

PROCLAMATIONS.

PROCLAMATION.

BY

HIS EXCELLENCY THE HIGH COMMISSIONER.

No. 3, 1912.—DATED 1st FEBRUARY, 1912.

**Preamble.**

WHEREAS it is expedient to make further and better provision for the prevention and repression of theft of stock and produce in the Bechuanaland Protectorate:

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

**Applying Cape Act No. 35 of 1893 to Protectorate.**

1. The Act of the Parliament of the late Colony of the Cape of Good Hope known as the Stock and Produce Theft Repression Consolidation Act 1893 (Act No. 35 of 1893), the terms of which are set forth in the schedule to this Proclamation, is hereby declared to be in force and to have effect (except section *thirty-nine* thereof) within the limits of the Bechuanaland Protectorate.

**Meaning of expressions.**

2. In the application of the said Act to the Bechuanaland Protectorate the expression "Governor" shall mean the High Commissioner and the expression "*Gazette*" shall mean the *Official Gazette* of the High Commissioner, and all powers, authorities, functions, duties, and jurisdiction which under the said Act are in the Cape of Good Hope exercisable or to be exercised by any officer or by any court in the said Act mentioned shall, as far as they are capable of being exercised in the Bechuanaland Protectorate, be exercisable or performed by the officer or court having like powers, authority, functions, duties, and jurisdiction in the said Protectorate.

**Commencement of Proclamation.**

3. This Proclamation shall have force and take effect from the date of its first publication in the *Gazette*.

SCHEDULE.

Act No. 35 of 1893.

ACT

TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE  
THEFT OF STOCK AND PRODUCE.

[Assented to 9th September, 1893.]

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. The laws mentioned in the schedule to this Act to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed, except as to proceedings instituted previously to the promulgation of this Act.

2. In the interpretation of this Act the following terms shall have the meanings herein after assigned to them, that is to say:—

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"Stock" shall include any horse, mare, gelding, colt, filly, mule or ass; any bull, cow, ox, heifer or calf; any sheep, goat, or pig or domesticated ostrich; and the slaughtered carcass, or portion of the slaughtered carcass of any such stock.

"Produce" shall include all skins, hides, horns, wool, mohair, and ostrich feathers.

"Sufficient fence," when applied to wire fences, shall mean a fence of not fewer than four wires and not less than three feet six inches high, in other cases any fence, wall or hedge through which no stock could pass without breaking, or any natural boundary through or across which no sheep would ordinarily pass.

"Theft" shall embrace besides actual stealing (1) receiving knowing to have been stolen, (2) attempting to steal, and (3) being or having been in unlawful possession, not being able to give a satisfactory account of such possession.

"Supreme Court" shall, within the limits of their respective jurisdictions include the Eastern Districts Court and the High Court of Griqualand West, as the case may be.

"Attorney-General" shall, within the limits of the districts in which they exercise their offices, include the Solicitor-General or the Crown Prosecutor respectively.

3. In the trial of cases under this Act the Courts of Resident Magistrates shall (except as herein after excepted) proceed in like manner as in criminal cases falling within their ordinary jurisdiction: Provided that in all cases under this Act, the Magistrate shall take down in writing, or cause to be taken down in writing, the evidence in the case, the judgment of the Court, and should such judgment be a judgment of "guilty," the sentence pronounced upon the offender.

4. On the day of hearing of any case under this Act, the Magistrate shall read over, or cause to be read over, to the accused person the charge or complaint against him, and shall ask him if he pleads "guilty" or "not guilty" to the offence set forth in such charge or complaint; and should such person plead "guilty," his said plea shall be recorded, as shall also the sentence pronounced upon the offender.

5. The provisions of the *forty-third*, *forty-seventh*, *forty-eighth*, and *forty-ninth* section of the Act No. 20, 1856, entitled "An Act for amending and consolidating the Laws relative to the Courts of Resident Magistrates," and of the *fourth* section of Act No. 21 of 1876, as amended by this Act, shall extend and apply to all cases of convictions under this Act, whether upon a plea of "guilty" or after a plea of "not guilty," and whatever may be the period of imprisonment or the number of lashes to which the offender shall have been sentenced.

6. It shall be lawful for the Courts of Resident Magistrates on the trial of any accused person for theft, as defined by this Act, to find such accused person guilty of any of the offences embraced in the term theft as so defined, although such accused person may not have been originally charged with that particular offence.

7. From and after the taking effect of this Act the Courts of Resident Magistrates shall, respectively, have jurisdiction, in all cases in which any person may be accused of the theft of any stock or produce, provided that it shall not be lawful save as is herein after excepted for any such court to punish any person convicted of any such theft in any higher or other manner than, in the case of a first conviction, by imprisonment with or without hard labour for any period not exceeding one year, or by imprisonment with spare diet and with or without hard labour for any period not exceeding three months, or by corporal punishment in any number of lashes not exceeding twenty-five, or by both such first-mentioned imprisonment and such lashes; and, in the case of a second or any subsequent conviction within the space of three years next following a previous conviction for theft of stock

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or produce by imprisonment with or without hard labour for any period not exceeding two years or by corporal punishment in any number of lashes not exceeding thirty-six or by both such imprisonment and such lashes: Provided also, that no offender sentenced under this Act to imprisonment with hard labour for any period exceeding three months shall be sentenced to spare diet, except for offences against the discipline of the gaol or other place at which he may be lawfully confined or employed: Provided, further, that in regard to the infliction of spare diet under this Act, the Courts of Resident Magistrate shall, in their sentences observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences, and be by the Governor prescribed for the guidance of such court; and such courts shall, in their sentences, fix, in conformity with such regulations and restrictions, the particular days or times during which the offender shall be subject to spare diet.

8. It shall be lawful for such court, upon the conviction of any person on a charge of theft of stock or produce, or upon his committal for trial on such charge, at the request of the owner or owners of the stock or produce, for the theft of which such person is so convicted or committed for trial, as aforesaid, or of the person authorised in writing by such owner or owners, to inquire summarily and without pleadings but in the presence of the accused person into the value of such stock or produce; and such court upon proof made to its satisfaction of the value of such stock or produce, and of any damages which the said owner shall have sustained by the loss of such stock or produce, or by the cost of a search for, or other endeavour to recover the same, shall give judgment in favour of such owner and against the accused, for such value as aforesaid, together with such damages, if any, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted: Provided, that no such court shall give any such judgment as aforesaid in any case except one in which the proof of the guilt of the accused shall be such as would, in the opinion of such court, if given in a civil action founded upon the same theft, require such court to give judgment in favour of the owner and against the accused: And provided, also, that no Resident Magistrate shall give any such judgment for any sum exceeding forty pounds sterling: And provided, further, that no such judgment for such value shall be given in any case in which such stock or produce shall have been recovered by the owners before the conviction or committal for trial, as the case may be, of the accused person.

9. No such judgment as aforesaid shall be put in execution if the person convicted or committed for trial as the case may be shall give security to the satisfaction of such court, to pay the amount thereof should his conviction be confirmed by a judge, or should he be afterwards duly convicted when brought to trial, nor shall any such judgment be put into execution unless and until the owner of the said stock or produce shall give security, to the satisfaction of the Magistrate, to refund, in case he shall, by law, be required so to do, any sum of money which shall be levied under or upon such judgment, and to make good such damages, if any, as the accused person shall have sustained by the execution of such judgment.

10. If any conviction of any person who shall have given such security shall afterwards be quashed on appeal or review, or if any accused person who shall have given such security, shall ultimately be acquitted of the theft in regard to which he was committed, then the judgment aforesaid shall be null and void: Provided, however, that nothing in this Act contained shall deprive the owner of the stock or produce aforesaid of any right of civil action which he may, by law, be entitled to have or maintain, notwithstanding the quashing of such sentence or such acquittal, against the person so convicted or committed for trial.

11. As often as any such judgment as aforesaid shall have been put into execution and the conviction be quashed on appeal or review by a Judge, or in the case of a committal for trial, the person committed be ultimately acquitted or discharged, then the court by or before which the person accused shall have been convicted or committed for trial, as the case may be,

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shall upon application of, or on behalf of, such person, give judgment, summarily and without pleadings, for such sum as shall have been levied under such execution, and such damages, if any, as referred to in section *nine* unless it shall be found by such court upon considering the evidence in the criminal case, and any other evidence which may be given by the owner aforesaid and the person acquitted, or either of them, that, upon grounds of law, applicable to the decision of civil actions, the said owner was and is *prima facie* entitled to have and retain such judgment as aforesaid against the person acquitted, notwithstanding such acquittal.

12. In case the value of any stock or produce with the theft of which any person shall be charged, and the amount of such damages as aforesaid, shall not sufficiently appear upon the depositions taken on the preparatory examination or at the trial, and further proof of such value or such damages shall be tendered on the part either of the owner or of the accused, such further proof shall be taken down in writing, and shall by such Magistrate be preserved.

13. As often as any charge of theft of stock or produce, in regard to which any such judgment as aforesaid shall have been given by any Resident Magistrate, shall be tried in the Supreme or any Circuit Court, it shall be the duty of the Resident Magistrate who gave such judgment to deliver, or cause to be delivered to the Registrar of such court, a copy of such further proof, if any, of value and damages as such Magistrate shall have taken, over and above the preparatory examination, together with a statement of the date and amount of the said judgment, as also a statement of the amount, if any, levied thereupon and the said Registrar shall before, during, or immediately after the trial, lay the same before the presiding Judge for his inspection.

14. In case any such owner as aforesaid shall not have obtained from the committing Magistrate any such judgment as aforesaid, and the prisoner committed for trial shall be afterwards convicted, before the Supreme or any Circuit Court, then the Judge before whom such conviction shall have taken place shall upon the like request as that in the *eighth* section of this Act mentioned, but in the presence of the prisoner, inquire summarily, and without pleadings, into the value and damages therein referred to, and give judgment for the same, and such judgment shall be of the same force and effect, and be executable in the same manner, as if it had been given in a civil action duly instituted.

15. Should any case in which any such judgment as aforesaid, shall have been given by any Resident Magistrate be afterwards remitted to the Court of such Resident Magistrate, such Magistrate shall, in forwarding the record of the proceedings in such case to the Registrar of the Supreme Court, to be laid before a Judge in Chambers for his consideration, forward with such record the same particulars regarding such judgment as such Magistrate is, under and by virtue of the *thirteenth* section of this Act, enjoined to deliver or cause to be delivered, in cases in which the person accused is tried in the Supreme or any Circuit Court.

16. If, in any case, the Attorney-General, upon considering the preparatory examination, shall decline to prosecute any person against whom the committing Magistrate shall have given judgment under this Act, then such person shall be deemed to be discharged within the meaning of section *eleven*, unless the person in whose favour such judgment shall have been pronounced shall within a time to be fixed give security as a private prosecutor to the satisfaction of the Magistrate for the prosecution of the person accused, and unless the accused person shall be so prosecuted and convicted within a further time to be fixed by the Magistrate; and if such conviction shall be quashed on appeal or review, the provisions of section *eleven* shall also apply.

17. As often as more persons than one shall be convicted of the theft of any stock or produce, or committed for trial on any charge of such theft, then any such judgment as may be given for value and damages, or value without damages, by any Magistrate or Judge against such persons jointly,

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shall be deemed to be joint and several, and may be executed against the property of any one or more of the persons who shall have been so convicted or committed for trial: provided that it shall be lawful to give judgment against any one or more of such persons without including in that judgment any of the other persons convicted or committed for trial for or in regard of the theft of the same stock or produce: and provided that no person against whom such judgment has been pronounced shall in any case recover under section *ten* or *eleven* of this Act more than the amount levied against himself in satisfaction of such judgment, together with any damages awarded to him under section *nine*.

18. Nothing in this Act contained shall be construed so as to oblige any owner of any such stock or produce to apply for any such judgment as aforesaid, or to deprive him of any right of civil action which he may have against the accused person for or on account of such stock or produce; nor shall the fact of having obtained from any Resident Magistrate a judgment for the sum of forty pounds, prevent the owner who obtained such judgment from suing in any competent court for any damages by him sustained over and above the said sum of forty pounds: nor shall the fact of judgment under section *ten* or *eleven* bar any civil action by the owner who has lost the stock or produce forming the subject of the charge.

19. As often as any charge of the theft of stock or produce shall be brought under the notice of any Resident Magistrate, which charge shall from its nature or magnitude appear to such Magistrate to be unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such Magistrate, instead of proceeding to try the case under this Act, to commence and take a preparatory examination, in like manner precisely as if this Act had not been passed: Provided that if the Attorney-General, upon consideration of the preparatory examination, shall be of opinion that the evidence is such as to require that the prisoner shall be put upon his trial, and be of opinion also that the exercise of the jurisdiction conferred by this Act will satisfy the ends of justice, then and in that case the Attorney-General may remit the case for trial to the Court of the Resident Magistrate by whom the preparatory examination was taken, and such court shall thereupon proceed to try the same in manner and form as in the *twenty-ninth* section of the "Criminal Law Amendment Act, 1861," prescribed; and in case the prisoner shall be convicted, such court may pronounce upon him any sentence to which he might have been subjected under this Act, in case he had been tried under this Act without any preparatory examination having been taken: and provided that nothing herein contained shall be deemed to deprive the Attorney-General of any power to remit such cases which may at any time be vested in him by law independently of this section.

20. When, in the course of any trial under this Act in any Court of any Resident Magistrate, it shall appear to the Resident Magistrate, from the facts disclosed by the evidence, that the case is one which from its nature or magnitude is unfit to be disposed of under the limited jurisdiction conferred by this Act, it shall be lawful for such court to stop the trial, and to take, or turn proceedings into, a preparatory examination; and thereupon all and singular the provisions of the last preceding section shall apply to such preparatory examination, precisely as if such trial aforesaid had never been commenced.

21. (Repealed by Proclamation No. 7 of 1919 and the following section of the schedule to that Proclamation enacted in its place). Section 2.—

It shall be the duty of any court empowered to pass sentence on any person for the offence of theft of stock or produce, in addition to such sentence in every case in which the evidence is sufficient and in which the stock or produce has not been recovered or in which it has been recovered reduced in value by at least one-half of its market value at the time of the theft, and in which the owner or owners do not proceed under the provisions of section eight of Act 35 of 1893 for compensation, to impose on every person convicted in respect of such theft a fine not exceeding the full market value

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at the time of the theft of such stock or produce, such fine if not paid to be levied on the movable property of the offender under and by virtue of a warrant under the hand of the Judge or Magistrate imposing such fine, together with the costs of levy; and the amount of such fine when paid or levied shall, subject to the provisions herein following, be paid by the Resident Magistrate of the district in which the case is heard to the owner or owners of the stock or produce so stolen: provided that when and as often as any such fine shall be imposed by a Resident Magistrate such Resident Magistrate shall forward the record of the proceedings in said case to the Registrar of the Supreme Court in order that the sentence may be reviewed by one of the Judges, and such Judge may reduce or disallow the same as shall seem to him to be most in accordance with real and substantial justice; and in every case in which such record shall have been so forwarded as aforesaid the warrant shall be executed by immediately attaching sufficient goods as aforesaid to answer the fine imposed by such Magistrate in the first instance, but such goods shall not be sold to realise the amount of such fine until the sentence shall have been finally approved or amended by such Judge as aforesaid, and then only so much thereof shall be sold as shall probably be necessary to produce the amount of such fine as shall ultimately be imposed together with costs of levy as aforesaid.<sup>1</sup>

22. Any person who shall, by way of purchase, bargain, exchange or gift, acquire or receive into his possession, from any other person, any stolen stock or stolen produce, without guilty knowledge that the said stock or produce is stolen but without having reasonable cause, proof of which shall lie on such first-mentioned person, for believing, at the time of such acquisition or receipt, that such stock or produce was the property of the person from whom he received it, or that such person was duly authorised by the rightful owner to deal with or dispose of it, shall be deemed guilty of contravening this section, and shall be liable on conviction to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such fine and such imprisonment.

23. The provisions of section *twenty-two* of this Act shall not apply to stock or produce purchased—

- (a) on any public market;
- (b) at any sale held by a duly licensed auctioneer, or held in pursuance of the order of a court of competent jurisdiction.

24. (Repealed by Proclamation No. 7 of 1919 and the following section of the schedule to that Proclamation enacted in its place). Section 4.—

It shall be duty of any Judge or Magistrate passing any sentence and imposing any fine as herein provided at the time of passing such sentence and imposing such fine to order that, if at the expiration of such sentence, such fine shall not have been paid or recovered and shall not have been disallowed on appeal or review as in this Act provided, the person or persons convicted shall be imprisoned with or without hard labour for a further period not exceeding twelve months.<sup>1</sup>

25. Any person who enters any farm, or part of a farm enclosed on all sides with a sufficient fence, and whether such entry shall be effected by breaking through such fence or not, or any kraal, with intent to steal any stock which is in or upon such kraal, farm, or part of a farm, shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding one year, or to a fine not exceeding one hundred pounds, or to both such fine and such imprisonment.

26. Any person found within any farm, or part of a farm enclosed on all sides with a sufficient fence, or within any kraal, and who when so found was not proceeding along some road or thoroughfare traversing such farm

<sup>1</sup> See Proclamation No. 7 of 1919.

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or part of a farm, shall, if charged with a contravention of section *twenty-five* of this Act, have the burden imposed upon him of proving that he did not enter such kraal, farm, or part of a farm with intent to steal the stock, if any, kept therein.

27. Any person charged with the theft of stock from any such kraal, farm, or part of a farm, may in the same indictment be charged with a contravention of the *twenty-fifth* section of this Act; and upon conviction shall be separately sentenced in regard to each offence.

28. If there be reasonable grounds for believing that any person is or has been in unlawful possession of any stock or produce, it shall be competent for any justice of the peace, field cornet, landholder, or police constable to apprehend or cause to be apprehended such person without warrant, and convey him or cause him to be conveyed in custody before any Resident Magistrate having jurisdiction, and if it be found that he is or has been in possession of any such stock or produce, and is not able to give a satisfactory account of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft of stock or produce and shall thereupon be dealt with as if he had originally been charged with such crime.

29. If any person is reasonably suspected to have in any sack, knapsack, or other covering, any produce or the carcasses, or portions of carcasses, of slaughtered stock, it shall be lawful for any justice of the peace, field cornet, landholder, or police constable to detain or cause to be detained such person and examine or cause to be examined the contents of such sack, knapsack, or other covering, and in case such person shall, upon such examination, be found to be in possession of any of the articles aforesaid, it shall be lawful for such justice of the peace, field cornet, landholder, or police constable to apprehend him or cause him to be apprehended without warrant and to convey him, or cause him to be conveyed, before any Magistrate having jurisdiction, and in case he shall be unable to give a satisfactory explanation of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft of stock or produce and shall be thereupon dealt with as if he had been originally charged with such crime.

30. Any person charged with theft of stock or produce in accordance with either of the last two sections may, if the court or jury before whom he is tried be satisfied that he had no guilty knowledge that the stock or produce forming the subject of the charge was stolen, be dealt with in all respects as though he stood charged with a contravention of section *twenty-two* of this Act.

31. Upon the conviction of any person for an offence under this Act, it shall be lawful for the Governor, out of such funds as may from time to time be appropriated to the carrying out of the Criminal Law of the Colony, or as may be at the disposal of the Governor for that purpose, to pay to the person other than the owner of stolen property forming the subject of the charge who shall have given information or made the charge leading to such conviction as aforesaid such sum as the Governor shall direct, or as shall be provided for by a tariff to be published in the *Gazette*.

32. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apprehend any other person, or cause him to be apprehended, shall be liable to pay a fine not exceeding twenty pounds, and to pay to the apprehended person such amount, not exceeding the sum of fifty pounds, as and for damages, as the Magistrate before whom such apprehended person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid: Provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

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33. Notwithstanding the provisions of section *forty-two* of Ordinance No. 40 of 1828, it shall be lawful for any justice of the peace, field cornet, assistant field cornet, or for any police officer of such rank as the Governor may from time to time designate, upon being satisfied that there is reason to suspect that any stolen stock or stolen produce is concealed in any building, hut, kraal, or enclosure, to search or to grant written authority to any person applying for the same, to search such building, hut, kraal or enclosure at any time during the day or night: Provided that any landowner shall in respect of building or huts upon his own land be entitled to exercise all the powers conferred by this section upon the officers herein before mentioned.

34. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apply for, obtain, and act upon such written authority as aforesaid, or wrongfully and maliciously, or without probable cause exercise the powers of search conferred by the last preceding section, shall be liable to a fine not exceeding twenty pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and shall also be liable to pay to the person lawfully in occupation of the building, hut, kraal or enclosure in question, when the same was searched, such sum not exceeding fifty pounds for damages as any competent court may award.

35. The Resident Magistrate of the district in which any building, hut, kraal or enclosure wrongfully searched as aforesaid is situated shall have jurisdiction to impose the penalty and to award the damages in the last preceding section provided. But nothing in this or the last preceding section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy allowed by law in lieu of the remedy under this Act.

36. It shall not be lawful for any person to purchase or sell for purposes of trade, any produce between the hours of sunset and sunrise: Provided, however, that this prohibition shall not apply to any person purchasing or selling produce at any public sale.

37. Any person contravening the provisions of the preceding section of this Act shall, upon conviction, be liable to a penalty of not exceeding twenty pounds, or to imprisonment with or without hard labour not exceeding three months.

38. The provisions of the two preceding sections shall not apply to any contract for the purchase and sale of produce where the purchase price paid or agreed to be paid for the said produce shall amount in value to the sum of fifty pounds sterling or upwards.

40. This Act may be cited for all purposes as "The Stock and Produce Theft Repression, Consolidation Act, 1893."

SCHEDULE.

LAWS REPEALED.

| Number and Year. | Title.   | Extent of Repeal.              |
|------------------|--|--------------------------------|
| Act 16 of 1864   | The Cattle Theft Repression Act, 1864.   | So much as remains unrepealed. |
| Act 9 of 1867    | An Act to amend the Law relating to the Trial and Punishment of Criminals for Theft and for receiving Stolen Goods knowing the same to have been stolen. | Sections 2, 3, and 4.          |

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| Act 17 of 1867 | The Cattle Theft Repression Amendment Act, 1867.                   | The whole.  |
| Act 17 of 1874 | The Criminal Law Amendment Act, 1874.                              | Section 1.  |
| Act 21 of 1876 | The Resident Magistrates' Court Act, 1876.                         | The words between " 1856 " and " shall " in the 2nd and 3rd lines of the <i>fourth</i> section and the whole of the <i>sixth</i> section. |
| Act 18 of 1879 | The Cattle Thefts Extended Punishment Act, 1879.                   | The whole.  |
| Act 32 of 1883 | The Ostrich Feathers and Skins Theft Repression Act, 1883.         | Sections 5, 6, and 7.   |
| Act 19 of 1884 | The Wool, Mohair, and Carcasses Theft Repression Act, 1884.        | The whole.  |
| Act 13 of 1885 | The Ostrich Feathers and Skins Theft further Repression Act, 1885. | The whole.  |
| Act 33 of 1891 | The Stock and Produce Theft Repression Act, 1891.                  | The whole.  |