

PROCLAMATION.¹

BY

BY HIS EXCELLENCY THE RIGHT HONOURABLE SIR HERCULES
GEORGE ROBERT ROBINSON, BARONET, &c., &c.

No. 2, 1896.—DATED 11th FEBRUARY, 1896.

Preamble.

WHEREAS it is expedient to amend the High Commissioner's Proclamation of June 10th and June 27th, 1891, so as to increase the jurisdiction of Assistant Commissioner's and Resident Magistrates' Courts within the Bechuanaland Protectorate, and to constitute the Court of Resident Commissioner as a Court of Appeal and Review, and to make other provision for the trial of persons charged with the crime of murder, and in other respects to alter and amend the manner of proceedings in Civil and Criminal cases within the said Protectorate.

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

Assistant Commissioner and Resident Magistrate to have jurisdiction in all Civil and Criminal cases.

Except murder.

1. Notwithstanding anything contained in the said Proclamations of June 10th and June 27th, 1891, or in any other Proclamation, the Assistant Commissioners and Resident Magistrates in the Bechuanaland Protectorate shall have jurisdiction in all civil and criminal suits and proceedings over and against all persons residing within their respective areas or jurisdiction or districts: Provided that no Assistant Commissioner or Resident Magistrate shall have jurisdiction to try and person charged with the crime of murder save as hereinafter provided; and provided that nothing herein contained shall be taken to affect or interfere with the provisions of Sections 8, 9, 10, and 11 of the said Proclamation of June 10th, 1891, with regard to cases in which natives are concerned.²

Resident Commissioner to have all the powers of the Supreme Court.

To have jurisdiction, but not in any original Civil or Criminal suit except murder.

2. All the powers of the Supreme Court of the Cape Colony shall in the Bechuanaland Protectorate be exercised by the Resident Commissioner; pro-

¹Printed as amended by Proclamation No. 23, 1914.

²For limited jurisdiction see Proclamations Nos. 40 of 1912 and 11 of 1928.

vided always, that notwithstanding, anything contained in Section 3 of Proclamation of June 10th, 1891, or in any other Proclamation, no original civil action, suit, or proceeding, shall be instituted before any Court of Resident Commissioner, and that, save as in Section 4 of this Proclamation, provided, it shall not be competent to institute or bring any criminal proceedings before the said Court of Resident Commissioner in the first instance, or otherwise than by way of appeal.^{1, 2, 3.}

Appeal from Assistant Commissioners' and Magistrates' decision to Resident Commissioner and Privy Council.

3. The jurisdiction of Assistant Commissioners and Resident Magistrates to hear and determine all civil cases whatsoever arising in their respective districts shall be subject to the right of appeal to the Special Court, and the King in Council, but nothing in this Proclamation contained shall be taken to affect or interfere with the provisions of Sections 8, 9, and 10, of Proclamation of June 10th, 1891, as to cases in which natives are concerned, or the provisions of Section 11 with regard to assessors.¹

Trial of persons charged with murder.

Judgment of the majority to be the judgment of the Court.

4. The trial of every person charged with the crime of murder shall be held before a Court consisting of the Resident Commissioner and any two officers being Assistant Commissioners or Resident Magistrates of the Bechuanaland Protectorate, at such time and place as shall be appointed by the Resident Commissioner, who shall be President of such Court, of which time and place due notice shall be given: the provisions of Section 11 of Proclamation June 10th, 1891, shall apply to the said Court. If the Commissioners or Magistrates shall differ with respect to the guilt of the person accused, the judgment of the majority shall be the judgment of the Court: provided always that the Commissioner or Magistrate dissenting shall state his reasons in writing for the information of the Governor in every case in which the majority find the accused guilty.^{4, 5, 6.}

Procedure on Appeals from Assistant Commissioner and Resident Magistrate's decisions.

Thirty days allowed for Appeal in Civil cases.

5. The rules and regulations regarding appeals from and reviews of any judgment, order or sentence of any Assistant Commissioner or Resident Magistrate shall be the same *mutatis mutandis*, and as nearly as the circumstances of the said Protectorate admit as those regulating appeals from and reviews of decisions of Resident Magistrates within the Cape Colony: provided that the period of thirty days shall be allowed within which it shall be lawful for the party appealing in any civil suit or proceeding to make known his intention to the Clerk of the said Court of Assistant Commissioner or Resident Magistrate.⁷

¹Printed as amended by Proclamations Nos. 11 of 1928 and 6 of 1929.

²As to power to hold Court outside the Protectorate see Proclamation No. 11 of 1898.

³For rules regarding procedure in the Resident Commissioner's Court in proceedings under the Foreign Tribunals (Evidence) Act, 1856, and the Evidence by Commission Act, 1859, see H.C. Notices Nos. 8 of 1911 and 44 of 1911. See H.C. Notice No. 39 of 1911. See H.C. Notice No. 79 of 1911 regarding Letters of Request. See H.C. Notice No. 48 of 1926 regarding rules as to record of proceedings.

⁴See Section 2 of Proclamation of 18th November, 1891.

⁵See Section 2 of Proclamation No. 40 of 1912, and Proclamation No. 11 of 1928.

⁶As to the appointment of a Deputy see Proclamation No. 48 of 1920.

⁷See Section 3, sub-section 3 of Proclamation No. 40 of 1912. Printed as amended by Proclamation No. 11 of 1928.

Compulsory sequestration proceedings in cases of.

6. [*Repealed by Proclamation No. 25 of 1929*].

7. [*Repealed by Proclamation No. 25 of 1929*].

Suits pending to be removed into the Court of Assistant Commissioner or Resident Magistrate.

8. All suits pending in the Court of Resident Commissioner as a Court of first instance at the date of this Proclamation shall be taken to be removed as from this date into the Court of Assistant Commissioner or Resident Magistrate exercising jurisdiction in the place where the Defendant resides, and shall be dealt with and determined by the said Assistant Commissioner or Resident Magistrate under the jurisdiction hereby conferred: Provided that in the taxation of bills of costs of such suits the fees recoverable in respect of any matter or thing done prior to this date shall be in accordance with the tariff of fees prescribed for the Court of the Resident Commissioner.

Commencement of Proclamation.

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