

## NEW ZEALAND.



ANNO TRICESIMO SECUNDO

## VICTORIÆ REGINÆ.

No. XI.

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## ANALYSIS.

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AN ACT to amend the Law relating to Mortgages of Title.  
 Stock. [30th September 1868.]

**B**E IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1. The Short Title of this Act shall be “The Mortgages of Stock Short Title.  
 Registration Act 1868.”
2. This Act shall commence and come into operation on the first Commencement of Act.  
 day of November one thousand eight hundred and sixty-eight Provided however that it shall be lawful for the Governor at any time after the passing of the Act to make any such warrant of appointment as by the sixth section of this Act is to be made by the Governor.
3. “The Bailors of Sheep and Cattle Protection Act 1865” is Repeal &c.  
 hereby repealed and “The Bills of Sale Act 1867” shall be deemed not to affect or apply to mortgages registered hereunder.
4. Nothing in this Act shall be construed to affect in any way the Rights of Crown &c. not affected.  
 rights and prerogative of the Crown as to any Crown Lands described in any mortgage as the lands or stations where stock may be depasturing.
5. In the construction of this Act unless the context be repugnant Interpretation.  
 thereto the word “station” shall include any land specifically mentioned in any mortgage granted as hereinafter mentioned and for the time being used by the grantor of any such mortgage for the purposes of depasturing stock and the word “stock” shall include

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any sheep cattle or horses and the word "person" shall include companies whether incorporated or not as well as individuals.

Right of mortgagee  
through possession  
on mortgagor.

6. Every mortgage of stock which shall hereafter be made *bonâ fide* and for valuable consideration provided the stock therein mentioned shall be branded with some distinctive brand or brands specified in the said mortgage or in some schedule or inventory thereto or referred to therein and provided such mortgage and every schedule or inventory thereto or therein referred to or a true copy thereof and of every attestation of the execution thereof together with an affidavit of the time of such mortgage being executed and a description of the residence and occupation of the mortgagor and of every attesting witness to such mortgage be registered by filing within twenty-one days after the execution thereof by the mortgagor in the office of the Registrar or Deputy Registrar of the Supreme Court in the Province within which such stock are at the time of the mortgage being executed by the mortgagor shall be valid in law to all intents and purposes whether the time for payment of the money secured by the mortgage shall have arrived or not and notwithstanding the said mortgaged stock 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 by the mortgagor his executors or administrators or any person claiming as aforesaid shall be to all intents and purposes in 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 any adjudication of bankruptcy against the mortgagor made pursuant to the bankruptcy laws for the time being in force in New Zealand or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage and 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 Provided the mortgage for securing the same be executed within twenty-one days after the transfer of the station or stock to the purchaser thereof Provided also that if such stock or stock and other chattels be within some district in the Colony not being within any Province such mortgage or copy thereof and such affidavit as aforesaid shall be filed within such time as aforesaid in such Supreme Court Office as the Governor shall from time to time by warrant under his hand appoint to be the Supreme Court Office for such district for the purposes of this Act whether such office be within or without such district and the Registrar or Deputy Registrar at such office shall be the officer with whom such particulars shall be registered.

Security for further  
advances.

7. In any mortgage to be granted under the provisions of this Act it shall be lawful for the parties thereto to provide therein that the same shall extend to and be a security for further advances beyond the advance or loan forming the *bonâ fide* consideration of such mortgage (to an extent not exceeding one-half of such original advance or loan) and the protection given by the provisions of this Act shall extend to such further advances notwithstanding that the same shall have been made within sixty days before any such act of bankruptcy as aforesaid.

*Mortgages of Stock Registration.*

8. Every such registered mortgage of stock shall unless the contrary be expressed therein be deemed to include not only the stock specifically mentioned in such mortgage and the increase and progeny of such stock but also all stock branded with the brand or brands specified in the mortgage or in any schedule or inventory thereto or referred to therein 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 specifically mentioned in such mortgage and also shall be deemed to authorize the mortgagee his executors administrators or assigns or his or their agent or the agent of any corporation or joint stock company unincorporated (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 branded as aforesaid 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 or such part thereof as shall be sufficient to satisfy the claim thereon to dispose of under such power of sale.

Mortgages of stock to comprise the stock branded in accordance with terms of deed.

9. No future mortgage of stock shall until nor in any case unless registered in accordance with the provisions of this Act within twenty-one days after the date thereof be of any validity as against any purchaser *bona fide* and for valuable consideration and such purchasers shall not be affected by notice actual or constructive of any unregistered mortgage or of any contract therefor and the knowledge that any such mortgage 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 twenty-one 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.

Future mortgages unless registered to be invalid as against purchaser for valuable consideration.

10. The assignee by deed of every such registered mortgage of stock shall have and may exercise the same right title and interest powers and authorities as the original mortgagee would have had or might have exercised if no assignment had been made by him.

Transfer of mortgage.

11. Every Registrar or Deputy Registrar as aforesaid shall cause every mortgage and every schedule or inventory as aforesaid and every such copy filed in his said office under the provisions of this Act to be numbered and shall endorse thereon the day and hour of the receipt thereof and shall keep a book in his office in which shall be fairly inserted as and when such mortgages or copies as required by this Act are respectively filed the name residence and occupation of the mortgagor and also the name of the mortgagee with the number affixed to the mortgage or copy on the registration thereof and all such particulars shall be entered according to the form given in the Schedule to this Act and such Registrar or Deputy Registrar as aforesaid shall be entitled to demand on the filing of every such mortgage or copy thereof a fee of five shillings and all persons shall have access to the said book and may search the same and every mortgage or copy thereof during the usual hours of business on paying for every search against each person a fee of two shillings and any person shall be entitled to have an office copy of or extract from any mortgage or copy thereof filed as aforesaid upon paying for the same at the rate of fourpence for every folio of seventy-two words.

Particulars of registration.

*Mortgages of Stock Registration.*

Registration of  
receipt from  
mortgagee.

**12.** In every case where the amount due upon any mortgage of stock 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 of the mortgage it shall be lawful for the mortgagor or his executors administrators or assigns to cause a copy of such receipt duly verified by affidavit to be registered in the office of the Registrar or Deputy Registrar at which the mortgage or copy shall have been filed and the Registrar or Deputy Registrar at such office shall file and register such copy on production to that officer of the original receipt and of the mortgage deed to which the same shall relate or at his discretion on the 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 or Deputy 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 reassignment of the mortgaged premises to the mortgagor his executors administrators or assignees and of the right and interest thereby created to all intents and purposes whatsoever 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 any part thereof then duly filed unless every party thereto and every assignee of such mortgagee shall by writing under his hand at the foot of such receipt as aforesaid have signified his assent to the registration of such receipt.

Fraud by mortgagor  
&c.

**13.** Every grantor of any mortgage of stock under this Act and every assignee of such grantor who shall remain in possession of such stock either before or after the time appointed for the repayment of the moneys secured by such mortgage shall be deemed to be a bailee of the stock comprised in such mortgage within the provisions of "The Larceny Act 1867."

Existing mortgages  
validated.

**14.** All mortgages of stock made before the coming into operation of this Act and which if this Act had been in force could have been registered pursuant to the provisions thereof may be registered as aforesaid within sixty days after this Act shall come into operation and shall so far as regards any stock comprised therein thereafter be deemed to all intents and purposes to have been made and registered according to the provisions of this Act but such registration as last aforesaid shall be without prejudice to any rights of priority existing at the time of such registration.

Schedule.

SCHEDULE.

Satisfaction entered.	Number.	Name, Residence, and Occupation of Mortgagor.	Name of Mortgagee.	Date of Deed.	Date of filing.

WELLINGTON, NEW ZEALAND:

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