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No. 364.

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1st Session, 4th Parliament, 16 Victoria, 1853.

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**B I L L .**

An Act to enable Contractors, Builders  
and others, to hold a Lien upon  
Buildings erected by them.

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Received and Read a first time, Wednesday, 20th  
April, 1853.

Second Reading, Friday, 22nd April, 1853.

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**MR. DIXON.**

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**QUEBEC :**

**PRINTED BY JOHN LOVELL, MOUNTAIN STREET.**

997.

1852-3.

**BILL.**

No. 364.

**An Act to give Contractors, Builders, Mechanics, and others a Lien on Buildings which they have erected or on which they have performed work.**

**WHEREAS** it is expedient, under certain conditions, to give Preamble.  
Contractors, Builders, Mechanics and others a Lien on buildings erected in whole or in part by them, until their just claims are paid, inasmuch as great hardship and injustice have arisen from the want of such Lien ; Be it therefore enacted, &c.,

That from and after the passing of this Act, any Contractor, Builder, Mechanic or other person who may, by himself or his agent, have erected any building or buildings of any description whatever, or have performed, under contract with the owner thereof, any work forming a portion of such building, or have furnished materials for erecting the same, amounting to the sum of Lien given on certain conditions to contractors, workmen, &c., on buildings erected by them. or upwards, such sum being properly and legally ascertained by agreement, admission in writing or otherwise as hereinafter provided, shall have a lien upon the said building or buildings, and such lien shall have the preference of all other claims, as if such sum were secured by a first mortgage on such Building or Buildings.

II. And be it enacted, That it shall be lawful for such Contractor or other person as aforesaid agreeing with the owner to Registration of contract. erect any building or buildings, or any portion thereof, or to supply materials for the same, to cause the said contract, agreement or specification to be registered in a book to be kept for that purpose by the Clerk of the Municipality in which such building shall be situate; and the said Clerk shall, on the application of any person interested in the said contract, agreement or specification, or for the supply of any materials therefor, furnish to the said applicant a copy of the said registered document, duly authenticated by the seal of the said Municipality attached thereto.

III. And be it enacted, That such contract, agreement or specification, shall when registered, be witnessed, and the execution thereof shall be proved in the same manner as deeds are now witnessed and the execution thereof proved under the Registry Laws of Upper Canada ; and the said Clerk is hereby authorized Attestation of contract for Registration.

to receive the affidavit necessary for proving such execution, and the registry thereof shall be effected by entering a copy thereof at full length in the said Book, and not by memorial.

Mode in which Mechanics or Labourers may secure their Lien.

IV. And be it enacted, That when any mechanic or labourer shall perform any work to be paid for by the day or day's work, upon any building, for any Contractor or sub-Contractor, it shall be lawful for such mechanic or labourer to furnish every week to the owner of such building or to his agent, a full and detailed account of the work performed by such Mechanic or Labourer and of the sum due to him for the same, duly certified by the foreman, manager or superintendent employed by such Contractor, or sub-Contractor, under whom such work has been performed, and for the amount of such accounts duly proved to have been delivered to such owner or owners, agent or agents, such mechanic or labourer shall have a lien to the amount of the accounts so delivered, upon such building or buildings, and the owner of the building may pay such accounts and deduct the same from any sum due or to become due from him to the Contractor for the work on which such mechanic or labourer shall have been employed, at any time before such Contractor or Sub-Contractor shall have proved to such owner or his agent that such accounts respectively, have been paid.

Provision if the debt to such Mechanic be disputed.

V. And be it enacted, That if any owner of a building as aforesaid shall be notified that any sum is due to any Mechanic or Workman as aforesaid from any Contractor or sub-Contractor, and that the said owner is required to pay such sum to such Mechanic or Workman, and such Contractor or sub-Contractor shall deny that such sum is so due to such Mechanic or Workman, then it shall be lawful for such owner to pay such sum into the Circuit Court having jurisdiction in the place where the building is situate, there to await the judgment of some Court having authority to award the same to the party entitled thereto, and having so paid in the said sum the said owner shall be discharged from further liability: Provided always, that no owner shall be bound to pay for claims under this Act, more than he has contracted to pay for the whole building or work to which they relate, and if the claims amount to more than such sum he may pay the sum due by him into Court as aforesaid and be discharged, nor shall he be bound to pay over again any sum which he may have paid to such Contractor or Sub-Contractor before such notice as aforesaid, and in all cases where the amount so paid into Court shall not be sufficient to discharge all claims against the said building or buildings, the amount so received shall by the said Court be equitably divided among to the several persons whose claims have been duly authenticated, paying to each a like percentage on his claim.

Proviso: where the sum due is not sufficient to pay all such liens,

VI. And be it enacted, That mechanics and labourers, when employed on any building by the day or day's work, may appoint one of their number as the attorney of each of them, to notify the owner of such building or buildings of the full amount of their several or joint claims, and they or the person so appointed may register a correct copy of the said notices with the Clerk of the said Municipality within fourteen days after the completion of the same, which notices so registered shall give them a lien upon the Building aforesaid, and to such registration all the provisions of this Act as to the registration of contracts shall apply.

Mechanics may employ one of their number to give notices to owner.

VII. And be it enacted, That any sub-Contractor for any work or materials as aforesaid, may cause his contract with the chief Contractor to be registered as before provided with regard to contracts with the owner, and notify such sub-contract and the registration thereof to the owner of the building, and such registration and notice shall have the same effect as the notice and registration of the claims of Mechanics or Workmen.

Sub-contractors may cause Contracts to be registered.

VIII. And be it enacted, That the Lien to be created by the operation of this Act, shall take effect from the date of such registration as aforesaid, and the said lien may be discharged by the Registry in the said Registry Book, of a certificate duly authenticated, that the claim for which such lien was created is discharged, or otherwise secured to the satisfaction of the party holding the same.

Date of the lien.

Discharge thereof.

IX. And be it enacted, That any lien remaining undischarged and undisputed at the expiration of one year from the date of the registry aforesaid, shall be considered as a judgment debt secured on the said building or buildings; and the said Clerk shall, so soon thereafter as he is required by the claimant or claimants in whose behalf the same was registered, furnish a certified copy of the Register as aforesaid, to the Sheriff of the County in which the said building or buildings may be situated, and the Sheriff shall, within ten days after the receipt of the copy of such register proceed to advertise and sell such building or buildings in like manner as he is by law now authorized to do in the case of real property seized in execution of any judgment; Provided, that the same shall be sold at the expiration of three months from the date of such advertisement.

Enforcement of Lien remaining undischarged for more than one year, by sale of building.

Proviso.

X. And be it enacted, That the Clerk of the Municipality aforesaid, shall be entitled to charge for the registry of any claim or a copy of such registration, the sum of \_\_\_\_\_ and \_\_\_\_\_ for every hundred words or figures in such registration or copy.

Fees.

**Interpretation** XI. And be it enacted, That the word "owner" in this Act shall include not only the actual owner of the building or work, but also any person bound to pay for the same : and the agent of any such person acting for him in respect of such building or work may be notified instead of such person, who shall be bound 5 by such notice to his agent.

**Extent of Act,** XII. And be it enacted, That that this Act shall apply only to Upper Canada, and to buildings within that portion of this Province,