

**MORTGAGES.****Ordinance No. 1 of 1875.***As amended by No. 6 of 1876, and No. 1 of 1905.*

[30th April, 1875.]

Be it enacted by the Governor of the Falkland Islands and the Dependencies thereof, with the advice of the Legislative Council thereof, as follows :—

Any person making a *bona-fide* advance to any proprietor of sheep on condition of receiving in payment the wool of the next ensuing clip to be entitled to the whole of the wool mentioned in such agreement.

1. In all cases where any person shall make any *bona-fide* advance of money or goods, or give any valid promissory note or bill to any proprietor of sheep on condition of receiving in payment or as security only for such money, goods, promissory note or bill, as the case may be, the wool of the then next ensuing clip of such proprietor, and where the agreement relating to such purchase or security shall be made in the Form A set out in the Schedule hereto or to the effect thereof, and shall be duly registered within ten days after the date of such agreement, the person making such purchase or advance shall be entitled to the whole of the wool mentioned in such agreement, whether such advance of money or goods or of such note or bill be before, at or after the granting of any such preferable lien, so long as the registered agreement relating thereto shall purport on the face of it to have been made in payment, or as security for such advance; and the possession of such wool by the said proprietor shall be, to all intents and purposes, the possession of the person or persons making such purchase or advance :

When advance repaid property and possession of the wool to revert in the proprietor of the sheep.

Provided that when, at any time, such advance be repaid, with such interest and commission as may be specified in any such agreement, the possession and property of the said wool shall revert in such proprietor.

2. When any person shall make any such *bona-fide* advance or purchase as aforesaid, the preferable lien of the licensee making the same, on the wool of the then next ensuing clip of such proprietor, shall not be in anywise extinguished, suspended, impaired, or otherwise prejudicially affected by any subsequent sale, mortgage, or other encumbrance whatsoever of the sheep mentioned and described in the registered agreement relating to any such preferable lien, nor by the subsequent bankruptcy of the lienor, but shall be as valid and affectual 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 bankrupt lienor, as against the original proprietor thereof, who granted such preferable lien :

Agreement, in form herein specified, for any *bona-fide* advance on security of ensuing clip of wool, registered as herein mentioned, valid against subsequent purchaser, etc., of sheep.

Provided that if any such lienor, subsequent mortgagor, encumbrancer, trustee, or other claimant or possessor of such sheep shall neglect or refuse to shear and deliver the wool of any sheep for which any such preferable lien shall have been granted as aforesaid, in pursuance of the agreement in that behalf contained in such preferable lien, it shall be lawful for the licensee, 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 licensee, shall be incorporated with and deemed in law part of the amount secured by such lien.

3. All mortgages of sheep, cattle, and horses, which shall hereafter be made *bona-fide*, and for valuable consideration, and where the names of the parties thereto, and the particulars thereof, shall be duly registered in cases where such mortgages shall have been executed in the Colony within ten days and where executed out of the Colony within three months after the date thereof in the office of the Registrar-General in the Form B set out in the Schedule hereto, shall be valid in law, to all intents and purposes, whether the money secured by the said mortgage be payable presently or not, and notwithstanding the said mortgaged live stock shall not be

Mortgage of live stock *bona-fide* made for valuable consideration executed and registered as herein mentioned, valid although the principal sum not presently payable, and although stock remain in possession of the mortgagor.

delivered over to the mortgagee, but shall remain and continue, in every respect as theretofore, in the possession, order, and disposition of the said mortgagor; and though the said mortgagor may afterwards be adjudicated a bankrupt:

Provided that no mortgage shall protect the same from the operation of any such law, unless such mortgage shall have been executed at least sixty days before the date of any fiat in bankruptcy, or where the consideration of any such mortgage shall be an advance or loan not payable presently, then the same shall only be valid to the extent of the amount actually advanced, or the bills or notes actually given by the mortgagee at the date of such fiat with such interest and commission as may be due in respect thereof.

Separate and distinct registry from year to year to be kept of agreements for purchases of, or advances on wool, and of mortgages of live stock.

4. The Registrar-General or Deputy-Registrar shall keep a separate and distinct registry, from year to year, of all such agreements for such purchases of wool, or advances thereon, and shall also keep a separate and distinct registry of the particulars of all such mortgages of sheep, cattle, and horses as aforesaid; and shall be entitled to demand for every such registry thereof, the fees payable under the Registration Ordinance, 1853.

When and how preferable liens on wool may be cancelled.

5. The Registrar-General, or his deputy, at any time after the registration of any such preferable lien as hereinbefore provided, may, at the request of both parties to any such preferable lien, enter satisfaction for the same on the records of the office.

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

6. Where before or after the passing of this Ordinance the amount of principal and interest, or of the balance of principal and interest due upon any mortgage of live stock, shall have been, or shall be paid to the person entitled to receive the same, or his agent in that behalf, and a receipt in writing for the amount so paid shall have been, or shall be given, signed by the party so entitled, or by his agent acknowledging such payment to be in satisfaction of the mortgage, it shall be lawful for the mortgagor, his executors, administrators, or assigns, to cause a copy of such receipt, duly verified by affidavit, to be

registered at Stanley, in the office of the Registrar-General, on production to this officer, or his deputy, of the original receipt, and of the mortgage deed to which the same shall relate; and, from and after the time of the registration of any such verified receipt, such payment shall operate as an extinction of the mortgage, and of the right and interest thereby created, to all intents and purposes whatsoever, but without prejudice nevertheless to any previous sale or sales, or any conveyance in pursuance thereof, under such mortgage deed, the particulars whereof shall be duly endorsed thereon, and without prejudice to any second or subsequent mortgage affecting the same live stock, or any part thereof, then duly registered, unless every party thereto shall, by writing under his or her hand, at the foot of such receipt as aforesaid have signified his or her assent to the registration of such receipt.

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

Rights of the  
Crown as to  
waste lands not  
affected.

8. Any grantor of any such preferable lien on wool, or of any mortgage of sheep, cattle, or horses, or of their increase and progeny, under this Ordinance, whether such grantor shall be principal or agent, who shall afterwards by the sale or delivery of the wool under any such lien, without the written consent of the lienee, to any purchaser, pawnee, or other person, or by selling, steaming, or boiling down, or causing to be sold, steamed, or boiled down, without such written consent as aforesaid, the sheep whereon the same shall be growing, with a view to defraud such lienee of such wool, or of the value thereof; or who shall, after the due execution and registry of any such mortgage, without the written consent of the mortgagee thereof, sell and dispose of, or steam, or boil down, or cause to be sold and disposed of, or to be steamed or boiled down, any sheep, cattle, or horses, or their increase or progeny (with intent in any such case to defraud the lienee or mortgagee), shall be severally held and deemed guilty

Punishment to  
frauds.

of an indictable fraud and misdemeanour, and being thereof duly convicted, shall be severally liable, in the discretion of the Judge or Court before whom any such offender shall be so convicted, to fine or imprisonment, or to both fine and imprisonment, for any period not exceeding three years, with or without hard labour, at the discretion of such Court or Judge.

Short title.

9. This Ordinance may be cited as "The Mortgages Ordinance, 1875."

#### SCHEDULE.

##### FORM A.

In consideration of [*here set out in full the consideration moving from A. B., of* , *the mortgagee, whether money or goods, or whatsoever else, and if it be money, state whether such money is payable presently or not, and if in fixed instalments set out the dates*] I do hereby give the said A. B. a preferable lien to the extent of £ , with interest thereon at the rate of £ per centum per annum, and such sums by way of commission as shall be due to him from time to time according to the ruling rates amongst merchants for the sale of such wool, and in respect of other sales and purchases made on my behalf, on the wool of the ensuing clip, to be shorn from my flocks of sheep, consisting in number of or thereabouts, and now depasturing at in the said Colony, under the superintendence of . It is further agreed that the said sheep shall be shorn by me, or at my expense, and that the wool thereof shall be delivered by me at to the order of the said A. B.

Dated day of , A.D.

Witness (Signed) C. D.

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

##### FORM B.

Date of Deed or Agreement.	Name of Mortgagor or Lienor.	Name of Mortgagee or Lienee.	Consideration (if for a preferable lien state particulars of bills or notes, if any, given).	Number and description of sheep whose wool is pledged, or of mortgaged sheep, cattle or horses, and the brand or other distinctive mark and stations where the same are depasturing, as also the name of the principal Superintendent or Overseer.

[*Name of witness or witnesses.*]