

BECHUANALAND PROTECTORATE.

No. 45 of 1943.

(Promulgated 24th December, 1943.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Entitled the Bechuanaland Protectorate Bills of Exchange (Amendment) Proclamation, 1943.

Whereas it is expedient to amend the Bills of Exchange Act, 1893 (Act No. 19 of 1893), of the Colony of the Cape of Good Hope (as in force in the Bechuanaland Protectorate), hereinafter referred to as "the principal law":

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

1. Section *eighty* of the principal law, as in force in the Territory, is hereby repealed and the following section is substituted therefor:—

" True owner of stolen or lost crossed cheque marked 'not negotiable' entitled to compensation from certain subsequent possessors.

80. (1) If a cheque has been stolen or lost while it was crossed as hereinbefore provided, and while it bore on it the words 'not negotiable', and it has been paid by the banker upon whom it is drawn under circumstances which do not render such banker liable in terms of this Act to the true owner of the cheque for any loss he may sustain owing to the cheque having been paid, the true owner shall, if he has suffered any loss as a result of the theft or loss of the cheque, be entitled to recover from any person who has been the possessor thereof after the theft or loss, and either gave a consideration therefor or took it as a donee, an amount equal to the true owner's said loss, but not exceeding the amount of the cheque.

(2) A person who has after the theft or loss paid any such cheque into his account with a banker after having paid or for the purpose of paying the amount of the cheque or part thereof to the person from whom he received the cheque, or on his direction, to any other person, shall, for the purposes

New section 80 of Cape Act No. 19 of 1893.

of sub-section (1), be deemed to have been a possessor of the cheque and to have given a consideration therefor:

Provided that the foregoing provisions of this sub-section shall not apply to a collecting banker employing another banker as his agent for the collection of any such cheque.

(3) Any person who has received any such cheque into his possession or custody after the theft or loss, and who fails to furnish the true owner or any person who has in terms of sub-section (7) the rights of a true owner, at his request, with any information at his disposal in connection with the cheque, shall for the purposes of sub-section (1) be deemed to have been a possessor of the cheque and either to have given a consideration therefor or to have taken it as a donee.

(4) Every possessor of any such cheque shall, for the purposes of this section, and until the contrary is proved, be deemed either to have given a consideration therefor or to have taken it as a donee.

(5) For the purposes of sub-section (1) a banker who receives payment of any such cheque for a customer shall, subject to the provisions of sub-section (3), not be deemed to have given a consideration therefor, merely because he has in his own books credited his customer's account with the amount of the cheque before receiving payment thereof, or because any such payment is applied towards the reduction or settlement of any debt owed by the customer to the banker.

(6) If in any action under this section the defendant proves that when he became the possessor of the cheque, it did not appear to be crossed or to have had a crossing which has been obliterated and to bear on it the words 'not negotiable', or to have borne on it any words which might have been the words 'not negotiable' and have been obliterated, he shall, subject to the provisions of sub-section (3) not be held liable under this section.

(7) A person who has discharged his liability under sub-section (1) or under this sub-section, and who took the cheque in good faith and without notice of any defect in the title of the transferor, shall as against any prior possessor of the cheque, who became a possessor thereof after the theft or loss and either gave a consideration therefor or took it as a donee, have the rights conferred upon a true owner by sub-section (1).

(8) In this section the giving of a consideration includes the receiving of any such cheque in reduction or settlement of any debt or liability."

2. Section *eighty-one* of the principal law, as in force in the Territory, is hereby repealed and the following section is substituted therefor:—

New section
81 of
Cape Act
No. 19 of
1893.

"Sections
74 to 80 to
extend to
documents
other than
cheques,
crossed
for like
object.

81. Section *seventy-four* to and including *eighty* shall extend to any document issued by a customer of any banker and intended to enable any person to obtain payment on demand from such banker (or from any banker if the document was issued on behalf of the Bechuanaland Protectorate Government) of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque; and the said sections shall *mutatis mutandis* also extend to any document which—

(a) was issued on behalf of the Bechuanaland Protectorate Government;

(b) is drawn upon or addressed to a servant of the Bechuanaland Protectorate Government (hereinafter in this section called the drawee); and

(c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a banker,

as if the said document were a cheque and as if the drawee were a banker and the Bechuanaland Protectorate Government his customer:

Provided that nothing herein contained shall be deemed to render any such document a negotiable instrument."

Short title. 3. This Proclamation may be cited as the Bechuanaland Protectorate Bills of Exchange (Amendment) Proclamation, 1943.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Fifteenth day of December One thousand Nine hundred and Forty-three.

HARLECH,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.