Courts of Justice, Justices and Commissioners shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Criminal surrendered by foreign State not triable for previous crime.

14. Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime which, if committed in the Protectorate, would be (by whatever name designated by the law of the Protectorate) one of the crimes described in the First Schedule to this Proclamation is surrendered by that foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried for any offence committed prior to the surrender in any part of His Majesty's Dominions or Protectorates other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

As to the use of forms in second schedule.

15. The forms set forth in the Second Schedule to this Proclamation or forms as near thereto, as circumstances admit, may be used in all matters to which such forms refer, and when used shall be deemed to be valid and sufficient in law.

Power of foreign State to obtain evidence in Protectorate.

16. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in a foreign State in like manner as it may be obtained in relation to any civil matter under the Act of the session of the nineteenth and twentieth years of the reign of Her late Majesty, chapter one hundred and thirteen, entitled "An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals"; which Act shall for this purpose apply to and be in force within the Protectorate, and all the provisions of that Act shall be construed as if the term "Colony or Possession" included a Protectorate, and as if the term "civil matter" included a criminal matter, and the term "cause" included a proceeding against a criminal; provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Power of taking evidence for foreign criminal matters.

17. The High Commissioner may by order under his hand require any Court of Assistant Commissioner to take evidence for the purposes of any criminal matter pending in any Court or tribunal in any foreign State; and such Court upon the receipt of such order shall take the evidence of every witness appearing before it for the purpose in like manner as if such witness appeared on a charge against some defendant for an indictable offence, and shall certify at the foot of the deposition so taken that such evidence was taken before it, and shall transmit the same to the High Commissioner; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition.¹

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence.

Every person who wilfully gives false evidence before the Court under this section shall be guilty of perjury.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

Foreign State includes Dependencies.

18. For the purposes of this Proclamation every constituent part of a foreign State and every Colony, Dependency or Protectorate of and every vessel of that State shall be deemed to be within the jurisdiction of and to be part of such foreign State.

Definition of terms.

19. In this Proclamation, unless the context otherwise requires:—

Crime in respect of which surrender may be granted.

The term "crime in respect of which surrender may be granted" means a crime which would be punishable by the law of the Protectorate if committed in the Protectorate and which would (by whatever name designated by the law of the Protectorate) be one of the crimes described in the First Schedule to this Proclamation.

Provided that every person who is accused or convicted of having counselled, procured, commanded, aided or abetted the commission of any crime or of being accessory before or after the fact of any such crime, shall be deemed for the purpose of this Proclamation to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

Conviction.

The terms "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "accused person" includes a person so convicted for contumacy.

Fugitive Criminal.

The term "fugitive criminal" means any person accused or convicted of a crime in respect of which surrender may be granted committed within the jurisdiction of any foreign State who is in or is suspected of being in or on the way to some part of the Protectorate and the term "fugitive criminal of a foreign State" means a fugitive criminal accused or convicted of a crime in respect of which surrender may be granted, committed within the jurisdiction of that State.

¹Printed as amended by Proclamation No. 53 of 1908.

Assistant Commissioner.

The term "Assistant Commissioner" includes an Acting Assistant Commissioner, or a Resident Magistrate or Acting Resident Magistrate.¹

Diplomatic representative.

The term "diplomatic representative of a foreign State" includes any person recognised by the High Commissioner as a Consul-General, Consul, or Vice-Consul, or as the Officer administering the Government of any Possession, Dependency, or Protectorate of that State.

Oath.

The term "oath" includes affirmation.

Warrant.

The term "warrant" in the case of any foreign State, includes any judicial document authorising the arrest of a person accused or convicted of crime.

Gazette.

The term "Gazette" means the *Official Gazette* of the High Commissioner for South Africa.

THE FIRST SCHEDULE.**LIST OF CRIMES.**

Murder and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting and altering and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Offences by bankrupts against bankruptcy law or any indictable offence under the laws relating to bankruptcy.

Fraudulent misappropriations and fraud by a bailee, made criminal by any Act of Parliament or Ordinance for the time being in force.

Rape.

Abduction.

Child-stealing.

Burglary and house-breaking.

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

¹Printed as amended by Proclamation No. 31 of 1930.

Revolt or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

Offences against the Slave Trade Act, 1873, or otherwise in connection with the slave trade, committed on the high seas or on land, or partly on the high seas and partly on land.

Kidnapping and false imprisonment.

Perjury and subornation of perjury.

Any offence not before mentioned, being an indictable offence under the following Acts of Parliament of 1861, or any of them, or under any Act amending or substituted for the same.

24 and 25 Vict. c. 96. Larceny.

24 and 25 Vict. c. 97. Malicious injuries to property.

24 and 25 Vict. c. 98. Forgery.

24 and 25 Vict. c. 99. False coining.

24 and 25 Vict. c. 100. Murder and other offences against the person.

Bribery.

Any other crime from time to time added by Act of Parliament to the list of crimes in the First Schedule to the Extradition Act, 1870.

SECOND SCHEDULE.

FORM OF ORDER OF HIGH COMMISSIONER TO THE ASSISTANT COMMISSIONER.

To the Assistant Commissioner at

WHEREAS, in pursuance of an arrangement with

referred to in a notice in the *Gazette* dated the

day of

a requisition has been made

to me,

the High Commissioner for

South Africa by

the diplomatic repre-

sentative of

for the surrender of

late of

accused (or

convicted) of the commission of the crime of

within the jurisdiction of

Now I hereby, by this my order under my hand and seal, signify to you that such a requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the Fugitive Criminals Surrender Proclamation, 1908, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand of the undersigned High Commissioner for South Africa this

day of

190

High Commissioner.

FORM OF WARRANT OF APPREHENSION BY ORDER OF HIGH COMMISSIONER.

To all and each of the constables of the Police Force.

WHEREAS the High Commissioner for South Africa by order under his hand and seal, hath signified to me that requisition hath been duly made to him

for the surrender of _____ late of _____
accused (or convicted) of _____
the commission of the crime of _____
within the jurisdiction of _____

This is therefore to command you in His Majesty's name forthwith to apprehend the said _____

pursuant to the Fugitive
Criminals Surrender Proclamation, 1908, wherever he may be found in the
Bechuanaland Protectorate and bring him before me or some other Assistant
Commissioner to show cause why he should not be surrendered in pursuance
of the said Proclamation for which this shall be your warrant.

Given under my hand at _____
this _____ day of _____
190 _____

Assistant Commissioner.

FORM OF WARRANT OF APPREHENSION WITHOUT ORDER OF
HIGH COMMISSIONER.

To all and each of the constables of the Police Force.

WHEREAS it has been shown to the undersigned

that _____ late of _____
is accused (or convicted) of the commission of the crime of _____
within the jurisdiction of _____

This is therefore to command you in His Majesty's name forthwith to apprehend the said _____

and to bring him before me or some other Assistant Commissioner to be further dealt with according to law, for which this shall be your warrant.

Given under my hand at _____
this _____ day of _____
19 _____

Assistant Commissioner.

FORM OF WARRANT OF COMMITTAL.

To _____ one of the constables
of the police force of _____
and to the keeper of the _____

BE it remembered that on this _____ day of _____
in the year of Our Lord _____

late of _____ is brought before
me an Assistant Commissioner for
to show cause why he should not be surrendered in pursuance of the Fugitive
Criminals Surrender Proclamation, 1908, on the ground of his being accused
(or convicted) of the commission of the crime of _____ within
the jurisdiction of _____ and forasmuch
as no sufficient cause has been shown to me why he should not be surren-
dered in pursuance of the said Proclamation.

This is therefore to command you the said constable in His Majesty's
name forthwith to convey and deliver the body of the said
into the custody of the said keeper of the
t and you the said keeper
to receive the said into
our custody, and him there safely to keep until he is thence delivered
pursuant to the provisions of the said Proclamation for which this shall be
our warrant.

Given under my hand at
his day of
9

Assistant Commissioner,

FORM OF WARRANT OF HIGH COMMISSIONER FOR SURRENDER
OF FUGITIVE.

to the keeper of and
to

WHEREAS late of accused
or convicted) of the commission of the crime of
within the jurisdiction of was delivered
into the custody of you the keeper of
by warrant dated pursuant
to the Fugitive Criminals Surrender Proclamation, 1908.

Now I do hereby, in pursuance of the said Proclamation order you the
aid keeper to deliver the body of the said
into the custody of the said
and I command you the said to receive
he said into your custody, and to convey
him within the jurisdiction of the said
and there place him in the custody of any person or persons appointed by
he said to receive him, for
which this shall be your warrant.

Given under the hand of the undersigned High Commissioner for South
Africa this day of