

# BECHUANALAND PROTECTORATE.

No. 11 of 1925.

[Promulgated 17th April, 1925.]

## PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Empowering Courts of the Bechuanaland Protectorate in criminal cases to make orders in certain circumstances for the restitution of stolen property and the compensation of purchasers thereof.

Whereas it is expedient to empower Courts of the Bechuanaland Protectorate in criminal cases to make orders in certain circumstances for the restitution of stolen property and the compensation of purchasers thereof:

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

1. When any person has been convicted by a competent Court of theft or of any offence whereby he has unlawfully obtained any property, and it appears to the Court by the evidence that he sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained and that money has been taken from the convicted person on his apprehension, the Court may, on the application of such purchaser and on restitution of such property to its owner, order that, out of the money so taken from the prisoner and belonging to him, a sum, not exceeding the amount of the proceeds of the sale, be delivered to such purchaser.

2. (1) If any person is convicted of theft or receiving stolen property, knowing it to have been stolen, or otherwise unlawfully obtaining any property, such property may be restored to the owner or his representative on application by him to the Court.

(2) In every such case the Court before which such person is tried for any such offence shall have power to award from time to time writs of restitution in respect of the said property or to order the restitution thereof in a summary manner.

(3) If it appears, before any award is made, that any valuable security has been bona fide paid or discharged by any person liable to the payment thereof or, being a negotiable instrument, has been bona fide taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that the same had by any offence been stolen or otherwise unlawfully obtained, or if it appears that the property stolen or received as aforesaid or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the Court shall not award or order the restitution of such security or property.

3. The Court may, after the conclusion of any trial and subject to any special provision contained in any law, make a special order as to the return to the person entitled thereto of the property in respect of which the offence was committed or of any property seized or taken under this Proclamation or produced at the trial. If no such order is made, the property shall on application, be returned to the person from whose possession it was obtained after deduction of the expenses incurred since the conclusion of the trial in connexion with the custody of the property; but if within a period of three months after the conclusion of the trial no application is made under this section for the return of the property or if the person applying does not pay the expenses aforesaid, the property shall vest in the Crown.

4. (1) Any award or order of restitution made under this Proclamation may be made subject to the applicant giving security *de restituendo* in case the award or order be reversed on appeal or review.

(2) The Court may in any case refer a party applying for compensation under this Proclamation to his remedy under the ordinary law.

(3) Where any such award or order is made against two or more persons it shall be joint and several.

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

GOD SAVE THE KING.

Given under my Hand and Seal at Capetown this Seventh day of April One thousand Nine hundred and Twenty-five.

ATHLONE,  
High Commissioner.

By Command of His Excellency the  
High Commissioner.

B. E. H. CLIFFORD,  
Imperial Secretary.