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No. 184.

3rd Session, 6th Parliament, 23 Victoria, 1860.

BILL.

An Act to facilitate the drainage of land
in Canada.

Received and read, 1st time, Friday, 30th
March, 1860.

Second reading, Monday, 2nd April, 1860.

Mr. BENJAMIN.

QUEBEC:

PRINTED BY THOMPSON & CO., BY CURULE STREBY.

An Act to facilitate the drainage of land in Canada.

WHEREAS it is of the utmost importance to the Agricultural inter- Preamble
 ests of the Province to encourage a thorough system of under-
 drainage, and whereas the expense of thorough drainage although very
 considerable has been found by experience to be highly remunerative
 5 and greatly to diminish the casualties incident to grain crops and
 particularly to winter wheat, the great staple production of the Province of
 Canada, and more capital is required to carry on such improvements than
 farmers generally have at their command, without resorting to loans
 from capitalists, and it is therefore indispensable to afford every facility
 10 for enabling the farmer to give the best security a lender can desire:
 Therefore, Her Majesty &c., enacts as follows:

I. In the construction of this Act the word "Commissioners" shall Interpretation
 mean any Commissioners appointed to carry out the provisions of this of certain
 Act and the word "Land owner" shall mean any persons entitled in words and ex-
 15 possession to any land in fee simple, or as tenant in tail or by the
 feoffees or for his own life, or any officers or trustees for any charit-
 able or other purposes; or any ecclesiastical or other corporation,
 aggregate or sole, or any mortgagee or incumbrancer in fee in possession
 20 of the land mortgaged or encumbered, or any person entitled to any
 lands subject to any mortgage or charge thereon, provided such person
 shall be in possession of the lands mortgaged or charged, and the word
 "Works" shall extend to all embankments, dams, cuts, watercourses,
 ditches, drains, floodgates, tunnels, sluices, engines, engine houses or
 25 machinery for the elevation and discharge of water, and all other works
 necessary and proper for the executing of the contracts hereby authorized
 to be made, and every word importing the masculine gender only shall
 extend and be applied to a female as well as a male; and the word
 "Company" shall mean any company which has already been or may
 30 hereafter be incorporated for the purpose of loaning money, or for the
 purpose of constructing any of the works proposed under this Act, and
 the word "Engineer" shall mean any assistant commissioner, surveyor
 or engineer appointed by the commissioners to inspect the said works.

II. If any Land owner shall be desirous of exercising any of the Proceedings
 powers under this Act, he shall enter into, and execute a contract with to enable a
 35 any of the said Companies, for the loan of money for the execution, or
 for the execution by them, of the necessary works, for the purposes of
 draining and embanking such lands, or for either of the said purposes;—
 in such contract, shall be stated and set forth, the nature of his estate
 and interest in the lands proposed to be drained or embanked, the
 40 particulars of such lands a specification of the works intended to be
 executed, the then net estimated annual value of the lands proposed to be
 drained or embanked; an estimate of the probable increased annual value
 of such lands, when the intended works shall have been executed; the
 amount which under, and by virtue of such contract, as aforesaid, is to
 45 be paid to said Company, for the execution of the same, or is to be ad-
 vanced by the said Company, to be expended for the execution of the
 said works.

Plans of existing and proposed improvements to be annexed to the contract.

III. To every such contract, shall be annexed, a plan of all such lands as aforesaid, and on such plans shall be delineated all the river water-courses, ditches, drains, fences and embankments, which, at the time of entering into such contract, shall be in and upon the same lands; and also, all such new water-courses, ditches, drains and embankments, as are then intended and proposed to be cut or made, in and upon the same, and any alterations intended to be made therein, in distinguishing colours, and copies of such plan shall be deposited by the said Company, with the Registrar of every County in which the said lands are situate, to be by him kept, and to be open to public inspection, on payment of the sum of twenty-five cents. 5 10

On entering into such contract the land owner to deposit with Board of Agriculture an abstract of his title.

IV. Whenever it is proposed that any such contract should be entered into, as aforesaid, the Land-owner shall deposit with the Commissioners of the Boards of Agriculture, for Upper and Lower Canada, respectively, an abstract of the title of the said lands, certified by the Registrar of the County in which the lands are situate; and in case it shall appear by the said certified abstract, that the interest of the said Landowner is limited or encumbered by any Mortgage registered against the said land, then the consent of the mortgagee or mortgagees, under the form set forth in Schedule A, must be obtained and registered in the same manner as final discharges of mortgages are now registered in the county where the lands are situate. 15 20

Commissioners may cause the land to be inspected.

V. It shall be lawful for the said Commissioners, in case they shall think fit to do so, to cause the lands intended to be drained, to be inspected and examined by an Engineer to be nominated by the said Commissioners for that purpose, and to direct the said Engineer to report upon the same, and the plan of the said work, and the matter of the said contract. 25

Orders for improvements may be made by the Commissioners.

VI. In all cases in which any such copies of contract or specifications of work, abstract of title, and consent of incumbancers, if any exist, as aforesaid, shall have been delivered to the Commissioners as aforesaid, it shall be lawful for the said Commissioners, with or without any such inspection or report of such Engineer as aforesaid, in case it shall appear to the satisfaction of the said Commissioners that the execution of the said works will effect a permanent improvement in the lands proposed to be drained and embanked as aforesaid, by order in writing, hereinafter to be called the original order, in the form contained in Schedule B, to direct the works in such contract or specification, and plan described, to be forthwith executed, and to declare that the sum mentioned in the said contract, specification or plan, to be paid for or expended in the execution of the said works, and the costs, charges, and expenses properly incurred in and about the entering into and executing such contract, and making such inspection and order as aforesaid, or in relation thereto, or consequent thereupon, shall be charged upon the lands proposed to be improved by the said works, or on some part of such lands in the said original order, to be mentioned and described. 30 35 40 45

Such order may be amended.

VII. The said Commissioners may, from time to time, and at any time after the making by them of such original order as aforesaid, and before the execution of the works therein mentioned, at the request of the parties to the said contract, or any or either of them, by order in writing, direct that the works mentioned in the original order as aforesaid, shall and may be altered in the manner mentioned in such new order as aforesaid, whereupon such alteration shall be made in the terms of such contract, as may be required in consequence of such order. 50

VIII. It shall be lawful for the said Commissioners, by an order in writing, to direct a certain sufficient sum of money to be paid by the said land owner to the said Engineer, in compensation of the time, labor, and expenses of the said Engineer, in reference to the inspection and report of the said works, at such time, and in such manner, as in such order shall be expressed.

Remuneration of Engineer.

IX. After the execution of the said works, it shall be lawful for the said Commissioners to cause the works described in such contract or specification, to be examined by an Engineer, and if on such examination the works are found to have been well and properly executed, the said Engineer shall return to the Commissioners a report of the said works, certified under his hand, with a tabular statement in form given in Schedule (C) of all the work done in relation to the said contract or specification, and after such inspection and report the Commissioners shall, by order under their seal called the Final Order, according to form in Schedule [D] certify and declare if such shall be the case, that the whole of the works mentioned in such contract or specification have been executed, and the amount of the costs, charges and expenses properly incurred preparatory to, or in relation to, and consequent on the contract and execution of the said works as ascertained and certified by the final inspection and report of the engineer are thereby absolutely charged upon the lands so improved as aforesaid.

Final order on completion of the works.

X. Upon the granting of the said Final Order, every such charge shall be a valid and indefeasible charge, upon the land comprised in the grant thereof, by the said Commissioners, subject only to local rates, and prior to all other charges, whatsoever; Provided always, that every such charge shall be redeemable on payment of all principal money, interest and costs; and provided also, that on all money so made chargeable as aforesaid, there be paid an interest not exceeding eight per cent per annum, and that the principal money so advanced, shall be repaid by a Sinking Fund of not less than two per cent. per annum, as shall be specified in the said Final Order; that all grants of rent-charges to be made in pursuance of this Act, shall be registered in the Registry Office of the County in which the lands drained are situated, and shall be liable to be postponed in point of priority, to subsequent deeds and conveyances, in the same manner, and to the same extent, respectively, as if such grants were made by absolute owners, and without reference to this Act.

Effect of such final order

Proviso.

XI. All such rent-charges shall be recoverable by the ordinary means of entry and distress, in like manner as any annual or other rent payable out of the same lands would be recoverable.

Recovery of rent charges.

XII. Every land owner in possession of any lands drained under the provisions of this Act, shall be bound to pay the yearly or other periodical payments of such charge, which become payable during the continuance of his interest, and no person entitled in remainder or reversion, and becoming entitled in possession, shall be liable to pay any arrears of the charge remaining unpaid at the time of his estate or interest in remainder or reversion becoming an estate or interest in possession exceeding the amount of two year's payment of such charge, and the amount paid by such person in respect of such arrears, and any costs occasioned by non-payment thereof, shall be a debt from the person who, in the first instance, ought to have paid the same or from his estate, to the person who paid the same, and shall be recoverable accordingly.

Payment of rent charge to be made by person in possession.

Persons bound to pay the rent charges to uphold the improvements.

XIII. So long as any land continues charged with any such charge, the person for the time being bound to make the yearly or other periodical payments of such charge, shall be bound to uphold the improvements and works on account of which the land is charged therewith, and to keep clear and open the outfalls of all the drains, and such person shall once in every year certify to the Commissioners the state of such works and of such drains and outfalls.

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Issue of debentures by Company on becoming possessed of a rent charge.

XIV. When the Company shall have become possessed of any such rent-charge as aforesaid, duly registered and perfected, it shall be lawful for the said Company to issue a debenture or debentures equal to the amount received by the said rent-charge, and such debentures shall be numbered in arithmetical progression, beginning with number one, and be respectively distinguished by the numbers affixed to them; every debenture shall truly state the sum for which it is issued, which shall not be for a less sum than fifty dollars, or the like amount, in sterling money, the time when payable and the interest it bears, which shall not exceed the rate of eight per cent. per annum, and the same may be in the form of Schedule E, or to the like effect.

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Mortgage and debenture book.

XV. The Commissioners shall keep a book, to be called the "The Mortgage and Debenture Book," and in such book shall be fairly and distinctly entered from time to time, the date, names, amount of mortgage money advanced, and other short particulars of every mortgage deed in their custody and possession, together with the number and amount, and other short particulars of the debenture or debentures issued in respect thereof, which shall in no case exceed the amount so advanced on mortgage.

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Half yearly statement to the Minister of Finance.

XVI. The Commissioners shall, on the first day of January and July in each year, transmit to the Minister of Finance a full and clear statement of their assets and liabilities on the day of the date thereof, and such statement shall contain, in addition to such other particulars as the Minister of Finance may require :

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1st. The amount of stock subscribed ;

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2nd. The amount paid in upon such stock ;

3rd. The amount borrowed for the purposes of investment and the securities given therefor ;

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4th. The amount invested and secured by mortgage deeds ;

5th. The value of the real estate under mortgage.

SCHEDULE A.

Form of consent by mortgagee to charge for cost of drainage being made prior to incumbrance.

SCHEDULE B.

Drainage by _____, of Lot No. _____, in the Concession, of the Township of _____, in the County of _____

We, the Commissioners of Agriculture for Canada, in pursuance of the General Land Drainage Act of 1860, hereby declare and provisionally

order, that it is right and proper, and for the benefit of the parties having any estate or interest in the lands mentioned in the Schedule hereto, that the monies paid or to be paid for the improvement by drainage of such lands mentioned in the contract, (or specification, as the case may be,) for such improvement, dated, &c., and the moneys paid and to be paid for the costs, charges and expenses incurred in relation thereto, should be charged as follows, upon the inheritance of such lands mentioned in such Schedule.

In witness whereof, we have hereunto affixed our seal, this day of _____, in the year of Our Lord, one thousand eight hundred and _____.

[L.S.]

SCHEDULE OF LANDS PROVISIONALLY CHARGED.

Description of Lands.	Land owner.	Amount.
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SCHEDULE C.

(To be inserted hereafter)

SCHEDULE D.

Canada Land Drainage Act.

Drainage Loan Charge by _____ of Lot No. _____ Concession _____ Township of _____ in the County of _____.

The Commissioners under the Canada Land Drainage Act of 1860 do, by this absolute order, under their hands and seals, charge the inheritance or fee of the lands mentioned in the Schedule annexed hereto, with the payment to the (name of Company), their successors and assigns, of the yearly sum of \$ _____, payable half-yearly, on the _____ day of _____ and the _____ day of _____, in every year for the term of _____ years, the first half-yearly payment to be made on the _____ day of _____.

Dated this _____ day of _____, 1860.

[L.S.]

SCHEDULE OF LANDS CHARGED.

Description of Lands.	Land owner.	Amount of charge.
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SCHEDULE E.

COMPANY.

Debenture No. _____ Transferable _____ \$ _____

Under the authority of an Act of the Province of Canada, _____ Vic., cap. _____.