

LIENS ON CROPS AND WOOL AND STOCK MORTGAGES ORDINANCE, 1912. ⁽¹⁾

No. 37 of 1912.

An Ordinance to amend the Law relating to Liens on Crops and Wool and Stock Mortgages.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Liens on Crops and Wool and Stock Mortgages Ordinance, 1912.* ⁽¹⁾ Short title.

It shall come into operation on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.* ⁽¹⁾ Commencement.

It is divided into Parts as follows:— Division.

Part I.—Lien on Crops.

Part II.—Lien on Wool and Stock Mortgages.

PART I.—LIEN ON CROPS.

2. In this Part of this Ordinance—

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

“Horticultural Produce” includes oranges grapes whether grown as fruit or for wine or spirit and fruit of any other kind.

Interpretation.

Q. 31 Vic.
No. 36, s. 37;
N.S.W. 7 of
1898, s. 3.

3. In all cases where any person makes any *bonâ fide* advance of money or goods or gives any valid promissory note or bill to any holder of land on condition of receiving as security for the same

Liens on
yearly crops.
Q. *Ib.* s. 38.
N.S.W. *Ib.* s. 4.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua <i>Govt. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.7.1912	(a)	23.12.1912 (Papua <i>Govt. Gaz.</i> of 23.12.1912)

(a) No notice of non-disallowance has been published in Papua *Govt. Gaz.*

COMMERCIAL LAW—

First
Schedule.

the growing crop or crops of agricultural or horticultural produce on any such land and where the agreement relating to such security is made in the form or to the effect of the First Schedule hereto and purports on the face of it to have been made as security for such advance and is duly registered within forty-two days after its date by leaving in the office of the Registrar of the Central Court⁽²⁾ a true copy thereof verified on oath before the said Registrar or any commissioner for taking affidavits or justice of the peace the person making such advance whether before at or after the date of such agreement shall have a preferable lien upon and be entitled to the whole of such crop or crops and the whole produce thereof; and possession thereof by the lienor shall be to all intents and purposes in the law the possession of the lienee; and when such advance is repaid with interest specified in such agreement the possession and property of such crop shall revert to and vest in the lienor.

Liens not
affected by
sale &c. of
land.

Q. 31. Vic. No.
36. s. 39.
N.S.W. 7 of
1898, s. 5.

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

Lienee to pay
rent of leased
land before
selling crops.

Q. *Ib.* s. 39.
N.S.W. *Ib.* s. 6.

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

Lienee to pay
interest to a
mortgagee
before selling
crop.

Q. *Ib.* s. 39.
N.S.W. *Ib.* s. 7.

6. If at the time of making any such lien there is in force a mortgage of the land whereon such crop shall be growing and the land is at the time of harvesting such crop in the occupation of the mortgagee such lienee shall before selling such crop pay to the mortgagee the amount of interest (not however exceeding twelve months' interest) due upon such mortgage at the time of carrying away or selling such crop and the lienee may repay him-

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Liens on Crops and Wool and Stock Mortgages Ordinance, 1912.

self the sum so paid for interest out of the proceeds of the sale of such crop before paying over the balance to the lienor.

7. The Registrar shall keep a separate alphabetical registry of all such agreements as aforesaid and shall be entitled for every entry therein to a fee of two shillings and six pence and to a fee of one shilling for each affidavit sworn in his office in verification of such agreement; and any person shall have access to such registry and may search the same during the usual hours of business on paying a fee of one shilling for each search.

List in registry open to inspection.
Q. 31 Vic. No. 36, s. 40.
N.S.W. 7 of 1898, s. 8.

8. Subject to the provisions of the section next following no such lien shall continue in force for a longer period than one year from the date thereof; and the said Registrar at the request of both parties shall at any time enter satisfaction thereon.

Duration of lien.
Q. 1b. s. 41.
N.S.W. 1b. s. 9.

9. Wherever a preferable lien has been or hereafter shall be given upon any sugar-cane or other crop which does not come to maturity within one year the lienee may on or before the day when the lien expires renew the said lien for any term not exceeding one year by filing in the office of the Registrar an affidavit stating that the crop is still immature that the lien is unsatisfied and the period for which he desires to renew his said lien; and thereupon the said lien shall continue in force for such further period (not exceeding one year) as the lienee shall set forth in his said affidavit.

Liens may be renewed in certain cases for terms not exceeding one year.
Q. 34 Vic. No. 12, s. 1.

10. A fee of two shillings and sixpence with the ordinary fees upon affidavits shall be chargeable in respect of the renewal of any such lien.

Renewal fee.
Q. 1b. s. 2.

11. All preferable liens upon crops shall be transferable by endorsement and every such transfer shall give to the transferee the same right title and interest therein as was held by the original lienee.

Liens to be transferable by endorsement.
Q. 1b. s. 4.

Provided that all such transfers shall be registered within forty-two days after the date thereof by leaving in the office of the Registrar a true copy of such transfer verified on oath before the said Registrar or before any commissioner for taking affidavits or justice of the peace.

PART II.—LIEN ON WOOL AND STOCK MORTGAGES.

12. In all cases where any person makes any *bonâ fide* advance of money or goods or gives any valid promissory note or bill to any proprietor of sheep on condition of receiving in payment or as security only for such money goods promissory note or bill (as the case may be) the wool of the then next ensuing clip of such proprietor and where the agreement relating to such purchase or

Right of lienee to wool as security or in payment.
Q. 31 Vic. No. 36, s. 27.
N.S.W. 1b. s. 11.

COMMERCIAL LAW—

Second
Schedule.

security is made in the form or to the effect in the Second Schedule appended to this Ordinance and purports on the face of it to have been made in payment or as security for such advance and is duly registered within forty-two days after the date of such agreement by leaving in the office of the Registrar a true copy thereof duly verified on oath before the said Registrar or before any other public officer who may be duly authorized to administer an oath in that behalf the person making such purchase or advance shall be entitled to the whole of the wool mentioned in such agreement whether such advance of money or goods or of such note or bill be before at or after the granting of any such preferable lien 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; and when such advance is repaid with such interest and commission as may be specified in any such agreement the possession and property of the said wool shall revert in such proprietor.

Right of
lienor.

Right of lienee
to ensuing
clip of wool.
Q. 31 Vic.
No. 36, s. 28.
N.S.W. 7 of
1898, s. 12.

13.—(1.) Where any person makes any such *bonâ fide* advance or purchase as in the last preceding section mentioned 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 any wise extinguished suspended impaired or otherwise prejudicially affected by any subsequent sale mortgage or other encumbrance 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 encumbrancer 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.

(2.) If any such lienor subsequent mortgagee encumbrancer trustee or other claimant or possessor of such sheep neglects or refuses to shear and deliver the wool of any sheep for which any such preferable lien has 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 or to such other place as may be named in said lien as the place of delivery shall be incorporated with and be deemed in law part of the amount secured by such lien.

14. 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 forty-two days after the date thereof in the office of the Registrar in the form mentioned in the Third Schedule 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 are not delivered over to the mortgagee but remain and continue in every respect as theretofore in the possession order and disposition of the said mortgagor and though the said mortgagor afterwards takes the benefit of any law now or hereafter to be in force in the Territory for the relief of insolvent debtors.

Right of mortgagee although possession in mortgagor.

Q. 31 Vic. No. 26, s. 29. N.S.W. 7 of 1898, s. 13.

Third Schedule.

Provided that no mortgage shall protect the same from the operation of any such law unless such mortgage shall have been executed at least sixty days before the date of the order for sequestration or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

15. It shall not be lawful for any lienor of wool or mortgagor of sheep so long as any mortgage or lien thereon executed by him or her shall remain unsatisfied to grant a further lien on such wool or mortgage of such sheep without the written consent of the lienee or mortgagee any practice to the contrary notwithstanding.

Lien granted by mortgagor. Q. *Ib.* s. 31.

16. All liens on wool or mortgages of live stock shall be transferable by indorsement and every such indorsement thereof shall give to the holder the same right title and interest therein as that held by the original lienee or mortgagee.

Transfer by indorsement of liens and mortgages. Q. *Ib.* s. 32. N.S.W. *Ib.* s. 15.

Provided that all such transfers by indorsement shall be duly registered within forty-two days after the date thereof in the office of the Registrar.

17. The 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 a fee of two shillings and six pence and one shilling for each affidavit sworn before him or filed in verification thereof; and any person shall have access to either of the said registries and may search the same during the usual hours of business on paying for each search a sum of one shilling.

Registry books to be kept. Q. *Ib.* s. 30. N.S.W. *Ib.* s. 16.

COMMERCIAL LAW—

Cancelling of preferable liens.
Q. 31 Vic.
No. 26, s. 33.
N.S.W. 7 of
1898, s. 17.

18. At the end of twelve months next after the expiration of the year for which any such preferable lien upon wool shall have been given as aforesaid the Registrar may remove from the records of his office all such preferable liens and may destroy or cancel the same or at any time at the request of both parties to any such preferable liens may enter satisfaction on the same.

Registration of satisfaction of mortgage.
Q. *Ib.* s. 34.
N.S.W. *Ib.* s. 18.

19.—(1.) In every case when the amount 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 to his or her 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 or her agent acknowledging such payment to be in satisfaction of the mortgage the mortgagor his executors administrators or assigns may cause a copy of such receipt to be registered in the office of the Registrar on production to that officer of the original receipt and of the mortgage deed to which the same relates.

(2.) From and after the time of the registration of such verified receipt such payment shall operate as an extinction of the mortgage and of the right and interest thereby created to all intents and purposes whatsoever but without prejudice to any second or subsequent mortgage affecting the same live stock or any part thereof then duly registered; any such similar receipt in writing indorsed on the back of any such second or subsequent mortgage and registered as aforesaid shall operate as an extinction of such second or subsequent mortgage and all right title and interest thereby created.

Saving rights of Crown.
Q. *Ib.* s. 36.
N.S.W. *Ib.* s. 19.

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

Judge may order extension of time for correction of errors.
Q. 60 Vic.
No. 10, s. 11.

21. A judge of the Central Court⁽²⁾ on being satisfied that the omission to file or register any document under Part I. or II. of this Ordinance within the time prescribed or that any omission or misstatement made in the process of the filing or registration of any document was unavoidable or accidental or due to inadvertence may in his discretion order such omission or misstatement to be rectified by extending the time for such filing or registration or by allowing any document book or register to be corrected or amended on such terms and conditions (if any) as to security notice by advertisement or otherwise as he thinks fit.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

SCHEDULES.

FIRST SCHEDULE.

Section 3.

In consideration of the advance of £ _____ paid to me in money by (or value for which I admit to have received in goods from) C.D. of _____ I do hereby give the said C.D. a preferable lien to the extent of the said advance— together with interest thereon at the rate of _____ per centum per annum —on the crop (or crops) of (*here state the nature of the produce*) of this year growing and to grow on the land (*here describe the land*) in the Territory of Papua. It is further agreed that unless on or before the _____ day of _____, 19____, I pay to the said C.D. the sum of £ _____ with interest thereon at the rate of _____ per centum per annum the said crop (or crops) shall be gathered carried away and made marketable by me or at my expense and shall be delivered at _____ to the said C.D. or his order—in which event he may sell the same by (*here state mode and conditions of sale*) and from the proceeds may pay himself the said sum and interest and all costs and shall pay over to me the balance if any or if there be any deficiency may recover the same against me at law as any debt.

Dated this _____ day of _____, 19____. (Signed) _____ A.B.

Witness—

SECOND SCHEDULE.

Section 12.

In consideration of £ _____ *bona fide* value, which I admit to have received in money (or goods or both as the case may be) from A.B. I hereby give to 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 Territory of Papua under the superintendence of _____. It is further agreed that the said sheep shall be shorn by me or at my expense and that the wool thereof shall be delivered by me at _____ to the order of the said A.B.

Dated this _____ day of _____, 19____. (Signed) _____ C.D.

Witness—

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

THIRD SCHEDULE.

Section 14.

Date of Deed.	Name of Mortgagor.	Name of Mortgagee.	Consideration.	Numbers and Description of Mortgaged Sheep Cattle or Horses and the Brand or other Distinctive Mark and Station where the same are depasturing as also the name of the Principal Superintendent or Overseer.
Name of witness or witnesses.				