



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

No. 17.

An Act to give a preferable lien on Wool, from season to season, make Mortgages of Sheep, Cattle, and Horses valid, without delivery to the Mortgagee.

[Assented to 2nd January, 1852.]

*Special 1st Session
by No. 4 - 1852 - 6.*

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: Preamble.

Be it therefore Enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof, 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 ten days after the date of such agreement, 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 re-

Any person making a *bona fide* advance to any proprietor of sheep on condition of receiving in payment, or as security of 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 revert 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.

lating 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 revert in such proprietor.

2. And be it Enacted, That when any person shall make any such *bona fide* advance or purchase 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 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 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 shearing, and the conveyance of the wool to the place of abode of such lienee, shall be incorporated with, and deemed in law, part of the amount secured by such lien.

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 the mortgagor.

3. 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 ten days after the date thereof, in the office of the Registrar-General, 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 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 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 any fiat of insolvency or unless the

the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

4. And be it Enacted, That the Registrar-General or Deputy Registrar 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, the fees payable under the Ordinance No. 8, of the Fifth year of Her Majesty, to provide for the registration of deeds, wills, judgments, conveyances, and other instruments.

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.

5. And be it Enacted, That the Registrar-General, or his deputy, 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, enter satisfaction for the same on the records of the office.

When and how preferable liens on wool may be cancelled.

6. And be it Enacted, That in every case where, before or after the passing of this Act, the amount of principal and interest, or of the balance of principal and interest due upon any mortgage of live stock, 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 registered at Adelaide, in the office of the Registrar-General, on production to this officer, or his Deputy, 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 live stock, or any part thereof, then duly registered, unless every party thereto shall, by writing under his or her hand, at the foot of such receipt as aforesaid have signified his or her assent to the registration of such receipt.

In every case, before or after passing of this Act, in which amount of mortgage shall have been paid, mortgagor may register the receipt, but without prejudice to any previous sale or subsequent mortgage.

7. 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 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.

Rights of the Crown as to waste lands not affected.

8. And be it Enacted, That this Act shall take effect from the passing

Duration of Act.

passing thereof, and shall continue in force until the thirty-first day of December, in the year one thousand eight hundred and fifty-four, and no longer.

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

9. 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, or 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 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 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 (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 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.

Penalties.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this Twenty-fourth }
day of December, One Thousand Eight }
Hundred and Fifty-one.*

WM. B. GILBERT,
Pro Clerk of Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Lieutenant-Governor.

Government House, Adelaide,
2nd January, 1852.

SCHEDULES REFERRED TO.

A

In consideration of £ 2000 — 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 _____ 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 expence, 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 brackets "to the extent of the said advance," insert the words "for the absolute purchase and whole value thereof."

B

Date of Deed or Agreement.	Name of Mortgagor or Lienor.	Name of Mortgagee or Lienee.	Consideration. If for a preferable lien state particular of bills 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 distinctive mark, and stations where the same are depasturing, as also the name of the principal superintendent or overseer.
	Name of Witness or Witnesses.			