

22 GEO. V. No. 37, 1931. *Liens on Crops of Sugar Cane Act.*

An Act to Amend the Laws relating to Liens upon Crops of Sugar Cane, and for other purposes consequent thereon.

22 GEO. V.
No. 37.
THE LIENS
ON CROPS OF
SUGAR CANE
ACT OF 1931.

[ASSENTED TO 24TH DECEMBER, 1931.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

*1. This Act may be cited as "*The Liens on Crops of Sugar Cane Act of 1931*," and shall come into operation on a date to be proclaimed by the Governor in Council by Proclamation published in the *Gazette*. Short title and commencement.

2. In the construction and for the purposes of this Act and in all documents purporting to be made or executed thereunder (if not inconsistent with the context and subject-matter), the following terms shall have the respective meanings hereinafter assigned to them, that is to say— Interpretation.

"Crop"—A crop of sugar-cane being grown or to be grown for the purpose of being harvested in any one harvesting season; Crop.

"Lien"—The charge (made enforceable under this Act when registered and while subsisting) whereby any crop and the proceeds thereof become security for the discharge of any debt or obligation; Lien.

"Lienee"—A person to whom a lienor gives a lien, or to whom a lien is assigned as provided by this Act, or on whom a lien devolves by operation of law; Lienee.

"Lienor"—Any owner of a crop who gives a lien as provided by this Act; Lienor.

"Owner of a crop"—A person growing or intending to grow a crop who has any legal or equitable right or interest therein: the term also includes a person who is entitled to emblements; Owner of a crop.

* Proclamation dated 5th January, 1932, issued bringing Act into force as from 11th January, 1932. (*See Gazette*, 1932, page 28.)

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Owner of a mill.

“Owner of a mill”—A person owning or having control of a sugar-mill: the term includes the Corporation of The Treasurer created under and for the purposes of **“The Sugar Works Guarantee Acts, 1893 to 1908,”* †*“The Sugar Works Act of 1911,”* and ‡*“The Co-operative Sugar Works Act of 1914”*;

Register.

“Register”—A register of liens on sugar-cane required to be kept under this Act.

Repeal of certain Acts and savings.

3. §*“The Mercantile Act of 1867,”* ¶*“The Mercantile Act Amendment Act of 1870,”* and ¶*“The Mercantile Amendment Act of 1896”* are repealed so far as they relate to liens on crops of sugar-cane not registered before the commencement of this Act, but nothing herein contained shall affect the validity or the operation of any lien on a crop of sugar-cane duly made and registered before the commencement of this Act, except that all such liens relating to any crop which is intended to be harvested during the harvesting season in the calendar year one thousand nine hundred and thirty-two shall be deemed to have been duly made under this Act and to have been duly registered under this Act as though such lien had been so registered at the date of the making thereof, and all instruments by which such liens have been created shall be transmitted to the proper registry and entered in the register in order of such date: Provided that nothing herein enacted shall affect the registration or the effect of the registration of any lien in respect of which any legal proceedings have been taken before the commencement of this Act.

Owner of crop intending to charge crop to execute an instrument

Schedule, Form “A.”

4. (1.) Whenever the owner of any crop or crops intends to charge such crop or crops by way of security for the payment or satisfaction of any debt or liability (whether past or present or future, and whether vested or contingent), such owner shall execute an instrument in the form or to the effect of Form “A” of the Schedule hereto.

* 57 Vic. No. 18 and amending Acts, *supra*, pages 3417 *et seq.* (See Alphabetical Table.)

† 2 Geo. V. No. 8, *supra*, page 5211.

‡ 5 Geo. V. No. 34, *supra*, page 6391.

§ 31 Vic. No. 36, *supra*, page 2133.

¶ 34 Vic. No. 12, *supra*, page 2146.

¶¶ 60 Vic. No. 10, *supra*, page 2146.

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(2.) Every such instrument shall contain a description sufficient to identify the land upon which the crop or crops intended to be so charged is or are growing or is or are about to grow, and shall be attested by a witness.

Description of land in instrument.

(3.) Every such instrument shall be registered at the prescribed registry by filing in such registry a true copy of such instrument verified by an affidavit in Form "B" of the Schedule hereto.

Registration of instrument.

Schedule, Form "B."

(4.) Subject to section three hereof, all such instruments registered in respect of or affecting the same crop or crops shall be entitled to priority according to the respective times of registration and irrespective of the dates of such instrument. For the purpose of determining such priorities, an officer in such registry shall endorse on every such instrument registered by him the date and time of registration, and shall assign to each such instrument in the order of registration a consecutive number and shall endorse such number thereon.

As to priority of registration.

5. Except as hereinafter provided, the registration of any lien duly registered in accordance with the provisions of this Act shall be deemed to be full and sufficient notice to all persons of such lien:

Effect of registration.

Provided however, that such registration shall not be deemed to be notice so as to affect the security given by any lien already registered for further advances made or to be made.

6. There shall be kept in every such registry a register book in Form "C" of the Schedule hereto in which shall be recorded the particulars shown in the said form, and for every such register book there shall be kept an index of all liens referred to therein arranged alphabetically according to the names of the lienors.

Register book to be kept.

Schedule, Form "C."

7. When any lien has been satisfied or discharged, the lienee shall if so required by the lienor duly mark or endorse the instrument creating such lien with a memorandum signed by the lienee and by a witness attesting such signature to the effect that such lien has been satisfied or discharged, and on the production of the instrument so marked or endorsed the officer shall record in the register book and on the lien so

Discharge of lien to be recorded in register book.

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produced and on the copy thereof filed in the registry the fact of such satisfaction or discharge and the date and time of the registration thereof.

Power of
lienee where
lienor
neglects to
pay off the
moneys
secured by
lien.

8. Subject to the provisions of **“The Regulation of Sugar Cane Prices Acts, 1915 to 1931,”* and of any award duly made thereunder and affecting any crop, if a lienor, his executors, administrators, or assigns shall neglect or refuse either to pay off the whole of the moneys secured by a lien upon such crop with interest as agreed upon as aforesaid, or to give up such crop to such lienee in pursuance of such lien, such lienee, his executors, administrators, or assigns may himself or by his servants or agents, and upon giving notice to the owner of any sugar-mill to which the lands described in such lien may be assigned under the aforesaid Acts, enter upon such land and cultivate, gather, carry away, and sell such crop or crops to the owner of such sugar-mill or to any other person in the manner and subject to the same conditions and to the same effect as the lienor could lawfully have sold the same :

Provided that if such lienor be a tenant then the lienee shall before carrying away any such crop pay to the landlord of the land whereon such crop shall be growing such sum of money as may be due to him for rent at the time of carrying away such crop, provided that the sum so paid shall not exceed one year's rent :

Provided also that if at the time of the registration of such lien there be in force a mortgage or a contract for the purchase by the lienor of the land whereon such crop shall be growing and the land shall at the time of harvesting be in the occupation of the mortgagee or the vendor, such lienee shall before carrying away and selling any such crop pay to the mortgagee or to the vendor the amount of interest, not, however, exceeding twelve months' interest, due upon such mortgage or such contract of sale at the time of carrying away and selling such crop.

Application
of proceeds
of sugar-
cane.

9. (1.) The purchaser of any sugar-cane, whether such purchaser is the owner of a mill or not, shall after production to such purchaser of any duly registered lien given over such sugar-cane apply the proceeds so far

* 6 Geo. V. No. 5 and amending Acts, *supra*, page 9887. (*See* Alphabetical Table.)

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as they are available of all such sugar-cane so purchased in such order, and such proceeds are deemed to be charged to such extent as follows, that is to say :—

- (i.) When an owner of a mill has become entitled under subsection one of section twenty-four of **“The Regulation of Sugar Cane Prices Acts, 1915 to 1931,”* to any costs of harvesting or other expenses incidental thereto, then in repaying such costs to such owner together with any amount which he may with the consent of the lienee have advanced to any person or may himself otherwise than as aforesaid have paid or incurred for the purpose of harvesting such crop ;
- (ii.) In paying to the lienee any sum or sums paid by the lienee under section eight hereof to a landlord or to a mortgagee or to a vendor for rent or interest ;
- (iii.) Unless otherwise stated in the instrument creating the lien, in paying to the lienee any amount paid or incurred under the †*“The Wages Act of 1918”* or otherwise by the lienee in cultivating or harvesting and carrying away the sugar-cane covered by his lien ;
- (iv.) When the purchaser is the owner of a mill, in paying such levies as such owner may lawfully deduct from such proceeds ;
- (v.) In paying to the lienee any amount due and owing to such lienee for any moneys secured by such lien : Provided that where a lien is given to the extent of a stated percentage of the proceeds of a crop of sugar-cane or a stated amount per ton of such crop, then such purchaser shall under this subsection pay to such lienee such stated percentage only of such proceeds as are available from time to time, or such amount on each ton of cane so realised, as the case may be, towards the satisfaction of the principal moneys and interest secured by the said lien ;
- (vi.) In paying to any second or subsequent lienee in like manner as aforesaid, and in order of

* 6 Geo. V. No. 5 and amending Acts, *supra*, page 9887. (See Alphabetical Table.)

† 9 Geo. V. No. 19, *supra*, page 8495.

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the priority of the registration of their respective liens any moneys paid by such lienee for rent or interest under this Act and any amount paid or incurred under **“The Wages Act of 1918”* or otherwise for cultivating or harvesting and carrying away such sugar-cane, and any moneys secured by such liens :

(2.) Provided that where the sugar-cane is harvested by the lienor the purchaser may, if so requested by the lienor, and with the consent of the lienee or his agent, endorsed upon the instrument creating the lien, advance to the lienor such amount as may reasonably be necessary for payment by the lienor of wages due and payable by the lienor to any employees for harvesting any sugar-cane covered by the lien.

(3.) Subject to the foregoing provisions and subject to any equities affecting such proceeds of which such purchaser shall have had notice, such purchaser shall pay the proceeds of such sugar-cane to the lienor.

Restriction
as to giving
of lien.

10. Excepting as provided by section eleven of this Act, no lien shall be given except over a crop being grown or to be grown for harvesting either during the calendar year in which the lien has been given or in the calendar year next following unless such lien shall have been renewed in accordance with the provisions of this Act, and no lien shall continue in force for a longer period than one year from the date thereof unless renewed or further renewed as hereinafter provided.

Further
provisions
regarding
liens.

11. Where a lien is given to secure the payment with or without interest of purchase money under an agreement of sale of the land upon which the crop or crops given as security is or are growing or to grow, or to secure the payment with or without interest of a debt owing under a mortgage of such land, or to secure any rent or royalty payable under a lease of such land and where such lien shall contain as a schedule thereto or embodied therein a true copy of such agreement for sale or such mortgage or lease, such lien may be given over the crop or crops growing or to grow on the said land in any year or in any year and any subsequent year or years, but such lien shall not continue in force longer than one year from the date of such lien unless such lien shall be renewed or further renewed as hereinafter provided.

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12. Where two or more liens given by way of collateral security to mortgages over the same land shall be renewed they shall take effect as between themselves in the same order of priority as such mortgages and not in the order of the registration of such liens, but no lien given to secure purchase money with or without interest under any agreement of sale, or given as collateral security to a second or subsequent mortgage, or given to secure any rent or royalty payable under a lease shall be renewed after a prior vendor mortgagee or lessor has lawfully entered into possession of such land, unless at the time of the renewal of such lien there shall be filed a written consent thereto signed by such prior vendor or mortgagee or lessor :

Provisions as to priority where two or more liens given.

Provided that nothing in this section shall affect the priority of any lien which shall be renewed or further renewed under the provisions of section thirteen of this Act.

13. Any lien which shall have been duly registered in accordance with the provisions of this Act upon any crop which at the expiry of the period mentioned in section ten of this Act shall not have been fully harvested may be renewed or further renewed in the manner hereinafter provided, but it shall not be necessary after the crop covered by such lien has been fully harvested to renew a lien in order that such lien shall remain effective against the proceeds of such crop.

Renewal of liens.

14. A lienee, in order to renew or further renew any lien which under the provisions of this Act may be renewed, shall on or before the day when the lien would otherwise expire file in the proper registry an affidavit stating what amount secured under the lien is still unpaid, and stating further, where such is the case, that the crop or crops over which the lien was given have not been fully harvested, or in case of a lien given under the provisions of section eleven of this Act, that the proceeds of such crop or crops have been insufficient to satisfy the amount secured to such lienee by such lien, and the period for which he desires to renew such lien, and such affidavit shall be registered and the renewal of such lien shall be duly noted by the registrar in the register and upon such lien, and subject to the provisions of section twelve of this Act such lien shall thereupon continue and be in force over such crop or proceeds of such crop for such further period

Provisions as to renewal of liens.

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not exceeding one year from the date of filing such affidavit, and shall be entitled to the same priority over all other liens as it had prior to such renewal.

Liens not
affected by
sale, &c., of
land.

15. No lien given in good faith and for valuable consideration and duly registered shall be extinguished or otherwise prejudicially affected by any sale, assignment, partition, lease, agreement for a lease, mortgage, or encumbrance of or other dealing with the land on which any such crop may be growing or shall be grown, or by the surrender of any lease, or by the death of the lienor, or by any re-entry or foreclosure by any vendor, lessor, mortgagee, or encumbrancee or other person than a lienee entitled thereto under this Act.

Priority.

16. Save as otherwise provided by this Act, no lien, charge, security, or claim shall have preference or priority over any lien duly registered under and in accordance with the provisions of this Act :

Nothing in this Act shall prejudice or in any wise affect the provisions of **“The Wages Act of 1918.”*

Production
of lien to
owner of
mill.

17. Every lienee under a lien given over a crop growing or to grow on land the whole or any part of which is assigned to a mill shall after the registration, renewal of registration, assignment, transfer, satisfaction, or discharge thereof produce such lien to the owner of such mill, and in the case of a first registration of such lien shall leave with such mill a true copy of such lien as registered, and the owner of such mill shall if required by the lienee acknowledge in writing endorsed upon such lien the production of such lien and the receipt of such copy, and until such lien or such renewed, assigned, transferred, satisfied, or discharged lien shall be so produced no mill shall be affected by the registration, renewal, assignment, transfer, satisfaction, or discharge of such lien as to any proceeds of sugar-cane paid out before such production ; but after production of such lien, unless such lien shall have been satisfied or discharged, the lienee or the assignee or transferee under such lien shall be entitled to be paid from the proceeds then next available and, so far as the said proceeds are sufficient, such amount as he would have received if such lien or renewed or assigned or transferred lien had been produced.

* 9 Geo. V. No. 19, *supra*, page 8495.

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18. The registry at which a lien given under the provisions of this Act or any transfer, assignment, or renewal thereof is to be registered shall be determined as follows:—

Place of
registration.

(1.) If the crop is described in the instrument creating such lien as being at a place not within the Northern District and not within the Central District as defined by **The Supreme Court Act of 1895* or any enactment amending or substituted for the same, the registry shall be the office of the Registrar of Joint Stock Companies at the Supreme Court at Brisbane.

(2.) If the crop is described in the instrument creating such lien as being at a place within the Northern District or within the Central District, the registry shall be the office of the Registrar of Joint Stock Companies at the Northern Court at Townsville or the office of the Registrar of Joint Stock Companies at the Central Court at Rockhampton, as the case may be.

(3.) If the crop is described in the instrument creating such lien as being situated in more than one of such districts it must be registered in each of such districts, otherwise it shall be deemed to be unregistered as to so much of the crop as is at any place within the district in the proper registry of which it is not registered:

(4) Provided that in the case of any such lien given in consideration of any limited principal sum not exceeding fifty pounds the registry shall be the office of the clerk of petty sessions district within which the crop is described as being situated, or if the crop is described as being situated within more than one of such petty sessions districts it must be registered in each of such districts, otherwise it shall be deemed to be unregistered as to so much of the crop as is at any place within the district in the proper registry of which it is not registered.

(5.) If the consideration expressed in the instrument creating the lien does not consist of money or value declared in money it must be registered in the Supreme Court in the district in which the crop is described as being situated.

* 59 Vic. No. 21, *supra*, page 3454.

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Assignment
or transfer
of lien by
endorse-
ment.

19. Every lien registered under this Act may be assigned or transferred by endorsement, and upon the registration of such assignment or transfer by filing in the proper registry an affidavit containing a true copy of such endorsement and verifying the same, all the right, title, interest, powers, and remedies of the lienee under such lien shall pass to and vest in the transferee as from the date of execution of such transfer: Provided that no such transfer shall affect or create any liability in respect of any payment made by the purchaser of any crop of sugar-cane referred to in such lien prior to such transfer being produced to such purchaser.

Power of
search of
register for
obtaining
copies.

20. Any person may, during the usual hours of business and upon payment of the prescribed fee, search the register kept at any registry, and shall be entitled to obtain an office copy or extract from any instrument filed in such registry, and any copy of an instrument purporting to be an office copy thereof shall in all courts and before all arbitrators or other persons be admitted as *primâ facie* evidence of the contents of such instrument and of the fact and date of registration or filing as shown thereon.

Fees.

21. The following fees shall be paid to and received on behalf of the Crown, that is to say:—

	<i>s.</i>	<i>d.</i>
On registering or filing any document	2	6
On every search	1	0
For every office copy per folio of seventy-two words	0	4

Judge may
order
extension of
time or
correction of
errors.

22. A judge of the Supreme Court, on being satisfied that the omission to file or register any instrument or renew any registration within the time prescribed by this Act, or that any omission or inaccuracy in any statement or in the process of filing or registration of any instrument was unavoidable or due to inadvertence, may in his discretion order such omission or inaccuracy to be rectified, and may extend the time for such filing or registration, and may order any instrument, register, or book to be corrected or amended on such terms and conditions as to notice by advertisement, security, or otherwise as he may think fit.

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23. (1.) A lien under this Act shall not be included in the term "Bill of Sale" under **"The Bills of Sale Acts, 1891 to 1896."* Non-application of Bills of Sale Acts, &c.

(2.) The provisions of this Act shall not apply to any lien on crops of sugar-cane given by any person to the Crown as defined by †*"The State Securities Registration Act of 1925"* and registrable under such Act; but the provisions of that Act in respect of such liens shall continue in full force and effect.

SCHEDULE A.

FORM OF AGREEMENT.

"The Liens on Crops of Sugar Cane Act of 1931."

In consideration of [insert consideration] paid to or owing by me to C.D. (or value for which I admit to have received in goods from or such consideration, as the case may be), I do hereby give the said C.D. (hereinafter called "the lienee") a preferable Lien to the extent of [insert particulars of principal and interest moneys to be secured] on the crop being grown or to be grown for harvesting during the calendar year in which this lien is given (or in the next following year or years, as the case may be, or crops or part or percentage (as stated) of the crop or crops) on the land [here describe the land] in the State of Queensland.

It is further agreed that unless on or before the day of _____, 19____, (or on demand as the case may be) I pay to the lienee the principal and interest moneys hereby secured the said crop (or crops or part or percentage (as stated) of the said crop or crops), shall be cultivated, gathered, carried away, and made marketable by me or by the lienee at my expense and shall be delivered at _____ Sugar Mill to the lienee, or his order, for sale and realisation and from the proceeds the lienee may, subject to the provisions of Section 9 of "*The Liens on Crops of Sugar Cane Act of 1931,*" pay himself the said principal and interest moneys and all costs, and shall pay over to me the balance, if any, or if for any cause there be any deficiency he may recover any such deficiency against me at law as any debt.

In witness whereof I have hereunto set my hand this day of _____, 19____.

Witness :

Signed : A.B.

I [we] accept the above lien.

Witness :

Signed : C.D. (or his agent.)

Dated :

I [we] consent to any advances to the lienor as provided by Section 9 of "*The Liens on Crops of Sugar Cane Act of 1931.*"

Witness :

Signed : C.D. (or his agent.)

Dated :

* 55 Vic. No. 23 and 60 Vic. No. 11, *supra*, pages 2149 and 2155.

† 16 Geo. V. No. 19, *supra*, page 11291.

SCHEDULE B.

In re "THE LIEN ON CROPS OF SUGAR CANE ACT OF 1931."

IN THE SUPREME COURT OF QUEENSLAND In the Matter of a Lien on Crops of Sugar-cane given by

(or In the Petty Sessions Office at _____ in the State of Queensland (as the case may be). to

I, _____, of _____, in the State of Queensland, make oath and say as follows:—

1. The paper writing hereunto annexed and marked "A" is a true copy of a Lien on Crops of Sugar-cane and of every Schedule thereto annexed or therein referred to, and of every attestation of the execution thereof as made and given and executed by

2. I am a _____ and reside at _____

Signed and sworn by the above-named deponent at _____ in the State of Queensland this _____ day of _____ 19 _____, before me—

A Justice of the Peace for the State of Queensland.

SCHEDULE C.

Number.	Date of Registration.	Date of Agreement.	Name of Lienor.	Name of Licnee.	Consideration.	Nature and description of Lien.	Description of Land.
			Name of Witness or Witnesses.				