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*Liens on Crops and Wool and Stock Mortgages.*


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## Act No. 7, 1898.

LIENS ON CROPS  
AND WOOL AND  
STOCK MORTGAGES.

An Act to consolidate Enactments relating to  
Liens on Crops and Wool and Stock Mort-  
gages. [27th July, 1898.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Liens on Crops and Wool and Stock Mortgages Act of 1898," and is divided into Parts as follows:—

PART I.—*Repeal.*

PART II.—*Lien on Crops.*

PART III.—*Lien on Wool and Stock Mortgages.*

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PART I.

*Repeal.*

Repeal.

2. The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

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PART II.

*Lien on Crops.*

Interpretation.

26 Vic. No. 10, s. 1.

3. In this part of this Act—

"agricultural produce" includes wheat, maize, sorghum, barley, oats, lucerne, and grass, whether for hay or grain, cotton, tobacco, rice, sugar-cane, and other agricultural produce;

"horticultural produce" means oranges and grapes, whether as fruit or for wine, and fruit of any other kind.

Lien on yearly crops.

*Ibid.* s. 2.

4. In all cases where any person makes any bona fide advance of money or goods to any holder of land on condition of receiving as security for the same the growing crop or crops of agricultural or horticultural produce on any such land, and where the agreement relating to such security is made in the form or to the effect of the Second Schedule hereto, and purports on the face of it to have been made as security for such advance, and is duly registered within thirty days after its date in the office of the Registrar-General in Sydney, the person making such

Second Schedule.

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such advance, whether before, at, or after the date of such agreement, shall have a preferable lien upon, and be entitled to the whole of such crop and the whole produce thereof, and possession thereof by the lienor shall be to all intents and purposes in the law the possession of the lienee, and when such advance is repaid with interest specified in such agreement the possession and property of such crop shall revert to and vest in the lienor.

5. No such lien duly made and registered shall be extinguished or otherwise prejudicially affected by the death or bankruptcy of the lienor, nor by any sale or mortgage of, or other incumbrance upon the land on which any such crop is growing. And if such lienor, his executors, administrators, or assigns, neglects or refuses either to pay off the whole of such advance with interest as agreed upon, or to give up such crop to the lienee thereof in pursuance of the agreement, such lienee, his executors, administrators, or assigns, may enter into possession of such crop, and may gather, and carry away and sell the same, and may apply the proceeds in paying himself such advance, with interest as aforesaid, and all expenses of gathering, carrying away, making marketable, and selling any such crop, and shall pay the balance to the lienor his executors, administrators, or assigns.

Lien not affected by sale, &c., of land. 26 Vic. No. 10, s. 3.

6. If the lienor be a leaseholder then the lienee shall, before selling any such crop, pay to the landlord of the land whereon such crop is growing such sum of money not exceeding one year's rent as may be due to him for rent at the time of carrying away such crop, and the lienee may repay himself the sum so paid out of the proceeds of the sale of such crop before paying over the balance to the lienor.

Lienee to pay rent of leased land before selling crop. *Ibid.*

7. If at the time of making any such lien there is in force a mortgage of the land whereon the crop subject to the lien is growing, and the land is at the time of harvesting such crop in the occupation of the mortgagee, the lienee shall, before selling any such crop, pay to the mortgagee the amount of interest (not, however, exceeding twelve months' interest) due upon such mortgage at the time of carrying away or selling such crop; and the lienee may repay himself the sum so paid for interest out of the proceeds of the sale of such crop before paying over the balance to the lienor.

Lienee to pay interest to mortgagee of land before selling crop. *Ibid.*

8. The Registrar-General shall keep a separate alphabetical registry of all agreements within the fourth section of this Act, and shall be entitled for every entry in such registry to a fee of two shillings and sixpence, and to a fee of one shilling for each affidavit sworn in his office in verification of any such agreement; and any person shall have access to such registry, and may search the same during the usual hours of business on paying a fee of one shilling for each search.

List in registry open to inspection. *Ibid.* s. 4.

9. No lien under this Part of this Act shall continue in force for more than one year from the date thereof, and the Registrar-General, at the request of both parties, shall at any time enter satisfaction thereon.

Duration of lien. *Ibid.* s. 5.

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Penalties for frauds  
on lienee.  
26 Vic. No. 10, s. 6.

**10.** Any lienor, whether principal or agent, who, by sale or delivery of any crop affected by such lien, or of any part thereof, without the written consent of the lienee, or by any other means defrauds such lienee of such crop or the value thereof, or any part thereof, and thus or by any means directly or indirectly defeats, invalidates, or impairs his right of property in the same, shall be deemed guilty of a misdemeanour, and shall be liable on conviction to a fine not exceeding three times the amount of the loss thereby sustained, or to imprisonment with or without hard labour for any period not exceeding three years.

## PART III.

*Liens on wool and stock mortgages.*

Right of lienee to  
wool as security or  
in payment.  
11 Vic. No. 4, s. 2.

Third Schedule.

Registration.

Possession.

**11.** In all cases where any person makes any bona fide advance of money or goods, or gives 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 is made in the form or to the effect in the Third Schedule appended to this Act, and purports on the face of it to have been made in payment or as security for such advance, and is duly registered within thirty days after the date of such agreement by leaving in the office of the Registrar-General in Sydney a true copy thereof, duly verified on oath before the said Registrar-General or before any other public officer duly authorised to administer an oath in that behalf, 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 is made before, at, or after the granting of any such preferable lien; and the possession of the wool by such proprietor shall be, to all intents and purposes in the law, the possession of the person making such purchase or advance; and when such advance is repaid, with such interest and commission as may be specified in any such agreement, the possession and property of the said wool shall revert in such proprietor.

Right of lienee to  
ensuing clip of wool.  
*Ibid.* s. 3.

**12.** (1) Where any person makes any bona fide purchase or advance, as in the last preceding section mentioned, the preferable lien of the lienee making the same on the wool of the 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 bankruptcy of the lienor, but shall be

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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 bankrupt lienor as against the original proprietor thereof who granted such preferable lien.

(2) If any such lienor, subsequent mortgagee, or incumbrancer, trustee, or other claimant or possessor of such sheep neglects or refuses 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 provisions in that behalf contained in such registered argeement, it shall be lawful for the lienee, 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 washing and shearing and conveyance of the wool to the place of abode of such lienee shall be incorporated with and be deemed in law part of the amount secured by such lien.

If lienor, &c., neglects to shear lienee may take possession and shear.  
11 Vic. No. 4, s. 3.

13. 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 in the form mentioned in the Fourth Schedule hereto shall be valid in the law to all intents and purposes whether the money secured by the said mortgage is payable presently or not, and notwithstanding that the said mortgaged live-stock are not delivered over to the mortgagee, but remain and continue in every respect, as theretofore, in the possession, order, and disposition of the said mortgagor, and though the said mortgagor afterwards takes the benefit of any law now or hereafter to be in force in New South Wales for the relief of bankrupt debtors:

Right of mortgagee although possession in mortgagor.  
*Ibid.* s. 4.  
Fourth Schedule.

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.

Proviso.

14. It shall be lawful for any mortgagor of sheep with the consent in writing of the mortgagee thereof, but not without such consent, to make and give a valid lien on the next ensuing clip of the wool of such sheep.

Mortgagor of sheep may with consent of mortgagee give lien.  
31 Vic. No. 24, s. 2.

15. All liens on wool, and all mortgages of sheep, cattle, or horses shall be transferable by indorsement, and every indorsee thereof shall have the same, right, title, and interest therein respectively as the original lienee or mortgagee.

Liens and mortgages transferable by endorsement.  
14 Vic. No. 24, s. 2.

16. The Registrar-General may prescribe the form and size of all writings to be registered under this Act, and shall keep a separate and distinct registry from year to year of all agreements for purchases

Particulars of registration by Registrar.  
11 Vic. No. 4, s. 15.  
Of 7 Vic. No.16, s. 15.

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of wool or advances thereon as aforesaid, 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 him or made in verification thereof; and any person 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.

Cancelling of liens.  
11 Vic. No. 4, s. 6.

**17.** At the end of twelve months next after the expiration of the year for which any preferable lien on wool has been given as aforesaid, the Registrar-General may remove from the records of his office such preferable lien, and may destroy or cancel the same, or at any time at the request of both parties to any such preferable lien may enter satisfaction on the same.

Registration of satisfaction of mortgage.  
14 Vic. No. 24, s. 3.

**18.** In every case where the amount of principal and interest, or of the balance of principal and interest due upon any mortgage of sheep, cattle, or horses is paid to the person entitled to receive the same, or his agent in that behalf, and a receipt in writing for the amount so paid is given, signed by the person so entitled, or by his agent acknowledging such payment to be in satisfaction of the mortgage, the mortgagor, his executors, administrators, or assigns may cause a copy of such receipt, duly verified by affidavit, to be registered in the office of the Registrar-General, on production to him of the original receipt and of the mortgage deed to which the same relates; and from and after the time of the registration of such verified receipt such payment shall operate as an extinction of the mortgage, and of the right and interest thereby created, to all intents and purposes whatsoever, but without prejudice to any previous sale, or any conveyance in pursuance thereof, under such mortgage deed, and without prejudice to any second or subsequent mortgage affecting the same stock or any part thereof then duly registered, unless every party thereto, by writing under his hand at the foot of such receipt as aforesaid, has signified his assent to the registration of such receipt.

Saving of rights and prerogatives of the Crown.  
11 Vic. No. 4, s. 8.

**19.** Nothing in this Part contained shall be construed to affect in any way the rights or prerogative of the Crown as to any of the waste lands described in any such liens or mortgages as the lands or stations where any such sheep, horses, or cattle may be depasturing.

**20.** And whereas it is expedient, with a view to increase the public confidence in the validity of 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—

Frauds by lienor.  
*Ibid.* s. 7.

- (1) Any grantor of any preferable lien on wool under this Part, whether such grantor is principal or agent, who afterwards sells or delivers to any purchaser, pawnee, or other person, the wool under any such lien without the written consent of the

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- the lienee, or sells, steams, or boils down, or causes to be sold, steamed, or boiled down, without such written consent as aforesaid, the sheep whereon such wool is growing, with a view to defraud such lienee of such wool or the value thereof; or,
- (2) Any mortgagor of sheep, cattle, or horses, and their increase and progeny under this Part, whether such mortgagor is principal or agent, who, after the due execution and registry of any such mortgage, without the written consent of the mortgagee, sells and disposes of, or steams or boils down, or causes to be sold and disposed of, or to be steamed or boiled down, any sheep, cattle, or horses, or their increase or progeny, mentioned or described in any such mortgage; or,
- (3) Any such grantor or mortgagor, whether principal or agent, who in any way, or by any means whatever or howsoever, directly or indirectly, destroys, defeats, invalidates, or impairs or any other person who wilfully and knowingly incites, aids, or abets any such grantor or mortgagor, directly or indirectly, to defeat, destroy, invalidate, or impair the right of property of any lienee 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 Part shall be severally held and deemed guilty of an indictable fraud and misdemeanour and being thereof duly convicted shall be severally liable in the discretion of the Judge or Court before whom any such offender 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 labour, at the discretion of such Court or Judge.

Frauds by mortgagor.  
11 Vic. No. 4, s.7.

Frauds by lienor, mortgagor, or other person.  
*Ibid.*

Penalties.  
*Ibid.*

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## SCHEDULES.

## FIRST SCHEDULE.

Year and Number of Act.	Title of Act.	Extent of Repeal.
7 Vic. No. 16 . .	An Act to consolidate and amend the laws relating to the Registration of Deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	Such portions of secs. 8, 10, 15, 18, 20, 22, and Schedule B as relate to stock, mortgages of stock, and liens on wool.
9 Vic. No. 28 . .	An Act to give to valid mortgages of sheep, cattle, and horses priority for a limited period according to the date of the registration thereof, and for other purposes therein mentioned.	The whole.
11 Vic. No. 4 . .	An Act to repeal an Act intituled <i>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.</i>	The whole.
14 Vic. No. 24 . .	An Act to continue for three years from the thirty-first day of December next, and from thence until the end of next Session of the Legislative Council, an Act intituled <i>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.</i>	The whole.
16 Vic. No. 11 . .	An Act to give effect to Liens on Wool and mortgages on sheep, cattle, and horses.	The whole.
19 Vic. No. 4 . .	An Act to continue the Lien on Wool Act for a period of five years.	The whole.
23 Vic. No. 9 . .	An Act to make permanent the Lien on Wool Act	The whole.
26 Vic. No. 10 . .	An Act to legalize Preferable Liens on yearly crops.	The whole.
31 Vic. No. 24 . .	An Act to amend the law relating to Preferable Liens on Wool and mortgages of sheep.	The whole.

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SECOND SCHEDULE.

Section 4.

IN consideration of the advance of £                      paid to me in money by (or value for which I admit to have received in goods from) C.D., of                      , I do hereby give the said C.D. a preferable lien to the extent of the said advance on the crop (or crops) of [*here state the nature of the produce*] of this year, growing and to grow on the land [*here describe the land*] in New South Wales. It is further agreed that unless on or before the                      day of                      18                      , I pay to the said C.D. the sum of £                      with interest thereon at the rate of                      per centum per annum, the said crop (or crops) shall be gathered, carried away, and made marketable by me or at my expense, and shall be delivered at                      , to the said C.D. or his order, in which event he may sell the same by [*here state mode and conditions of sale*], and from the proceeds may pay himself the said sum and interest and all costs, and shall pay over to me the balance (if any), or if there be any deficiency may recover the same against me at law as any debt.

Dated                      day of                      18                      .

Witness—

(Signed) A.B. .

THIRD SCHEDULE.

Section 11.

IN consideration of £                      , bona fide value for which I admit to have received in (money or goods or promissory notes, bills, or all or any of these, as the case may be) from C.D., of                      , I do hereby give the said C.D. a preferable lien to the extent of the said advance and interest at the rate of                      per centum per annum, and commission at the rate of                      per centum 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 New South Wales, 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 C.D.

Dated                      day of                      18                      .

Witness—

(Signed) A.B.

N.B.—If the money, goods, promissory notes, or bills advanced be for the absolute purchase of the wool instead of the words "to the extent of the said advance," insert the words "for the absolute purchase and whole value thereof."

FOURTH SCHEDULE.

Section 13.

Date of deed.	Name of mortgagor.	Name of mortgagee.	Consideration.	Number 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—				