

PROCLAMATION.¹

BY

HIS EXCELLENCY THE RIGHT HONOURABLE HERCULES GEORGE
ROBERT ROBINSON, BARON ROSMEAD, &c., &c.

No. 25, 1896.—DATED 23rd NOVEMBER, 1896.

Preamble.

WHEREAS an agreement was entered into between Her Majesty's High Commissioner for South Africa and Governor of British Bechuanaland of the one part, the British South Africa Company of the second part, and the Bechuanaland Railway Company of the third part, dated August 3rd, 1894, for the construction and working of a railway by the said Railway Company from Vryburg, in British Bechuanaland, to Palapye, in the Bechuanaland Protectorate; and whereas a Supplementary Agreement between the same parties was subsequently entered into on October 18th, 1895, which Agreements from the Schedule to Proclamation No. 227 of British Bechuanaland;

And whereas the said Railway Company has constructed the said line of railway from Vryburg to Mafeking, and from Mafeking to the Southern Border of the Bechuanaland Protectorate, in accordance with certain plans lodged with the Government of British Bechuanaland;

And whereas the said line of railway is now being constructed through the Bechuanaland Protectorate, from the Southern Border thereof, to a point at or near Palapye, and plans showing the route thereof are in course of preparation and will shortly be lodged in the Office of the Resident Commissioner of the Bechuanaland Protectorate:

And whereas it is expedient to confirm and confer upon the said Company the title, rights, powers and privileges necessary for the efficient construction, maintenance and working of the said line of railway from the southern border of the said Protectorate to a point at or near Palapye, subject to all lawful obligations imposed by this Proclamation and by the Agreements in this preamble referred to:

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

Bechuanaland Railway Co. authorised to construct a railway from the southern boundary of the Protectorate to Palapye.

1. The Bechuanaland Railway Company shall be and is hereby authorised and empowered to construct, equip, maintain and work, subject to the provisions of the Agreement of August 3rd, 1894, as amended by the Supplementary Agreement, the portion of the railway referred to in the said Agreement, between the point upon the southern boundary of the Bechuanaland Protectorate to which the said railway has been constructed under the provisions of Proclamation No. 227 B. B., 1895, and a point at or near Palapye in the said Protectorate; the course of the said line of railway between the said points to be more particularly defined and determined by plans to be lodged in the Office of the Resident Commissioner of the said Protectorate.

¹As to the appointment of persons to maintain order see Proclamation No. 47 of 1924.

Company may enter upon land for the purpose of surveying the same or setting out the line, paying compensation in certain cases.

2. The said Railway Company may by any person thereto authorised in writing, enter upon any land for the purpose of surveying the same, and of probing and boring, in order to ascertain the nature of the soil, or of setting out the line of railway between the said points, provided that compensation shall be made to the owner of any land so dealt with which is included within the limits of a grant which has been approved by Her Majesty's Secretary of State.¹

Company may take land required for railway.

Compensation to be paid for improvements.

3. The said Railway Company shall have the power to enter upon, take possession of, hold and retain for the purposes of this Proclamation land required for the said line of railway between the points aforementioned, of a uniform width throughout of one hundred yards, and such land in addition as may be required for all junctions, sidings and stations, and for all other works and approaches. The said Company shall not be bound to pay compensation in respect of any land so taken, save in respect of actual improvements, or of land included within the limits of a grant which has been approved by Her Majesty's Secretary of State.

Company to have the rights of a Divisional Council under Sections 146 and 147 of Act 40, 1889.

4. For the purposes of construction, maintenance and working of the said line of railway, the said Company shall have all the rights and powers and be subject to all the duties and obligations which a Divisional Council, by the law of the Colony of the Cape of Good Hope, has and exercises, or is subject to under the provisions of Sections 146 and 147 of the Act No. 40 of 1889 of the said Colony, for the purposes of Section 141 of the said Act: Provided that publication of Notice in the "Gazette" shall be deemed to be sufficient notice to any proprietor who shall be absent, or whose place of residence shall not be known.

Provisions of Sections 204 and 205.

5. The provisions of Sections 204 and 205 of the said Act No. 40 of 1889 of the said Colony shall *mutatis mutandis*, apply in respect of the said line of railway as though the same were a public road, the said Company being deemed and taken to be referred to in the said sections in place and stead of the Divisional Council.

In the absence of agreement questions of compensation to be settled under the Lands and Arbitration Clauses Act, 1882.

6. The settlement of questions of compensation that may arise in consequence of any exercise by the said Company of rights and powers, in accordance with this Proclamation, shall not delay such exercise, but such questions shall, as soon as may be, be determined, in the absence of agreement, in accordance with the provisions of the "Lands and Arbitration Clauses Act, 1882," of the said Colony.

Line may be carried over a road either by means of a level crossing or by means of a bridge either over or under the road.

7. At all places where the line of the said railway or any deviation thereof shall intersect or cross the line of any street or road it shall be lawful for the said Company to make and carry the said railway across such street or road either by means of a level crossing or by means of a sufficient bridge or viaduct over or under the said street or road; and the said Company shall be bound to make all such cuttings, embankments and approaches

¹See Order in Council dated 25th May 1922.

with all such culverts and drains, and all such repairs as may be requisite to make good the street or road across or over or under the said railway, at gradients not exceeding one foot in twenty feet; and shall also be bound to maintain and keep in repair all such crossings, bridges, viaducts, cuttings, embankments and approaches, culverts and drains as aforesaid.

Proclamation not to prevent new roads being carried across the railway.

8. Nothing in this Proclamation contained shall prevent any streets or public roads hereafter to be constructed under lawful authority from being made and carried across the said railway at all requisite and convenient places, provided that as little damage and inconvenience as possible shall be caused to the said railway by such crossings.

On completion of railway certain Acts to apply.

9. Upon completion of the said railway, or any portion thereof, the said Company shall, subject to the foregoing provisions of this Proclamation, enjoy all the powers and privileges conferred upon and be subject to all the obligations and conditions affecting Railway Companies contained in the following Acts of the Cape Colony, viz.: Act No. 19 of 1861, entitled "The Regulation of Railways Act, 1861," as amended by Act No. 19 of 1877, Act No. 31 of 1896, and Act No. 6 of 1905, save and except Section 29 of the said Act No. 19 of 1861; provided that the approval of the High Commissioner shall be necessary and sufficient for any bye-laws made under the said Acts.^{1, 2, 3}

Opening and closing gates.

10. Any person who shall open or unfasten any gate abutting on the said line of railway except for the purpose of then and there passing through the same with or without any vehicle or animals in his care or of enabling some other person or persons so to pass, and any person who shall pass through any such gate and who shall not immediately after so passing through the same with or without any vehicle or animals in his care, close and fasten such gate or cause the same to be closed or fastened, shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding twenty shillings or in default of payment thereof to imprisonment with or without hard labour for any period not exceeding fourteen days unless such fine be sooner paid.¹

Agreement annexed to Proclamation 227 B.B. to apply.

11. Subject to the provisions of this Proclamation, the terms, conditions and stipulations of the said Agreements, which are annexed as a Schedule to Proclamation No. 227, B.B. 1895, are herewith incorporated and shall extend and apply to the railway hereby authorised to be constructed as if the said Agreements had been included in this Proclamation.

Commencement of Proclamation.

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

¹ Printed as amended by Proclamation No. 5 of 1898.

² Printed as amended by Proclamation No. 19 of 1905.

³ For bye-laws regarding explosives, see H.C. Notice No. 92 of 1914.