

## No. XXX.

An Act to repeal an Act intituled “*An Act to give a preferable Lien on Wool from season to season and to make Mortgages of Sheep Cattle and Horses valid without delivery to the Mortgagee*” and to substitute for a limited time other provisions in lieu thereof. [Reserved—8th November, 1845.]

LIENS ON WOOL.

WHEREAS it is expedient that an Act passed in the seventh year Preamble. of Her Majesty's reign intituled “*An Act to give a preferable Lien on Wool from season to season and to make Mortgages of Sheep Cattle and Horses valid without delivery to the Mortgagee*” should be repealed and that other provisions be made in lieu thereof. Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That so soon as this Act shall take effect the said recited Act and every matter and clause therein shall be and hereby is repealed except as to any matter or thing previously done or commenced to be done under the provisions thereof which shall be as valid and effectual in law as if this Act had not been passed.

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Any person making a *bona fide* advance to any proprietor of sheep on condition of receiving in payment or as security for such advance the wool of the then next ensuing clip and duly registering the agreement relative thereto shall be entitled to the whole of the wool mentioned in such agreement whether such advance be made before at or after the granting of such preferable lien.

When advance repaid property and possession of the wool to revest in the proprietor of the sheep.

Agreement in form herein specified for any *bona fide* advance on security of ensuing clip of wool registered as herein mentioned valid against subsequent purchaser &c. of sheep.

Mortgage of live stock *bona fide* made for valuable consideration executed and registered as herein mentioned valid although the principal sum not presently payable and although stock remain in possession of mortgagor.

2. And be it enacted That in all cases where any person shall make any *bona fide* advance of money or goods or give any valid promissory note or bill to any proprietor of sheep on condition of receiving in payment or as security only for such money goods promissory note or bill (as the case may be) the wool of the then next ensuing clip of such proprietor and where the agreement relating to such purchase or security shall be made in the form or to the effect in Schedule A appended to this Act and shall be duly registered within thirty days after the date of such agreement by leaving in the office of the Registrar General of the said Colony or of the Deputy Registrar of the Court at Port Phillip a true copy thereof duly verified on oath before the said Registrar General or Deputy Registrar of the Court at Port Phillip or before any other public officer who may be duly authorized to administer an oath in that behalf within the jurisdiction where the proprietor of the said wool shall be resident the person making such purchase or advance shall be entitled to the whole of the wool mentioned in such agreement whether such advance of money or goods or of such note or bill be before at or after the granting of any such preferable lien so long as the registered agreement relating thereto shall purport on the face of it to have been made in payment or as security for such advance and the possession of such wool by the said proprietor shall be to all intents and purposes in the law the possession of the person or persons making such purchase or advance Provided that when at any time such advance be repaid with such interest and commission as may be specified in any such agreement the possession and property of the said wool shall revest in such proprietor.

3. And be it enacted That when any person shall make any such *bona fide* advance or purchase as aforesaid the preferable lien of the licensee making the same on the wool of the then next ensuing clip of such proprietor shall not be in anywise extinguished suspended impaired or otherwise prejudicially affected by any subsequent sale mortgage or other incumbrance whatsoever of the sheep mentioned and described in the registered agreement relating to any such preferable lien nor by the subsequent insolvency of the lienor but shall be as valid and effectual to all intents and purposes whatsoever against any such subsequent purchaser mortgagee incumbrancer or other claimant or possessor of the said sheep or against the trustees or assignees of such insolvent lienor as against the original proprietor thereof who granted such preferable lien Provided that if any such lienor subsequent mortgagor incumbrancer trustee or other claimant or possessor of such sheep shall neglect or refuse to shear and deliver the wool of any sheep for which any such preferable lien shall have been granted as aforesaid in pursuance of the agreement in that behalf contained in such preferable lien it shall be lawful for the licensee his executors administrators or assigns to take possession of the sheep bearing such wool for the purpose of washing and shearing the same and all expenses attending such shearing and the conveyance of the wool to the place of abode of such licensee shall be incorporated with and be deemed in law part of the amount secured by such lien.

4. And be it enacted That all mortgages of sheep cattle and horses which shall hereafter be made *bona fide* and for valuable consideration and where the names of the parties thereto and the particulars thereof shall be duly registered within thirty days after the date thereof in the office of the Registrar General or Deputy Registrar of the Court at Port Phillip according to the jurisdiction wherein the proprietor of such mortgaged live stock shall be resident in the form mentioned in Schedule B appended to this Act shall be valid in the law to all intents and purposes whether the money secured by the said mortgage be payable presently or not and notwithstanding the said

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said mortgaged live stock shall not be delivered over to the mortgagee but shall remain and continue in every respect as theretofore in the possession order and disposition of the said mortgagor and though the said mortgagor afterwards take the benefit of any law now or hereafter to be in force in the said Colony for the relief of bankrupt or insolvent debtors Provided that no mortgage shall protect the same from the operation of any such law unless such mortgage shall have been executed at least sixty days before the date of the order for sequestration or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

5. And be it enacted That the Registrar General or Deputy Registrar of the said Court shall keep a separate and distinct registry from year to year of all such agreements for such purchases of wool or advances thereon and shall also keep a separate and distinct registry of the particulars of all such mortgages of sheep cattle and horses as aforesaid and shall be entitled to demand for every such registry thereof a fee of two shillings and sixpence and one shilling for each affidavit sworn before them or made in verification thereof and all persons shall have access to either of the said registries and may search the same during the usual hours of business on paying for each search a fee of one shilling.

6. And be it enacted That at the end of twelve calendar months next after the expiration of the year for which any such preferable lien upon wool shall have been given as aforesaid the Registrar General or his Deputy or the Deputy Registrar of the Court at Port Phillip may remove from the records of their respective offices all such preferable liens and may destroy or cancel the same or at any time at the request of both parties to any such preferable liens may enter satisfaction on the same.

7. And whereas it is expedient with a view to increase the public confidence in the validity of such preferable liens on wool and mortgages of live stock to surround them with the penal provisions necessary for the punishment of frauds Be it enacted That any grantor of any such preferable lien on wool or of any mortgage of sheep cattle or horses and of their increase and progeny under this Act whether such grantor shall be principal or agent who shall afterwards by the sale or delivery of the wool under any such lien without the written consent of the licensee to any purchaser pawnee or other person or by selling steaming or boiling down or causing to be sold steamed or boiled down without such written consent as aforesaid the sheep whercon the same shall be growing with a view to defraud such licensee of such wool or of the value thereof or who shall after the due execution and registry of any such mortgage without the written consent of the mortgagee thereof sell and dispose of or steam or boil down or cause to be sold and disposed of or to be steamed or boiled down any sheep cattle or horses or their increase or progeny or who shall in any way or by any means whatsoever or howsoever directly or indirectly destroy defeat invalidate or impair or any other person or persons who shall wilfully and knowingly incite aid or abet any such grantor directly or indirectly to defeat destroy invalidate or impair the right of property of any licensee in the wool of any sheep mentioned and described in any such registered agreement as aforesaid or the right of property of any such mortgagee as aforesaid in any sheep cattle or horses or their increase and progeny mentioned in any mortgage duly executed and registered as aforesaid under the provisions of this Act shall be severally held and deemed guilty of an indictable fraud and misdemeanor and being thereof duly convicted shall be severally liable in *Penalties.* the discretion of the Judge or Court before whom any such offender shall

Separate and distinct registry from year to year to be kept of agreements for purchases of or advances on wool and of mortgages of live stock.

When and how preferable liens on wool may be cancelled.

To increase public confidence in liens on wool and mortgages of live stock expedient to punish frauds.

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shall be so convicted to fine or imprisonment or to both fine and imprisonment for any period not exceeding three years with or without hard labor at the discretion of such Court or Judge.

**Rights of the Crown  
as to waste lands  
not affected.**

8. And be it enacted That nothing in this Act contained shall be construed to affect in any way the rights or prerogative of the Crown as to any waste lands described in any such liens or mortgages as the lands or stations where any such sheep horses or cattle may be depasturing.

**Duration of Act.**

9. And be it enacted That this Act shall continue in force until the thirty-first day of December in the year one thousand eight hundred and forty-eight and no longer.

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**SCHEDULES REFERRED TO.**

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**A.**

IN consideration of £ *bonâ fide* value for which I admit to have received in (*money or goods or promissory note or notes or bill or bills or all or any of these as the case may be*) from A. B. of I do hereby give the said A. B. a preferable lien (to the extent of the said advance) on the wool of the ensuing clip to be shorn from my flocks of sheep consisting in number of or thereabouts and now depasturing at in the said Colony under the superintendence of It is further agreed that the said sheep shall be shorn by me or at my expense and that the wool thereof shall be delivered by me at to the order of the said A. B.

Dated

day of

A.D.

Witness—

(Signed)

C. D.

N.B.—If the money or goods promissory note or notes bill or bills advanced be for the absolute purchase of the wool instead of the words in the brackets “to the extent of the said advance” insert the words “for the absolute purchase and whole value thereof.”

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**B.**

Date of Deed.	Name of Mortgagor.	Name of Mortgagee.	Consideration.	Numbers and description of mortgaged Sheep Cattle or Horses and the brand or other distinctive mark and Stations where the same are depasturing as also the name of the principal Superintendent or Overseer.
	Name of Witness or Witnesses.			