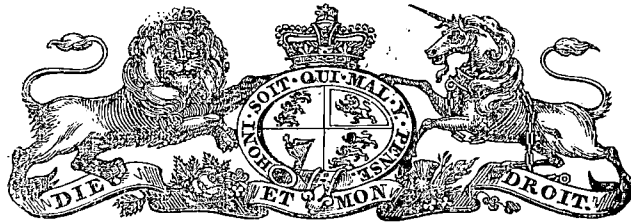


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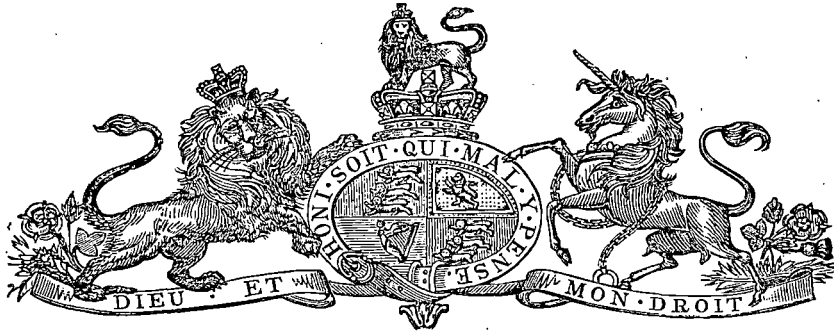
1890.

PARLIAMENT OF TASMANIA.

A BILL TO FACILITATE THE GRANTING OF LIENS
ON WOOL AND CROPS AND MORTGAGES
OF STOCK, (No. 10) :

REPORT FROM THE SELECT COMMITTEE, WITH MINUTES
OF THE PROCEEDINGS AND EVIDENCE.

Brought up by Mr. Fitzgerald, and ordered by the House of Assembly to be
printed, October 3, 1890.



*SELECT COMMITTEE appointed, on the 24th July, to consider and report upon
"A Bill to facilitate the granting of Liens on Wool and Crops, and Mortgages of
Stock."*

MEMBERS OF THE COMMITTEE.

MR. FEATHERSTONE.
MR. LEWIS.
MR. NICHOLAS BROWN.
MR. FITZGERALD.

MR. SUTTON.
MR. M'CALL.
MR. HARTNOLL.

DAYS OF MEETING.

Thursday, 4th September; Wednesday, 10th September; Friday, 26th September; Thursday, 2nd October;
Friday, 3rd October.

WITNESSES EXAMINED.

Mr. E. D. Dobbie (Crown Solicitor); Mr. John Mitchell (Solicitor); Mr. C. E. Webster (Merchant); Mr. Sutcliffe (Auctioneer); Mr. W. G. Browne (Manager Bank of Van Diemen's Land); Mr. John Henry (Mill-owner).

EXPENSES OF WITNESSES.

J. Mitchell, £1 1s.; C. O'Connor, £2 19s.

MINUTES OF PROCEEDINGS.

THURSDAY, SEPTEMBER 4, 1890.

The Committee met at 11.15 A.M.

Present.—Messrs. Lewis, M'Call, and Fitzgerald.

Mr. Fitzgerald was voted to the Chair.

The Committee deliberated.

Ordered, That Mr. A. D. Watchorn, Mr. Mitchell, Mr. Dobbie, Mr. Sutcliffe, Mr. E. Webster, be summoned to attend for examination on Thursday, the 10th inst., at 11 A.M., and that Mr. H. W. Dumaresq be requested to attend and give evidence on the same day.

At 12.15 P.M. the Committee adjourned till 11 A.M. on Wednesday, the 10th of September.

WEDNESDAY, SEPTEMBER 10, 1890.

The Committee met at 11 A.M.

Present.—Mr. Lewis, Mr. Nicholas Brown, Mr. Sutton, Mr. Hartnoll, Mr. Fitzgerald (Chairman).

The Minutes of the last Meeting were read and confirmed.

Mr. E. D. Dobbie, Crown Solicitor, was called and examined.

Mr. John Mitchell, Solicitor, was called and examined.

Mr. Mitchell withdrew.

Mr. Charles Ernest Webster, Merchant, was called and examined.

Mr. Webster withdrew.

Mr. Thomas William Sutcliffe, Auctioneer, was called and examined.

Mr. Sutcliffe withdrew.

The attendance of Mr. A. D. Watchorn was excused on account of previous professional engagements.

Ordered, That Mr. Watchorn be summoned for Wednesday, the 17th inst., at 11 A.M.

Resolved, That the following witnesses be summoned for Wednesday, the 17th inst., at 11 A.M., a copy of the Bill to be forwarded with each summons:—Mr. O'Connor, Tunnack; Mr. Harvey, Port Cygnet; Mr. P. J. Nicholls, Cambridge; Mr. W. G. Browne, Bank of Van Diemen's Land.

At 12.50 P.M. the Committee adjourned until 11 A.M. on Wednesday, the 17th inst.

FRIDAY, SEPTEMBER 26, 1890.

The Committee met at 2:15 P.M.

Present.—Dr. McCall, Mr. Hartnoll, Mr. Lewis, Mr. Fitzgerald (Chairman.)

The Minutes of the last Meeting were read and agreed to.

Clauses 1 and 2 read and agreed to.

Clause 3 read, amended in lines 10 and 11 by striking out the words "(or Mortgages)," and agreed to.

Clause 4 read, amended in line 26, page 2, by inserting the words "bark, timber," after the word "grain," and postponed.

Clause 5 read, amended in line 44 by inserting the words "in form of Schedule 3" after "affidavit," and postponed.

Clauses 6 to 9 read and postponed.

Clause 10 read and agreed to.

Mr. Dobbie, Crown Solicitor, attended in consultation.

Clauses 11 to 14 struck out.

When, there being no quorum, the Committee was adjourned by the Chairman until 3 P.M. on Thursday, the 2nd October.

THURSDAY, OCTOBER 2, 1890.

The Committee met at 3 P.M.

Present.—Mr. Lewis, Mr. Hartnoll, Mr. Brown, Mr. McCall, Mr. Fitzgerald (Chairman.)

The Minutes of the last Meeting were read and confirmed.

Clauses 4 and 5 amended and agreed to.

Clause 15 read and agreed to.

Clauses 16 to 19 read and agreed to.

Schedules 1 and 2 read and agreed to.

Schedule 3 struck out, and new Schedule inserted in lieu thereof.

The Committee adjourned until 3 P.M. on Friday, the 3rd instant.

FRIDAY, OCTOBER 3, 1890.

The Committee met at 3 P.M.

Present.—Mr. Lewis, Mr. Hartnoll, Mr. Sutton, Mr. Nicholas Brown, Mr. McCall, Mr. Fitzgerald (Chairman.)

The Minutes of the last Meeting were read and confirmed.

Clause 5 amended in line 36 by striking out the words "or give any negotiable security or supply any chattels," in line 37 by striking out the word "stock" and inserting "sheep" in lieu thereof, and agreed to.

Consequential amendments made in Clauses 6, 7, 11, 12, 13, 15, and 18, which were agreed to.

Clause 19 agreed to, Schedules 1 and 2 agreed to with consequential amendments, Schedule 3 struck out.

Clause 4 amended by striking out the word "stock," inserting "wool" in lieu thereof, and agreed to.

Clause 2 amended in line 7 by striking out the words "and Mortgages," and agreed to.

Title amended by striking out the words "and Mortgages of Stock."

The draft Report drawn up, adopted, and the Chairman instructed to present it to the House.

The Committee adjourned *sine die*.

REPORT.

YOUR Committee has the honor to report to your Honorable House that it has given its earnest consideration to the Bill committed to its charge, and herewith returns the said Bill with certain alterations and amendments. It has been considered advisable to eliminate the Section of the Bill relating to Mortgages on Stock, as business operations in this direction are already sufficiently provided for in the existing Bills of Sale Act. Other alterations relate to matters of detail in the remaining clauses of the Bill.

In view of the great facility likely to be afforded to all classes of agriculturists and pastoralists in the conduct of their business by the operation of the Bill in its altered form, all past opposition to the passing of the measure will probably be removed. It will be observed the Committee recommend that all advances on which security shall be given shall be for cash only.

Your Committee has pleasure in testifying to the valuable assistance rendered by the witnesses, whose evidence is appended hereto, and has the honor to present the Bill as amended for the favourable consideration of your Honorable House.

G. P. FITZGERALD, *Chairman*.

Committee Room, October 3, 1890.

E V I D E N C E.

WEDNESDAY, 10TH SEPTEMBER, 1890.

EDWARD DAVID DOBBIE, *examined by the Chairman.*

1. What is your name? Edward David Dobbie.
2. You hold the office of Crown Solicitor? Yes.
3. Would you explain the essential difference between the Bills of Sale Act and this Act we are considering at present, to facilitate the granting of liens on wool and crops and mortgages on stock? The vital difference between this Bill and the existing law relating to bills of sale, is in respect to mortgages. Under the Bills of Sale Act bills of sale must be re-registered to preserve their priority, but under this Bill mortgages of stock do not require that. Once such a mortgage is made it is a good and valid security until discharged by payment.
4. Are money advances necessary under the Bills of Sale Act? A contemporaneous advance of money or supply of goods is necessary.
5. Is it necessary under the Liens on Wool and Crops Bill? It does not provide for a contemporaneous advance. The provision is for a valuable consideration, and that may exist in many ways.
6. It may exist in an indebtedness at the time? Yes.
7. *By Mr. Hartnoll.*—Is there any protection against a bogus advance? Yes, if it were shown not to be *bonâ fide*. If bogus, it would not be *bonâ fide* and a valuable consideration.
8. *By the Chairman.*—Has this Bill been taken from the New South Wales Act? No; it has been taken almost verbatim from an Act in force in Victoria, passed in 1867.
9. But the New South Wales Act was the first? The original Act was passed in New South Wales in 1843. It is a short Act, and is intitled "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." Apparently, from the wording of the Act it was a temporary piece of legislation. The recital sets out—"Whereas in the present depression of the farming interest, it is expedient, and would tend greatly to increase the credit of and afford relief to owners of sheep, to enable them to give valid lien upon their wool, from season to season, without parting with the possession or management of the sheep." There is a similar recital with regard to mortgages on sheep and cattle. This Act was passed in 1843, and repealed in 1847. It was re-enacted by 11 Vict. No. 4, and continued by this Act until the 31st December, 1850. In 1850 the Act was continued for another three years. In 1852 it was continued until 1855. In 1855 it was continued again for five years, until 1860, when it was made permanent law. The provisions which existed in that Act, with some alterations, were enacted in Victoria in 1864 under the title "Instruments and Securities Act," and was re-enacted in 1867. There are similar provisions in Queensland. The Victorian Act of 1867 is practically the Bill now before the Committee.
10. Are there provisions similar to our Bills of Sale Act contained in the Victorian Act? The Law as to Bills of Sale in the colonies of Queensland and New South Wales is in a separate Act in each Colony. When Victoria separated from New South Wales a great deal of trouble was taken in consolidating the Statute Law, and provisions relating to bills of sale with provisions similar to those contained in this Bill, and others of a like nature, were included in "The Instruments and Securities Act, 1864." This Act contained provisions for bills of sale and also the provisions proposed to be enacted in the Bill before the Committee.
11. Then, the history of the legislation on this subject is, that it was in the first instance a temporary measure, and after frequent temporary enactments was made permanent in New South Wales? Yes.
12. In Victoria and Queensland it is permanent law? Yes, and in New Zealand there are similar provisions.
13. As far as your experience of the Bills of Sale Act go, do you think the provisions proposed to be enacted here would bear heavily on small farmers and owners of small properties? I should hardly think so, because there are at the present time facilities for giving bills of sale of the nature dealt with here. Many bills of sale registered in the Supreme Court Office are for clips of wool, stock, &c. They are very long and elaborate—necessarily so. The great difference between those bills of sale and liens under the Bill now before the Committee is that bills of sale must be re-registered every two years and accompanied by a consideration which is contemporaneous with the execution of the bill of sale.
14. Then, under the Bill before the Committee, this could be done in a ready and more convenient form? Yes, if it were followed; but, I am told that the short form provided in the Bill before the Committee is not always followed in the other Colonies, but that the mortgages on stock and crops are long documents running from 70 to 80 folios. There is nothing to hinder the provisions of this Bill being resorted to in the case of growing crops.

15. This Bill might readily be an instrument between the local storekeeper and the farmer? Yes.

16. *By Mr. Lewis.*—Are bills of sale under existing legislation considered good securities in regard to growing crops and clip of wool? I do not know that bills of sale under any circumstances are considered the best of securities. People who take them frequently suffer loss.

17. This Bill contemplates three liens—on wool, crops, and mortgages of stock? Yes.

18. With regard to mortgages of stock, is there any difference between mortgages under the Bill before the Committee and those under the Bills of Sale Act? I do not know that there is any difference except as to the consideration, and that in the one case they are subject to re-registration from time to time and in the other they are not.

19. Is it possible, under Schedule 2 of the Bill before the Committee, to provide for future advances on the security of wool and crops? The form in the Schedule does not appear to contemplate future advances.

20. *By the Chairman.*—An advance might be got on a crop in the first instance, and as the crop got better and afforded increased security, further advances might be required: might not the schedule be altered to effect that? Yes; but it might be considered better for safety to take another lien before the advance was made.

21. *By Mr. Sutton.*—In the event of a particular crop failing entirely, what then? The lien would simply be a debt.

22. *By Mr. Lewis.*—Do you think that Clause 9 is sufficient to protect landlords? Of course the landlord would have to see that his rent never got into arrear more than a year. If he did that the clause would protect him, but not otherwise. The remedy would be in the landlord's own hands. If the Bill passed, he would no doubt take care that the rent did not get into arrear.

23. Would it be possible to register those liens with bills of sale so that one search would be sufficient? I think it might be done, but it would be very inconvenient to include them in one book, as one requires to be re-registered and the other does not.

24. Would it not be advisable to have those liens re-registered every two years, the same as Bills of sale? If that is done I do not see that there is any necessity for the provisions in the Bill before the Committee, because you would have two laws dealing with the same thing, differing in language, but practically having the same effect.

25. *By Mr. Nicholas Brown.*—Would you explain the operation of Clause 15? That provides for a case where there is a general mortgage over all the stock, including the sheep, and the mortgagee is willing that the mortgagor should raise a further loan on the security of the clip of wool on the sheep's backs. This, of course, would diminish the mortgagee's security, and it is therefore provided that he shall first give his consent.

26. Is it likely that such a thing would occur? I have no doubt that it would. This provision is in the Acts of Queensland, Victoria, and New South Wales, where, of course, the transactions are much larger in pastoral matters.

27. Do you know anything of the operation of the New Zealand Act? I do not know of its operation, but I know that its provisions are similar to the New South Wales and Victorian Acts.

28. Have you heard any objections as to the operation of the Act in any of the other Colonies? No, except that I heard Mr. Falkiner this morning say that there was great objection existing in Victoria to the operation of this Act, because it had the effect of concentrating all the business into the hands of large firms, who took mortgages over the stock of the settlers.

29. Are the provisions of this Bill before the Committee as to penalties for fraud similar to those in operation in the other Colonies? Yes, the section referring to penalties is copied from the Victorian Act, and it, I believe, is taken from the New South Wales Act.

JOHN MITCHELL, *Solicitor, examined by the Chairman.*

30. What is your name? John Mitchell.

31. You are partner in the firm of Dobson, Mitchell, and Allport? Yes.

32. Have you perused this Bill before the Committee? Yes.

33. Does it in any way clash with the provisions of the existing Bills of Sale Act? It clashes very materially.

34. Would you state in what respect? I will give you an instance that may happen:—Under the Bills of Sale Act a bill of sale has to be registered within 14 days from the date of it. Under this Bill the lien is to be registered within 30 days. This position may happen: A would give a lien on his stock on the first day of the month, but it would not be registered until the last day of the month. He might go to a financial institution on the second day of the month and say, "I want an advance," notwithstanding that he has had an advance on the previous day, and give a lien for this second advance. The financial institution might make a search and find no bill of sale registered, and thus be induced to give an advance through the delay in registering the lien. A serious difficulty would thus be created between parties.

35. *By Mr. Nicholas Brown.*—Could that not occur under the existing Bills of Sale Act? It might happen, but the law in that case is decided. The bill of sale first registered would take priority. It is easy to see that where security is given under the Bills of Sale Act and under the Bill before the Committee, litigation would probably result. That might be met fairly by making the times of registration in the two cases concur.

36. *By the Chairman.*—The case you cited would be fraudulent? Yes; it would be fraudulent, without a doubt.

37. Is there any other provision to which you wish to refer? Yes; under the fifth section there is no guarantee that collusion might not exist between the parties to a document. Under the Bills of Sale Act an affidavit has to be filed with a copy of the bill of sale, and the said affidavit has to contain a separate paragraph giving the date of execution. I suggest that in the Bill before the Committee the affidavit mentioned in the fifth section should contain a like paragraph, and that the date be stated.

38. You have no knowledge of the operation of this Act in the adjoining colonies? No. Under Clause 6 of the Bill before the Committee I do not know whether the words "bankrupt lienor" would cover "liquidator lienor."

39. *By Mr. Nicholas Brown.*—Could that alteration not be made in the Interpretation Clause? Yes, words could be inserted; it is a matter of detail.

40. *By the Chairman.*—Is there any other clause to which you desire to direct the attention of the Committee? Yes, Clause 9, which says, "If the lienor be a tenant then the licensee shall before selling any such crop pay to the landlord of the farm whereon such crop shall be 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." I think that should be altered to provide that he should pay it out of the proceeds. There might be cases where it would not be convenient to pay cash, and he might have to sell in order to pay.

41. Are there any other provisions in the Bill before the Committee which clash with existing legislation? I think Clause 10 rather conflicts with The Lands Transfer Act, 25 Vict. No. 16. Under Section 57 of that Act there is no limit whatever for interest, and a man may be two or three years in arrear. It states—"besides his remedy against the mortgagor or incumbrancer, every mortgagee or incumbrancee shall be entitled, after the principal sum, interest, annuity, or rent charge shall have become in arrear for 21 days, and after seven days have elapsed from the date of application for the payment thereof to the occupier or tenant, to enter upon the mortgaged or incumbered land, and distrain and sell the goods and chattels of such occupier or tenant, and to retain thereout the moneys which shall be so in arrear, and all costs and expenses occasioned by such distress and sale." Under Clause 10 of the Bill before the Committee the licensee has a preferential claim for the whole of his interest for twelve months. I think those provisions would require to be made to fit one another.

42. Then, really the provisions of Clause 10 are less exacting than those already existing in other respects? Yes, under a mortgage. The Bill before the Committee contemplates 12 months' lien. It would be much better to make it apply continuously, because merchants in town often arrange with tenants to get a seven years' lease of a place, they guaranteeing the rent, and it would be very hard on the guarantors to find that the security for the money that had given to stock the place should be limited to twelve months, while his liability runs on during the currency of the lease. It would be better to make it for a specified term, and also to provide that the liens be re-registered every two years. Then under one section the liens may be assigned, but there is no form of assignment. It would be as well, if you are going to have a form of mortgage, to have also a form of assignment. It is found in solicitors' practice that the more elastic the forms are the better. I would recommend that both forms be struck out altogether as unnecessary.

43. *By Mr. Nicholas Brown.*—From your experience in connection with negotiations for loans to farmers and owners of stock, do you think a Bill of this character would afford them facilities for obtaining loans on better terms than now? I do not think so. I cannot see the difference. The man who borrows the money has practically to give a mortgage to the party advancing the money, and there is the same publicity about it, as they are both filed.

44. Do you think that under a Bill of this kind better security is given, such as would induce financial institutions or individual capitalists to lend money on easier terms as to interest than is done under the existing Bills of Sale Act? I do not think so. The borrower goes to the lender, and the lender can dictate his own terms.

45. *By Mr. Hartnoll.*—Would it not be advisable to provide that the commission charged should not exceed a certain sum? You need not take the advance unless you like.

46. But sometimes the borrower is driven into a corner, and glad to take any terms? This Bill protects the lender of the money: the other man is put away entirely.

47. *By Mr. Nicholas Brown.*—Is it not always the case that security governs the rate of interest? Yes.

48. Then, if this Bill gives greater security, would financiers not be inclined to lend on lower terms? It is personal property. You have got to get rid of the idea that sheep may run away.

49. *By Mr. Hartnoll.*—Is it not very frequently the case that the rate of interest depends upon the character of the individual? Yes, very often the character of the man is your security. We always look to the man, and sometimes lend him the full amount, because we know that he will keep his shoulder to the collar and pull through.

50. *By Mr. Lewis.*—What additional security would be given by this Bill over and above the Bills of Sale Act? I do not think that there is any extra security.

51. Is it quite the usual thing to give Bills of Sale on growing crops and wool? Oh, yes.

52. In your opinion, the Bills of Sale Act, as it at present exists, provides all that is necessary? I think so.

53. *By the Chairman.*—Is a bill of sale always accompanied by a money advance? Oh no. A man may give a bill of sale for a past debt, but it would not hold good in bankruptcy.

54. Do you not think that the Bill before the Committee would have this effect—that it would lead to extended credit being given by the storekeeper to the farmers? Of course the storekeeper could take a bill of sale in the same way. It is not always advisable for the storekeeper to give extended credit, because they get the whole district on their backs.

55. Do you know that Bills were enacted in New South Wales to meet a time of depression? I know that, because the preamble recites it. I should like to see the Bills of Sale Act blended with this Bill.

56. Do you think that would be preferable? Yes; I suggested it to the Premier when he showed me the Bill.

57. *By Mr. Nicholas Brown.*—You think that the provisions for registration should be the same in both cases? Yes, and I see no difficulty in regard to entering them in the Registration Book.

58. Under Clause 15 of the Bill before the Committee would the borrower be able to obtain additional advances not now obtainable under the Bills of Sale Act? No. We have only to take up our book of precedents to see cases where a man enters into another mortgage and postpones his first mortgage. I have known cases where the borrower wanted more money, and the first mortgagee was so satisfied that he postponed his security, and allowed a first mortgage to be taken, he coming as second mortgagee.

CHARLES ERNEST WEBSTER, *examined by the Chairman.*

59. What is your name? Charles Ernest Webster.

60. You are connected with the firm of A. G. Webster & Son? Yes.

61. Have you had much experience of the operation of the Bills of Sale Act with your constituents? I have had a fair amount.

62. Have you had an opportunity of reading the Bill before the Committee? Yes.

63. Do you know anything of its operation in the adjoining colonies? I have heard of its operations in Victoria and New Zealand.

64. Can you explain its operation there, as far as you have heard? I have heard that it has generally operated very well and proved satisfactory.

65. Is it principally taken advantage of by the large wool-growers, or by the smaller class of pastoralists and agriculturists? I think it is particularly used by the large wool-growers, and also by the other classes to a certain extent.

66. Whereas a bill of sale affects prejudicially a man's credit, the operation of this Bill may be taken advantage of without that occurring? I am given to understand that it is so.

67. It is not uncommon for wealthy squatters in the other colonies, whose business would be prejudicially affected by giving a bill of sale, to take advantage of the operations of this Act? Yes, many of the largest of them, who are considered in a perfectly sound position, take advantage of such a Bill as this where they would not risk their credit by a bill of sale.

68. The same answer would also apply to the small farmers? Yes.

69. Do you think it is likely to be welcomed by your constituents? If they read it as I read it, I would say that they would welcome it. Its operations, as I understand them, would not prejudicially affect their position at all.

70. It would not be likely to place them at the mercy of the financier, any more than the present Bills of Sale Act? Not so much. I take it, that by the Bill before the Committee, the borrower would only, so to speak, mortgage his income or revenue for the ensuing year, because this Bill will only take effect for one year, whereas a bill of sale takes effect for all time, and is more stringent in its conditions.

71. In your business you have had experience of the larger wool-growers and also of the smaller farmers? Yes.

72. *By Mr. Lewis.*—Explain why a bill of sale would prejudice a man financially more than a lien on his wool or a mortgage on his stock? When a bill of sale is issued and registered it is published in the Trade Lists, but liens under the Bill before the Committee would not be subject to this.

73. But there is nothing to prevent them doing that? I did not understand that.

74. *By the Chairman.*—By the Bill before the Committee mortgages are given rather on a man's revenue than on his capital? Yes, it is really on his revenue, but a bill of sale is for all time or until the borrower has repaid the advance. Under the Bill before the Committee a man would borrow upon his incoming revenue, and only upon that. If his income did not come up to the required amount the lienor would not have any claim upon the borrower's goods or chattels, or future revenue.

75. You are now speaking of wool and crops: how about a mortgage on stock, which is to all intents and purposes a bill of sale? I think a man could get credit more easily under this Bill than under a bill of sale. It would be less expensive, and a lien would not be looked upon in the light of a bill of sale.

76. Do you take bills of sale in your business over clips of wool and growing crops? Yes.

77. What objection have you to that from a business point of view? We have none, except that the security of a bill of sale is doubtful on growing crops and wool in certain cases.

78. There would be this objection, that immediately a man's bill of sale was registered his credit outside your operations would become affected? That would be a general objection; that refers more to the borrower.

79. Would it affect your transaction with the man? Not so much; but it would serve this purpose,—to bring all his business through our hands.

80. *By Mr. Nicholas Brown.*—Do you think that the security given under this Bill to the lienor would be better than that under a bill of sale? No, I think that the security of the lienor would not be so great.

81. *By Mr. Hartnoll.*—Is it the practice to charge the lienor a commission independent of the actual advance? Commission is charged on the produce when sold. If no produce is received, commission is charged on the advance when it is repaid.

THOMAS WILLIAM SUTCLIFFE, *examined by the Chairman.*

82. What is your name? Thomas William Sutcliffe.

83. You are at present engaged as Auctioneer by the Tasmanian Pastoral and Agricultural Agency Company? Yes.

84. Have you had in the adjoining Colonies any experience of the operation of the Bill before the Committee? Yes, I have had fully ten years' experience in Victoria.

85. Is the Act there largely availed of? Yes.

86. Were its operations availed of more generally by the larger or smaller class of holders? My experience was rather with the selectors than with the capitalists of the district. When the railway came into the country it opened up a large extent of land, which was selected. Men settled down upon it with a limited amount of capital, and found it necessary to get advances. I think, as a rule, this helped them along, as they are now tolerably well-to-do.

87. Creditors are prejudicially affected by a bill of sale, whereas with a lien it is not so? I think so.

88. Have you had experience elsewhere? Only in Victoria.

89. Was it customary for small selectors to get advances for the year? Yes, they came to the agent and said "I have certain stock and certain land with crops in. Can you advance so much on the cattle and growing crop?" We would discuss the matter, and find out that they were not incumbered in any other way, and then we would give them forms of mortgage which had to be filled up. A penny stamp was put on them, and they were duly executed. Within two days they had to be registered, and if not registered within that time they were not legal. I think, in such cases, the shorter the notice the better, because it gives a greater opportunity of doing legitimate business. It would prevent a man going wrong and running away.

90. The operations are easier than under the Bills of Sale Act? Yes.

91. And much more largely availed of? Much more so. It was a common thing for people to come in and get advances.

92. Then the operation of this Act in Victoria has been really beneficial to small holders? I think so, throughout the Colony.

93. It has not acted to their prejudice? Quite the contrary.

94. Can you explain why a bill of sale affects a man prejudicially more than a lien on his crop or a mortgage on his stock? I could not say.

95. Is it only sentiment? I think so. People get that idea; but in my opinion it is six of one and half-a-dozen of the other.

WEDNESDAY, 17TH SEPTEMBER, 1890.

MR. WILLIAM GEORGE BROWNE, *examined by the Chairman.*

96. What is your name? William George Browne.

97. You are Manager of the Bank of Van Diemen's Land? Yes.

98. Have you had an opportunity of perusing the Bill before the Committee and making yourself acquainted with its provisions? Yes, to a certain extent.

99. You have had experience of a similar measure in New Zealand, and you found there that it was generally advantageous? Certainly it was.

100. Was it availed of by all classes of borrowers, that is, the small and the large? Quite so.

101. Was it largely availed of by large squatters for liens upon wool? Yes, to a very large extent.

102. Did you find that in its operation it had any prejudicial effect in regard to a borrower's credit, such as is usually connected with a bill of sale? Certainly not, it had nothing of the sort. I do not know whether the New Zealand Act incorporates the stock mortgage and the lien, but I think it would be better to have the Lien Act and the Stock Mortgage Act in separate form. The great beauty of the lien is, that it is so distinct from the stock mortgage.

103. A borrower under a lien pledges his revenue, where a borrower under a mortgage pledges his capital? Yes, and to prevent a man pledging all he has, a lien would do where a stock mortgage is unnecessary.

104. This Bill would allow a smaller class of agriculturalists to get advances? Yes, through the local storekeeper.

105. It would be the means of sustaining their credit temporarily at any rate? Yes, and it would protect the local storekeeper to a very great degree. At present, a man might go to two or three storekeepers and get advances against a growing crop, whereas under this Bill the lender would know what he was doing, the lien being registered, and a man would be prevented from getting credit where it ought not to be given.

106. *By Mr. Nicholas Brown.*—I presume the difference which renders the lien on wool and crops more valuable than the existing Bills of Sale Act is, that it would not necessitate a contemporaneous advance? Yes, to a certain extent. There is no provision made for further advances, which, of course, are the great benefit of the lien. A man would go to a firm in the habit of advancing (banks do not like this class of business as a rule, except in the case of large liens on wool, and would prefer him to go to such a firm as yours). They would send out a man to look at the crop as soon as it was above the ground, and would advance a certain sum per acre, and as the crop grew they would advance further and find his harvesting expenses. In New Zealand the small farmers could not exist without this lien.

107. It will terminate at the end of the year? Yes. In this Colony I think the lien could be made applicable to bark, and made to extend over four or five years. If the owner could pledge the growing bark, it would be a legitimate thing to advance the money. The same way with fruit; I see no objection to a man borrowing on his fruit when it has reached a certain stage, he gets a certain advance, and so on.

108. Have you heard of an objection to the lien on bark to the effect that it interferes with the mortgagee's interest? No.

By the Chairman.—Generally are you of opinion that a measure like this is really calculated to advance the settlement of small holders on the land? Yes, distinctly so; it would be a great boon to the small people.

110. *By the Hon. Nicholas Brown.*—In what respect does the provision for mortgages on stock differ from the existing Bills of Sale Act? That I do not know. I have not studied it. The great beauty of the lien is that it is so distinct from the stock mortgage. I may say that one of the biggest men in New Zealand, who died worth over half a million, used to give his lien on his wool to the bank as regularly as the season came round.

111. *The Chairman.*—This Bill is in general existence throughout New South Wales, and in no way affects a man's credit, as is the effect of a bill of sale or other mortgage.

112. *By Mr. Lewis.*—It is stated that this Bill, if passed, will be the ruin of the small country storekeepers—what is your opinion? I have spoken to two or three since the Bill was started, and they were of that opinion until I explained the Bill. My impression is that they did not understand it. I pointed out that now, if they make advances they have really no security, while under this Bill they will make an advance and get a good security. They will have a lien form in their possession, and if anyone wants to get goods and money against his crop they will take down the form, and say "sign this form." At present a man could be in the books of all the storekeepers in the place, but under this Bill they will know from harvest to harvest in what position a man is. So far from ruining them, I look upon it as the best thing that could happen to them. Bankers would sooner be without this class of business, and would not go in for small liens if they could.

113. *By the Chairman.*—The operation is principally between the storekeepers and the small farmers? Yes.

114. *By Mr. Lewis.*—Would you be more prepared to advance on the security of a mortgage on stock under this Bill than on a bill of sale? I do not see the difference. We never advance on a bill of sale if we can avoid it.

115. What is the objection of bankers to the security of a bill of sale? It is considered an objectionable thing for a man to do. A lien is simply a man anticipating his year's crop. If an ordinary individual only drew his income once a year, he would require credit until he drew his income. These farmers have to struggle on from harvest to harvest, and they have no means of giving security unless they give a bill of sale over everything they have in the world.

116. Won't that apply over the whole of his stock? Yes.

117. *By the Chairman.*—There is an important distinction where a man gives a lien on his revenue, and another on his capital? Yes, of course there is. That is what I wish to point out. Giving a lien and a stock mortgage are two very different things.

118. *By Dr. McCall.*—Do not you think in all these cases there should be a cash advance? It would be a very much better plan. If a man is advanced money he has an opportunity of converting it into goods if he thinks proper.

119. In that way small farmers would be prevented from getting into the hands of one storekeeper? Yes.

120. Was it the practice in New Zealand for lenders to take the liens to secure themselves for old debts? No. Of course such a thing could be done, but if it was possible to prevent it it would be a good thing to do. The great feature of the New Zealand law was the further advances, and I would suggest that advances should be made after the lien had been taken, and should not necessarily be contemporaneous advances. I would suggest that the Bill should deal with both contemporaneous and future advances.

MR. CHARLES OWEN O'CONOR, *examined by the Chairman.*

121. What is your name? Charles Owen O'Conor.
122. You are a storekeeper at Tunnack? Yes.
123. Have you had an opportunity of perusing this Bill for granting liens on wool and crops and mortgages on stock? Yes, I have looked through its provisions.
124. Do you think the provisions of the Bill would facilitate your business? Yes, very much so; it would simplify matters to a very great extent.
125. Does it seem a preferable mode of making advances to that usually adopted under the Bills of Sale Act? Yes, and it saves considerable expense too.
126. I suppose these liens would be acceptable to your customers, small farmers, and others? I think they would be more acceptable than the Bills of Sale or Mortgages now in force.
127. Do you know anything of the operations of these Bills in other countries? No, I have had no experience of them.
128. *By Dr. McCall.*—Do you think this Bill will be objectionable to small farmers? I think it will be objectionable, but less so than the other ones.
129. They are not likely in any way to suffer from the effects of it? No, by no means—on the contrary.
130. Have you heard any expressions of opinion against this Bill? No; I think it is very little known amongst the farming classes, but from its being so simple and the expenses so very small, I know that they will benefit more by it than by the present Bills of Sale or Mortgages.
131. Do you think that they will recognise the difference between the two? No doubt they will.
132. *By the Chairman.*—It is often the case that small farmers setting up spend the whole of their capital in clearing the land, and have not the wherewithal to wait for the proceeds of their crop: this Bill would be useful for them? That is the very difficulty that I have had in business, and this Bill will operate very beneficially in such cases.
133. *By Mr. Lewis.*—What is the difference in this Bill between the Mortgage on Stock and the ordinary Bill of Sale? The first difference is that the expense is so trifling when compared with the other.
134. How would the expense be less? From what I see in this Bill the expense would be very much less, as it is so simple to have these forms filled up.
135. I am speaking of mortgages on stock only. This Bill deals with three things—liens on crops, liens on wool, and mortgages on stock: why would the mortgages on stock be cheaper? My impression from reading the Bill is that the expense would be less, as it could be carried out without calling in the assistance of a legal man.
136. How would you make one out without calling in the assistance of a legal man? There is no difficulty in it, as far as my opinion goes. The forms may be obtainable at the Post Offices, the Police Station, or some such place.
137. There is no form of the mortgage of stock in this Bill, and none proposed? But the expenses of registering this mortgage of stock only amounts to four shillings.
138. What difference do you see in this Bill with regard to the mortgages on stock and the bills of sale upon stock? There is a saving of expense. I have had a great deal to do with bills of sale and mortgages, and I find that they are very expensive to one party, and in my reading of the Bill I think that a very great deal of this expense will be saved.
139. Why will this mortgage on stock be more acceptable? Because it is so much more simple; and to my mind, so much less expensive.
140. Have you any other reason for saying so? I do not think that I have.
141. Would you readily give credit to a person whose name appeared in any list as having given a lien over his wool and crop and a mortgage over his stock? I should be very slow in doing so.
142. *By the Chairman.*—You recognise that the liens here given are simply liens on his revenue, while the liens given under a bill of sale are given on his whole capital? Yes, I see the difference.
143. The credit of a man is less affected by giving a lien of this sort than it would be if he gave a bill of sale? Yes, it would be only on the crops, but I think it would follow, from my reading of the Bill, that lien would extend to the next crop if the lien on the first one had not been paid.
144. *By Mr. Lewis.*—Do you find it easy to get bills of sale from the small farmers if you ask for them? I seldom or never ask for bills of sale.
145. Are not farmers or squatters more willing to give bills of sale to firms or banks in Hobart than to storekeepers? That is not my experience—it is just the reverse; we can get too many of them; we can get a security just as easily as bankers.
146. You think that the passing of this Bill would be a great boon to the country storekeepers? I would not go so far as to say that. I think it would be a great advantage to the small farmers.

MR. JOHN HENRY, *examined by the Chairman.*

147. What is your name? John Henry.

148. What are you? I am a resident of Devonport West. I am engaged in business there as Managing Director of the Don Trading Company.

149. Have you had any opportunity of perusing this Bill? I have looked over it, and have made myself acquainted with its purpose.

150. Have you had any experience as to the granting of bills of sale? Yes.

151. Do you think that this measure would be likely to operate beneficially in regard to the small borrower? Yes, I think it would.

152. More so than the ordinary operations of the Bills of Sale Act? Yes; it would enable the borrower to raise money when he otherwise could not, and at lower rates of interest. It is in favour of the borrower, and will be an advantage generally.

153. Is it likely to be used largely by the country storekeepers for that operation? Certainly it is.

154. It provides for lending money on a man's revenue, as it were, and in that sense would be less objectionable than lending money on his capital as is now done by a bill of sale? Quite so.

155. Have you any suggestion to make which you think would improve the Bill? No, I have not considered the Bill in detail. I have looked over it and have seen its purpose, and am of opinion that it would be a useful measure.

156. Do you know anything personally of the operation of similar measures in the other Colonies? No, only by report. I understand that they are found useful amongst squatters, and in the saving of law expenses.

157. *By Dr. McCall.*—Do you think that the liens should be allowed to cover old standing debts, or that they should be only allowed to apply to cash advances at the time, or to future advances afterwards? I have not considered the point, but I do not think it would be a safe thing to traders generally to depart from the principles of the Bills of Sale Act. I think it would be a very imprudent thing to allow a man to give preference to any of his creditors.

158. Do you think that a lien, upon crops for instance, should be allowed to cover advances in addition to the one given at the time as the crops progressed? If it is a *bonâ fide* advance, I think that it should.

159. Would you prefer to see liens secure cash advances? I do not think that it would be prudent to depart from the principle contained in the Bills of Sale Act. I would not like to see liens allowed to be given except for *bonâ fide* advances.

160. *By Mr. Lewis.*—In your opinion should it be an advance in cash or in chattels? It need not necessarily be in one or the other, as long as it is a *bonâ fide* consideration. It might be in the nature of a guarantee.

161. You see no objection to the consideration being in chattels, such as tea or sugar? No, so long as it was a *bonâ fide* consideration passing at the time. If a farmer had a team of bullocks, and another farmer wanted the use of them to carry on work on his farm, the bullocks might be passed over as a consideration. Cash is always converted into chattels, and so long as the consideration is a *bonâ fide* one I see no objection to chattels being the consideration.

162. Is it the practice in your part of the country to give bills of sale over growing crops and wool? They have been given.

163. What is considered of them as a security? As a business man I do not care to take bills of sale. At one time I used them freely, but now I avoid them. They are necessary occasionally, of course.

[As amended in Select Committee.]

A

B I L L

TO

Facilitate the granting of Liens on Wool and Crops, [and Mortgages of Stock.] A.D. 1890.

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as “The Lien on ^(Wool) [Stock] and Crops Act.” Short Title.

5 2 Nothing contained in this Act shall be construed to affect in any way the rights and prerogatives of the Crown as to any Waste Land described in any Liens [and Mortgages] as the lands or stations where [stock] (sheep) may be depasturing. Crown rights saved.

3 *The Bills of Sale Registration Act* and “The Bills of Sale Application of
10 Registration Act, 1867,” shall not affect or apply to any Liens [or 22 Vict. No. 4
Mortgages] registered in the manner provided in this Act. and 31 Vict. No. 14.

4 In this Act, unless the context otherwise determines— Interpretation.
“Waste Land” shall have the meaning assigned to such words 34 Vict. No. 10.
in *The Waste Lands Act*:

15 “Station” shall include any land used wholly or in part for the purpose of depasturing [stock], whether the same shall consist (sheep)
of purchased land or land held under a lease or licence, or []
partly of purchased land and partly of land so held:

[Bill 10.]

* * The words and figures proposed to be struck out are enclosed in brackets []; those to be inserted, in parentheses ().

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[“Stock” shall include sheep, cattle, and horses :]

“Crop” shall mean the following crops sown for any purpose whatsoever and growing or not harvested ; viz.—wheat, maize, bere, barley, oats, rye, or other cereal, rye grass, lucerne, clovers of all kinds, vetches, rape, peas, beans, flax, 5 onions, potatoes, turnips, carrots, beet, mangel-wurzel, cultivated roots of all kinds, hops, tobacco, fruit of every kind, vegetables of every kind, and generally all agricultural and horticultural products :

“Farm” shall mean any land used wholly or in part for the 10 purpose of growing any crop, whether the same shall consist of land alienated from or land held under a lease or license from the Crown, or partly of alienated land and partly of land so held, or shall mean when thereto limited any part of such land specifically described in the agreement 15 hereinafter mentioned :

“To harvest,” or “harvesting,” or “to be harvested” shall include the cutting, mowing, reaping, threshing, digging, gathering, bagging, and doing all other things necessary to bring such crop into a marketable condition, and the word 20 “harvest” shall mean the crop so harvested ;

“Produce” shall include all (timber, bark,) grain, straw, chaff, hay of every kind, haulm seeds of every kind, grass, flax, onions, potatoes, turnips, carrots, beet, mangel-wurzel, cultivated roots of every kind, hops, tobacco, fruit, vegetables, or 25 other result of such harvesting :

“Person” shall include Companies, whether incorporated or not, as well as individuals :

“Registrar” means the Registrar of the Supreme Court.

(“Bankruptcy” includes liquidation by arrangement, and any 30 other act or proceeding in law having under any Act for the time being in force effects or results similar to those of bankruptcy ; and “Bankrupt” has a meaning corresponding with that of bankruptcy.)

Liens on Wool.

Right of lien to
wool.

(sheep)

Schedule (1.).

(Ten)

5 In all cases where any person shall *bonâ fide* make any advance of 35 money, [or give any negotiable security, or supply any chattels] to any proprietor of [stock], on condition of receiving the wool of the then next ensuing clip of such proprietor as absolutely purchased by, or in payment of, or to secure the payment of any such money [or negotiable security, or for any such chattels (as the case may be),] and where the 40 agreement relating to such purchase, advance, or security shall be made in the form in the Schedule (1.) or to the like effect, and shall be registered within [Thirty] days after the date of such agreement by leaving in the office of the Registrar of the Supreme Court a true copy thereof 45 verified by an affidavit (containing the particulars set forth in the form in Schedule (3.), or to the like effect), sworn before the said Registrar or before any person authorised to administer an oath, the person making such purchase or advance, [or giving such negotiable security, or supplying such chattels,] shall be entitled to the whole of the wool mentioned in such agreement, whether such advance of money, [or the 50 giving such negotiable security, or the supply of such chattels] 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 to secure the payment of such money, A.D. 1890.
 [or negotiable security, or for such chattels ;] and possession of such
 wool by the said proprietor, his executors or administrators, shall be to
 all intents and purposes in the law the possession of the person making
 5 such purchase, or advancing such money, [or giving such negotiable
 security, or supplying such chattels ;] and after such advance shall have
 been repaid, [or such negotiable security satisfied, or such chattels paid
 for,] with such interest and commission as may be specified in any such
 agreement, the possession and property of the said wool shall, if such
 10 agreement was made by way of security, revert in such proprietor,
 subject nevertheless to any charge in the meantime created by the
 proprietor and which shall then affect the same.

6 After such agreement as aforesaid shall have been registered as
 aforesaid, the preferable lien of the lienee on the wool of the then next
 15 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 [stock] mentioned
 and described in the registered agreement relating to any such preferable
 lien, nor by the subsequent bankruptcy of the lienor, his executors or
 20 administrators, nor by any execution against his or their property, 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 [stock,] and against the trustee of
 such bankrupt lienor, his executors or administrators, and against any
 25 execution creditor, as against the original proprietor thereof who granted
 such lien ; and if any such lienor, subsequent purchaser, mortgagee,
 incumbrancer, or other claimant or possessor, trustee, or execution
 creditor shall neglect or refuse to shear at the usual season and deliver
 forthwith thereafter the wool of any [stock] for which any such preferable
 30 lien shall have been granted as aforesaid, in pursuance of the provisions in
 that behalf contained in such registered agreement, it shall be lawful for
 the lienee, his executors or administrators, to take possession of the [stock]
 bearing such wool for the purpose of washing and shearing the same,
 and (if authorised by such registered agreement in that behalf) to sell
 35 the same, and all expenses attending such washing and shearing, and
 the conveyance of the wool to the place of abode or business of such
 lienee, or to the nearest place of shipment, and of any sale as aforesaid,
 shall be incorporated with and be deemed in law part of the amount
 secured by such lien.

Right of lienee to
 ensuing clip of
 wool.

(sheep)

(sheep)

(sheep)

(sheep)

Liens on Crops.

40 7 In all cases where any person shall *bonâ fide* make any advance
 of money, [or give any negotiable security, or supply any chattels] to any
 proprietor of a crop, on condition of receiving the produce of the then
 next ensuing harvest of such proprietor as absolutely purchased by, or in
 payment of, or to secure the payment of any such money [or negotiable
 45 security, or for any such chattels (as the case may be),] and where the
 agreement relating to such purchase, advance, or security shall be
 made in the form or to the effect in the Schedule (2), and shall be
 registered within ten days after the date of such agreement by leaving
 in the office of the Registrar a true copy thereof verified by an affidavit
 50 (containing the particulars set forth in and in the form in Schedule (3),
 or to the like effect) sworn before the said Registrar or before any person
 authorised to administer an oath, the person making such purchase or
 advance, [or giving such negotiable security, or supplying such chattels,]

Right of lienee to
 crops.

Schedule (2.)

A.D. 1890.

shall be entitled to the whole of the crop mentioned in such agreement, whether such advance of money, [or the giving such negotiable security, or the supply of such chattels] be [before,] at, or after the granting of any such preferable lien, so long as the registered agreement relating thereto shall have been made in payment or to secure the payment of such 5 money [or negotiable security, or for such chattels;] and possession of such crop by the said proprietor, his executors or administrators, shall be to all intents and purposes in the law the possession of the person making such purchase, or advancing such money, [or giving such negotiable security, or supplying such chattels;] and after such advance shall have 10 been repaid, [or such negotiable security satisfied, or such chattels paid for,] with such interest and commission as may be specified in any such agreement, the possession and property of the said crop shall, if such agreement was made by way of security, revert in such proprietor, subject nevertheless to any charge in the meantime created by the 15 proprietor, and which shall then affect the same.

Right of lienée to
ensuing crop.

8 After such agreement as aforesaid shall have been registered as aforesaid, the preferable lien of the lienée on the crop of the then next ensuing harvest of such proprietor shall not be in anywise extinguished, suspended, impaired, or otherwise prejudicially affected by any subsequent 20 sale, mortgage, or other incumbrance whatsoever of the farm on which such crop shall then be growing or not harvested and which shall be mentioned and described in the registered agreement relating to any such preferable lien, nor by the subsequent bankruptcy of the lienor, his executors or administrators, nor by any execution against his or their 25 property, but shall be as valid and effectual to all intents and purposes whatsoever against any such subsequent purchaser, mortgagee, incumbrancer, lessee, or other claimant or possessor of the said land, and against the trustee of such bankrupt lienor, his executors or administrators, and against any execution creditor, as against the original proprietor 30 thereof who granted such lien. And if any such lienor, subsequent purchaser, mortgagee, incumbrancer, lessee, or other claimant or possessor, trustee, or execution creditor shall neglect or refuse to harvest at the usual season and deliver forthwith thereafter the crop for which any such preferable lien shall have been granted as aforesaid in pursuance of 35 the provisions in that behalf contained in such registered agreement, it shall be lawful for the lienée, his executors or administrators, to take possession of the farm bearing such crop for the purpose of harvesting such crop, and (if authorised by such registered agreement in that behalf) to sell the same; and all expenses attending such harvesting and 40 the conveyance of the produce thereof to the place of abode or business of such lienée or to the nearest place of shipment, and of any sale as aforesaid, shall be incorporated with and be deemed in law part of the amount secured by such lien.

Liens by tenants.

9 If the lienor be a tenant then the lienée shall before selling any 45 such crop pay to the landlord of the farm whereon such crop shall be 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 lienée 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. 50

Liens by mort-
gagors.

10 If at the time of making such lien there be in force a mortgage of the farm whereon such crop shall be growing, such lienée 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 such 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. A.D. 1890.

Mortgages of Stock.

- [11 Every mortgage of stock, or of stock and other chattels, on any station in *Tasmania* which shall hereafter be made *bond fide* and for valuable consideration, provided the names of the parties thereto and the particulars thereof shall be registered within Thirty days after the date thereof in the office of the Registrar, in the form in the Schedule (3.), or to the like effect, shall be valid in the law to all intents and purposes, whether the time for payment of the money secured by the mortgage shall have arrived or not, notwithstanding the said mortgaged stock or stock and other chattels shall not be delivered over to the mortgagee but shall remain and continue in every respect in the possession, order, and disposition of the mortgagor, his executors or administrators, or any person claiming under him or them; and the possession of such mortgaged stock, or stock and other chattels, by the mortgagor, his executors or administrators, or any person claiming as aforesaid, shall be to all intents and purposes in the law the possession of the mortgagee, his executors, administrators, or assigns, notwithstanding the subsequent bankruptcy of the mortgagor, his executors or administrators, or any person claiming as aforesaid, or any execution against his or their property: Provided, that no such mortgage shall be protected from the operation of any law now or hereafter to be in force relating to bankruptcy unless such mortgage shall have been executed at least Sixty days before the date of the order adjudging the mortgagor to be a bankrupt, or unless the consideration thereof shall be an advance or loan made at the time or in contemplation of the execution of such mortgage; and any bill of exchange accepted or endorsed, or drawn and endorsed, or any promissory note made or endorsed for the accommodation of the mortgagor or any unpaid purchase money for any station or the stock thereon, whether secured or not by any bill of exchange or promissory note, shall be deemed an advance or loan within the meaning of this Section.]

Right of mortgagee although possession in mortgagor.
Schedule (3.).

- [12 Every such registered mortgage of stock, whether expressly including other chattels or not, shall, unless the contrary be expressed therein, be deemed to include not only the stock, or stock and other chattels, mentioned in such mortgage, and the increase and progeny of such stock, but also all stock and other chattels belonging to the mortgagor, his executors or administrators, which shall after the execution of such mortgage at any time during the continuance of the security be depasturing, or be at, in, or upon any station comprised or mentioned in such mortgage, and also shall be deemed to authorise the mortgagee, his executors, administrators, or assigns, or his or their agent, or the agent of any corporation (being such mortgagee) on the happening of any event on which any power of sale contained in the mortgage deed may be exercised, to enter upon such station and take possession of all the stock and other chattels which shall or may for the time being be found at, upon, or about any such station, and which shall belong to the mortgagor, his executors or administrators, and the same stock and chattels respectively to dispose of under such power of sale.]

Mortgages of stock to comprise the stock for the time being on the station, and mortgagees authorised to take possession thereof and of other chattels on the station on power of sale becoming exercisable.

- [13 No future mortgage of stock, or of stock and other chattels, shall, unless registered in accordance with the provisions of this Act within

Future mortgages, unless registered,

A.D. 1890.

to be invalid as
against purchaser
for valuable
consideration.



Thirty days after the date thereof, be of any validity as against any purchaser *bond fide* and for valuable consideration; and whether so registered or not shall not be of any validity as against any subsequent mortgagee or lienee whose mortgage or lien shall be duly registered under this Act within Thirty days after the date thereof and before the registration of such first-mentioned mortgage, except in the case of fraud; and except in the case of fraud the priority of all instruments duly registered under this Act shall be determined by order of registration and not of date, and shall not be affected by notice, actual or constructive, of any unregistered mortgage or lien, or of any contract therefor; and the knowledge that any such mortgage, lien, or contract is in existence shall not of itself be imputed as fraud; and every second or subsequent mortgage of stock shall, if duly registered in accordance with the provisions of this Act within Thirty days after the date thereof, become upon such registration, and upon satisfaction of all prior mortgages registered in accordance with this Act, a first mortgage, so as to vest the legal ownership of the stock and chattels comprised therein in such second or subsequent mortgagee.]

Registration of
receipt from
mortgagee.



[14] In every case where the amount due or secured upon any mortgage of stock, or of stock and other chattels, shall have been or shall be paid or satisfied to the person entitled to receive or give a discharge for the same or his agent in that behalf, and a receipt in writing signed by such person or his agent shall be given acknowledging such payment or satisfaction, it shall be lawful for the mortgagor, his executors, administrators, or assigns, to cause a copy of such receipt, verified by affidavit, to be registered in the office of the Registrar, who shall register the same on production to him of the original receipt and of the mortgage to which the same shall relate, or at his discretion on production of the receipt alone, on proof by statutory declaration to his satisfaction that the mortgage has been destroyed or cannot be found, or of some other ground for non-production; and in every case in which production shall be dispensed with, the declaration on which dispensation is obtained shall be filed in the office, and a memorandum of such production having been dispensed with and referring by number to such declaration shall be made upon the original receipt and verified copy and signed by the Registrar at the time of registration; and from and after the registration of any such verified receipt, such registered receipt shall operate as an extinction of the mortgage and as a re-assignment of the mortgaged premises to the mortgagor, his executors, administrators, or assigns, but without prejudice nevertheless to any previous sale or any assignment in pursuance thereof under such mortgage deed, and without prejudice to any second or subsequent mortgage affecting the same stock, or the same stock and other chattels, or any part thereof then duly registered, unless every party thereto and every assignee of such mortgage shall, by writing under his hand at the foot of such receipt as aforesaid, have signified his assent to the registration of such receipt.]

Lien when may
be granted by
mortgagor.

(sheep)



15 It shall be lawful for any mortgagor of [stock,] 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 the stock included in the mortgage.

General.

Transfers of liens
and mortgages.



16 Every such registered lien of wool, every such registered lien of crop, [and every such registered mortgage of stock, or of stock and

other chattels] shall be assignable at law by writing; and the assignee thereof respectively may bring every such action thereupon or in respect thereof in his own name, and shall have and may exercise the same right, title, and interest, powers and authorities as the original lienee or mortgagee could have brought, would have had, or might have exercised if no assignment had been made by him.

A.D. 1890.



17 The Registrar shall keep a separate and distinct registry from year to year of all such agreements for purchases of wool or advances thereon as aforesaid and of all such agreements for purchases of crop or advances thereon as aforesaid, [and shall also keep a separate and distinct registry of the particulars of all such mortgages of stock or of stock and other chattels as aforesaid,] and shall be entitled to demand for every such registry thereof a fee of Two shillings and sixpence, and One shilling and sixpence for each affidavit sworn before him or made verification thereof; and all persons shall have access to the said registries and may search the same during the usual hours of business on paying a fee of Two shillings and sixpence for every search for each agreement for a purchase of wool or advance thereon, or for a purchase of crops or advance thereon, [and a like fee for every search against each station for a mortgage of stock or of stock and other chattels]. At the end of Twelve months next after the expiration of the year for which any such preferable lien on wool or crops shall have been given as aforesaid, the Registrar shall remove from the records of his office such preferable lien and shall destroy or cancel the same, or at any time, at the request of both parties to any such preferable lien, shall enter satisfaction on the same.

Particulars of registration by Registrar.



Cancelling of liens.

18 Any grantor of any preferable lien on wool, [or of any mortgage of stock, or of stock and other chattels under this Act,] and any overseer or servant of such grantor, who shall afterwards sell or deliver the wool under any such lien to any purchaser or other person without the written consent of the lienee, his executors, administrators, or assigns, or sell or dispose of, or cause to be sold or disposed of, without such written consent as aforesaid, any of the sheep whereon such wool shall be growing, with intent to defraud such lienee of any such wool or of the value thereof; [or who shall after the due execution and registry of any such mortgage in any manner, without the written consent of the mortgagee thereof, his executors, administrators, or assigns, sell or dispose of, or cause to be sold and disposed of, any stock or other chattels comprised in the mortgage, with intent to defraud the mortgagee;] or who shall in any way, or by any means whatsoever or howsoever, directly or indirectly destroy, defeat, invalidate, or impair, with intent to defraud, and any other person or persons who shall wilfully and knowingly incite, aid, or abet any such grantor, overseer, or servant, 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 stock or other chattels comprised in any mortgage duly executed and registered as aforesaid under the provisions of this Act, and any purchaser of the interest of the mortgagor, his executors or administrators, in any stock comprised in any such mortgage,] and any purchaser of the interest of any grantor of any preferable lien on wool, or the executors or administrators of any such grantor, and any overseer or servant of such purchaser respectively, who shall in any way, or by any means whatsoever, directly or indirectly destroy, defeat, invalidate, or

Frauds by lienor, &c. of wool, or mortgagor, &c. of stock.



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impair, or any other person or persons who shall wilfully and knowingly incite, aid, or abet any such purchaser, overseer, or servant, directly or indirectly to defeat, destroy, invalidate, or impair the right of the property of any such [mortgagee or] lienee as aforesaid, his executors, administrators, or assigns respectively in any stock or other chattels 5
 comprised in any such [mortgage or] lien, with intent to defraud such [mortgagee or] lienee, his executors, administrators, or assigns, shall be held and deemed guilty of a misdemeanor, and being convicted thereof shall be liable, in the discretion of the Court before whom any such offender shall be so convicted, to fine or imprisonment, or to both fine 10
 and imprisonment, such imprisonment to be for any period not exceeding Five years.

Frauds by lienor
of crops.

19 Any grantor of any preferable lien on crop, and any overseer or servant of such grantor, who shall afterwards sell or deliver the crop under any such lien to any purchaser or other person without the written consent of the lienee, his executors, administrators, or assigns, or sell, dispose of, lease, or otherwise incumber, or cause to be sold or disposed of, leased, or otherwise incumbered, without such written consent as aforesaid, any of the land whereon such crop shall be growing, with intent to defraud such lienee of any of such crop or of the value thereof, or to defraud in any of 15
 the cases aforesaid the purchaser, mortgagee, lessee, or other incumbrancer of the said land, or who shall in any way, or by any means whatsoever or howsoever, directly or indirectly destroy, defeat, invalidate, or impair the right of property of any lienee in the crop mentioned and described in any such registered agreement as aforesaid, and any 20
 purchaser of the interest of any grantor of any preferable lien on crop, or the executors or administrators of any such grantor, and any overseer or servant of such person respectively, who shall in any way, or by any means whatsoever, directly or indirectly destroy, defeat, invalidate, or impair, or any other person or persons who shall wilfully and knowingly 30
 incite, aid, or abet any such purchaser, overseer, or servant, directly or indirectly to defeat, destroy, invalidate, or impair the right or property of any such lienee as aforesaid, his executors, administrators, or assigns respectively, in any crop comprised in any such lien, shall be held and deemed guilty of a misdemeanor, and being convicted thereof shall 35
 be liable, in the discretion of the Court before whom any such offender shall be so convicted, to fine or imprisonment, or to both fine and imprisonment, such imprisonment to be for any period not exceeding Five years.

SCHEDULE.

(1.)

In consideration of £ , [bonâ fide value] (cash) which I admit to have received in [money [or negotiable securities, or chattels, or all or any of these, as the case may be]] from C.D. of , (and of further advances to be made to me by the said C.D. up to and not exceeding £), I do hereby give the said C.D. a preferable lien (to the extent of the said sum, and the interest and commission hereinafter mentioned) on the wool of the ensuing clip, to be shorn from my flock of sheep, consisting in number of or thereabouts and now depasturing at , in , under the superintendence of .
 It is agreed that the said C.D. shall be entitled to interest at the rate of per cent. per annum, from , on [the sum of] (such sum or sums as shall for the time being be owing on this security), and to a commission on such sum at the rate of per centum. And 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 at _____ to the order of the said C.D. A.D. 1890.
[If the parties intend that the licensee should have power to sell, add the words] and that the said C.D. may sell all wool so delivered, and retain the expenses of sale and the moneys due to him on this security from the proceeds of sale.

Dated _____ day of _____, A.D. 18 _____. (Signed) A.B.

Witness—

N.B.—If the money, [or negotiable security, or chattels advanced or supplied] be for the absolute purchase of the wool, instead of the words “to the extent of the said sum and the interest and commission hereinafter mentioned,” insert the words “for the absolute purchase and whole value thereof.”

(2.)

In consideration of £ _____ [bonâ fide value] (cash) which I admit to have received in [money [or negotiable securities, or chattels, or all or any of these, as the case may be]] from C.D. of _____ (and of further advances to be made to me by the said C.D. up to and not exceeding £ _____), I do hereby give the said C.D. a preferable lien (to the extent of the said sum and the interest and commission hereinafter mentioned) [on the wheat, oats (or other crop, as the case may be)] growing and not harvested on my farm containing _____ acres or thereabout, and situate _____ [or other substantial description]:

It is agreed that the said C.D. shall be entitled to interest at the rate of _____ per centum per annum from _____ [on the sum of] (such sum or sums as shall for the time being be owing on this security), and to a commission on such sum at the rate of _____ per centum. And it is further agreed that the said [the crop over which lien is given] shall be harvested by me or at my expense and shall be delivered at _____ to the order of the said C.D. [If the parties intended that the licensee should have power to sell, add the words] and that the said C.D. may sell the said [crop over which lien is given] so delivered and retain the expenses of sale and the moneys due to him on this security from the proceeds of sale.

Dated this _____ day of _____, A.D., 18 _____. (Signed) A.B.

N.B.—If the money [or negotiable security or chattels advanced or supplied] be for the absolute purchase of the crop over which the lien is given, instead of the words “to the extent of the said sum and the interest and commission hereinbefore mentioned,” insert the words “for the absolute purchase and the whole value thereof.”

[(3.)

Date of Deed.	Name of Mortgagor.	Name of Mortgagee.	Consideration.	Mortgaged stock and the brand or other distinctive mark, and the supposed number thereof, and the station where the same are depasturing, and the name of the principal superintendent or overseer of the station on which the mortgaged chattels are.
	Name of witness or witnesses (if any.)			

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C(3.)



I,

of
in Tasmania

make oath and say :—

1. That the paper writing hereunto annexed and marked "A" is a true copy of a
lien made or given by [lienor] to
[lienee] of
and of the schedule therein referred
to, and of every attestation to the execution thereof.
2. That the said lien was so made or given on the day of
being the day of the date thereof.
3. That I was present and did see the said [lienor]
sign and execute
the said lien, and that the said [lienor]
resides
and is a
4. That the name "
as a witness attesting the execution of the said lien is in my proper hand-
writing, and that I reside at
and am a

Sworn at in Tasmania
this day of One
thousand eight hundred and
before me

*A Justice of the Peace for Tasmania.*

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