



WESTERN AUSTRALIA.

ANNO TRICESIMO.

VICTORIÆ REGINÆ.

NO. V.

AN ORDINANCE to give a preferable lien on Wool, from season to season, and to render Mortgages of Sheep, Cattle, and Horses valid, without delivery to the Mortgagee.

[9th July, 1866.]

WHEREAS it is expedient 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:—Be it therefore enacted, by His Excellency the Governor of Western Australia, and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

1 IN all cases where any person shall make any *bonâ fide* advance of money or goods, or give any valid promissory note, or bill of exchange, 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

Preferential lien on next ensuing clip of wool, for *bonâ fide* advances.

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On advance being repaid,
lien removed.

clip of such proprietor, and where the agreement relating to such purchase or security shall be made in the form, or to the effect, of the form in Schedule A, hereto annexed, and shall be duly registered within one month after the date of such agreement, if executed in any part of the said colony, except the North and East districts, and within three months if executed in such districts, by leaving in the Office of the Registrar Master and Keeper of Records of the Supreme Court a true copy thereof duly verified on oath before a Justice of the Peace of the said Colony, 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, note, or bill, and the possession of such wool, by the said proprietor, shall be, to all intents and purposes in Law, the possession of the person or persons making such purchase or advance or giving such note or bill: Provided, that when, at any time, such advance, note, or bill be 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; subject to any charge which may affect the same.

Agreement valid against
subsequent purchaser, if
duly registered.

2 WHEN any person shall make any such *bonâ fide* advance or purchase and cause such agreement to be registered as aforesaid, the preferable lien of the lienee 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, Official assignee, or assignees of such insolvent lienor, as against the original proprietor thereof, who granted such preferable lien; Provided, that if any such lienor, subsequent mortgagee, 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 lienee, his executors, administrators, or assigns, to take possession of the sheep bearing such wool, for the purpose of washing
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and shearing the same; and all expenses attending such shearing, and the conveyance of the said wool to the place of abode of such lienee or to the nearest place of shipment, shall be incorporated with, and be deemed in law, part of the amount secured by such lien.

3 ALL mortgages of sheep, cattle, and horses, which shall hereafter be made *bonâ fide*, and for valuable consideration, and where the names of the parties thereto, and the particulars thereof, shall be duly registered within one month after the date of such agreement if executed in any part of the said Colony, except the North and East districts and within three months if executed in such districts, in the office of the Registrar, Master, and Keeper of Records, in the form mentioned in Schedule B, annexed hereto, shall be valid in Law, to all intents and purposes, whether the money secured by the said mortgage be payable presently or not, and notwithstanding the said mortgaged sheep, cattle, or horses 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 be protected from the operation of any such law, unless such mortgage shall have been executed at least sixty days before the date of any fiat of insolvency, or vesting order, or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

Registered Mortgages of sheep and stock valid, though sheep, &c., remain in the possession of the Mortgagor.

4 ALL liens of wool or mortgages of sheep, cattle, or horses shall be transferable by indorsement, and every endorsee thereof shall have the same right, title, and interest therein respectively as the original lienee or mortgagee.

Indorsement, of Liens, &c.

5 ANY mortgagor of sheep, with the consent in writing of the mortgagee thereof, but not without such consent, may make and give a valid lien on the next ensuing clip of the wool of such sheep.

Lien, when may be granted by mortgagor.

6 THE Registrar, Master, and Keeper of Records shall keep a separate and distinct Registry, from year to year, of all such agreements for such purchase 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, the sum of Five shillings, and for every search the sum of One shilling.

The Registrar Master and Keeper of records of the Supreme Court to keep separate and distinct register of such mortgages.

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When and how preferable liens on wool may be cancelled.

7 THE Registrar, Master, and Keeper of Records, at any time after the registration of any such preferable lien as hereinbefore provided, may, at the request of both parties to any such preferable lien, and on payment of a fee of two shillings and sixpence, enter satisfaction for the same on the records of the office.

When the mortgage money has been paid, the mortgagor may register receipt, under certain conditions.

8 IN every case where, before or after the passing of this Ordinance, the amount of principal and interest, or of the balance of principal and interest, due upon any mortgage of sheep, cattle, or horses, shall have been, or shall be 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 shall have been, or shall be given, signed by the party so entitled, or by his agent, acknowledging such payment to be in satisfaction of the mortgage, it shall be lawful for the mortgagor, his executors, administrators, or assigns, to cause a copy of such receipt, duly verified by affidavit to be taken before any Justice of the Peace, to be registered at Perth, in the Office of the Registrar, Master, and Keeper of Records, on production to this Officer of the original receipt, and of the mortgage deed to which the same shall relate; and from and after the time of the registration of any 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 nevertheless to any previous sale or sales, or any conveyance in pursuance thereof, under such mortgage deed, the particulars whereof shall be duly endorsed thereupon; and without prejudice to any second or subsequent mortgage affecting the same sheep, cattle, or horses, or any part thereof, then duly registered, unless every party thereto, and every assignee thereof shall, by writing under his hand, at the foot of such receipt as aforesaid, have signified his assent to the registration of such receipt.

Rights of the Crown as to waste Lands, not affected.

9 NOTHING in this Ordinance contained shall be construed to affect in any way the rights or prerogatives 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, cattle, and horses may be depasturing.

Punishment of frauds, in case of sales, &c., of mortgaged sheep, &c.

10 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 sheep, cattle, and horses, 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, or of their increase or progeny, under

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under this Ordinance, 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 lienee, 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 whereon the same shall be growing, with a view to defraud such lienee of such wool, or of the value thereof, or who shall, after the due execution and registration 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 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 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, with intent in any such case to defraud the lienee or mortgagee, shall be severally held and deemed guilty of an indictable fraud and misdemeanor, 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 a fine or imprisonment, or to both fine and imprisonment for any period not exceeding Five years, with or without hard labor, at the discretion of such Court or Judge.

J. S. HAMPTON,

GOVERNOR AND COMMANDER-IN-CHIEF.

I.S.

*Passed the Legislative Council,
this 9th day of July, 1866.*

G. S. PASCOE,

Acting Clerk of the Council.

SCHEDULE.

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SCHEDULE A.

In consideration of £ _____ *bona fide* value for which I admit to have received [*in money or goods, or promissory note or notes, Bill or Bills, or all or any of these, as the case may be*] from A. B., of _____ in the Colony of Western Australia, 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 _____.

Witness.

Dated the &c.

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 brackets “to the extent of the said advance,” insert the words “for the absolute purchase and whole value thereof.”

SCHEDULE B.

	Date of deed or agreement.	Names of Mortgagor or Lienor, and of Witnesses.	Name of Mortgagee or Lienee.	Consideration. If for a preferable lien, state particulars of bill or notes, if any given.	Number and description of sheep, whose wool is pledged, or of mortgaged sheep, cattle or horses, and the brand or other distinguishing mark, and station where the same are depasturing, as also the name of the principal superintendent or overseer.