

## BECHUANALAND PROTECTORATE.

No. 27 of 1935.

(Promulgated 17th May, 1935.)

### PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Entitled the Bechuanaland Protectorate Stock Theft  
Proclamation, 1935.

Whereas it is expedient to consolidate and amend the laws in force in the Bechuanaland Protectorate (hereinafter styled the Territory) relating to the theft of stock and produce:

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

1. A person who is found in recent possession of stock or produce in regard to which there is reasonable suspicion that the same has been stolen and is unable to give a satisfactory account of such possession shall be deemed to be guilty of an offence.

2. A person who in any manner, otherwise than at a public sale, acquires or receives into his possession from any other person stolen stock or stolen produce without having reasonable cause, proof of which shall be 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 authorized by the owner thereof to deal with it or dispose of it, shall be deemed to be guilty of an offence.

3. (1) A person who in any manner enters any land enclosed on all sides with a sufficient fence, or any kraal with intent to steal any stock or produce on such land or in such kraal shall be guilty of an offence.

(2) Where a person is found on any such land or in any kraal, then, unless

- (a) he satisfies the Court that he had reasonable and lawful excuse for his presence there, or
- (b) he was proceeding along a road or thoroughfare traversing such land or part of such land,

the onus shall be on him to prove that he did not enter such land or kraal with intention to steal the stock or produce therein.

4. (1) A person who is charged with the theft of stock or produce may be found guilty of

- (a) the theft of, or an attempt to commit the theft of, such stock or produce; or
- (b) receiving such stock or produce knowing the same to have been stolen; or
- (c) inciting, instigating, commanding or procuring another person
  - (i) to steal such stock or produce; or
  - (ii) to receive such stock or produce; or
- (d) knowingly disposing of, or knowingly assisting in the disposal of, stock or produce which has been stolen or which has been received with knowledge of it having been stolen; or
- (e) contravening section one or two of this Proclamation.

(2) A person charged with the theft of stock or produce belonging to a particular person may be found guilty of any of the offences mentioned in the preceding sub-section, notwithstanding the fact that the prosecution has failed to prove that such stock or produce actually did belong to such particular person.

5. Any person who for purposes of trade makes or accepts delivery between the hours of sunset and sunrise of any stock or produce sold or purchased or otherwise disposed of or acquired by him in any other manner than at a public sale shall be guilty of an offence.

6. (1) In addition to any powers of arrest conferred by any other law, any person may, without warrant, arrest any other person upon reasonable suspicion that such other person has committed the offence mentioned in section *one* or *three* of this Proclamation.

(2) Whenever any Justice of the Peace, member of a Police Force, or owner, lessee or occupier of land reasonably suspects that any person has in or under any receptacle or covering, or in or upon any vehicle any stolen stock or produce, such Justice of the Peace, member of a Police Force, owner, lessee or occupier may without warrant search such receptacle or vehicle and remove such covering, and if he thereupon finds any stock or produce which he reasonably suspects to have been stolen he may without warrant arrest such person and shall as soon as possible convey him and the stock or produce so found to a police station or charge office.

7. (1) A person who under colour of this Proclamation wrongfully and maliciously or without probable cause arrests any other person or effects any search shall be deemed to be guilty of an offence.

(2) In any charge under this section the onus of proof that the arrest or search which is the subject of the charge was not wrongful and malicious or without probable cause shall be upon the accused.

(3) Nothing in this section contained shall be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest.

8. Notwithstanding anything to the contrary contained in any law relating to Magistrates' Courts or in any other law, such Courts shall have special jurisdiction in cases of a conviction for the offences (a), (b), (c) or (d) mentioned in section *four* of this Proclamation to impose:

(a) on a first conviction

- (i) imprisonment for any period not exceeding twelve months, or
- (ii) a fine not exceeding £200, or
- (iii) both such fine and imprisonment for a period not exceeding twelve months;

(b) on a second or subsequent conviction

- (i) imprisonment for any period not exceeding two and a half years, or
- (ii) imprisonment with spare diet or solitary confinement or both for any period not exceeding three months, or
- (iii) whipping not exceeding fifteen strokes in number, or
- (iv) both such whipping and such imprisonment.

9. A person who contravenes any of the provisions of this Proclamation for which no penalty is otherwise provided shall on conviction be liable to a fine not exceeding one hundred pounds or to imprisonment not exceeding one year or to both such fine and such imprisonment.

10. (1) In all cases of a conviction for the offences (a), (b), (c) or (d) mentioned in section *four* of this Proclamation in which

- (a) the court is satisfied that the stock or produce which forms the subject matter of the charge is the property of some particular person;
- (b) such stock or produce has not been recovered, or, if recovered, is worth less than its market value at the time of the theft; and
- (c) the owner of such stock or produce does not apply under the provisions of the Bechuanaland Protectorate Criminal Procedure and Evidence Proclamation, 1933 (No. 20 of 1933) for compensation,

the court shall in addition to any sentence which it may impose, impose on the person so convicted a fine not exceeding the full market value of such stock or produce at the time when the theft was committed if the said stock or produce has not been recovered, or, if the said stock or produce or

portion thereof has been recovered, a fine not exceeding the difference between the market value of the said stock or produce when the theft was committed and its value when recovered, and in default of payment at the expiration of the sentence, imprisonment for a further period not exceeding twelve months.

(2) Such fine may be recovered in the manner provided by section *two hundred and ninety-three* of the Bechuanaland Protectorate Criminal Procedure and Evidence Proclamation, 1933 (No. 20 of 1933), and any amount so recovered shall be paid to the owner of the stolen stock or produce subject to the said owner giving security *de restituendo* in case the judgment of the said court be reversed on appeal or review.

(3) The provisions of this section shall not apply to the case of any person sentenced to detention in a juvenile reformatory or juvenile adult reformatory or to whipping without imprisonment unless it be proved that such person has the means of satisfying any fine imposed thereunder.

11. The provisions of this Proclamation shall apply in every case where an accused is indicted, summonsed or charged in respect of the theft of stock or produce, notwithstanding the fact that this Proclamation be not referred to in such indictment, summons or charge.

12. In this Proclamation

“ produce ” means the whole or any part of any skins, hides or horns of stock, any wool, mohair or ostrich feathers;

“ public sale ” means a sale effected

(a) on any public market, or

(b) by any shopkeeper during the hours when his shop may by any law in force remain open for the transaction of business, or

(c) by a duly licensed auctioneer at a public auction, or

(d) in pursuance of an order of a competent court;

“ stock ” means any horse, mule or ass; any bull, cow, ox, heifer or calf; any sheep, goat, pig or poultry or any domesticated game, or the carcass or the portion of the carcass of any such stock;

“ sufficient fence ” when applied to wire fences means 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.

13. The provisions of Proclamation No. 3 of 1912 applying the Stock and Produce Theft Repression Consolidation Act, 1893 (Act No. 35 of 1893) of the Colony of the Cape of Good Hope and of Proclamation No. 7 of 1919 applying the Stock and Produce Theft Repression Amendment Act, 1905 (Act No. 7 of 1905) and the Stock and Produce Theft Repression Amendment Act, 1907 (No. 3 of 1907) of the Colony of the Cape of Good Hope shall be and are hereby repealed.

14. This Proclamation may be cited for all purposes as the Bechuanaland Protectorate Stock Theft Proclamation, 1935, and 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 Tenth day of May One thousand Nine hundred and Thirty-five.

W. H. CLARK,  
High Commissioner.

By Command of His Excellency the  
High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.