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No. 22.

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1st Session, 4th Parliament, 16 Victoria, 1852.

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## **BILL.**

An Act to secure to Mechanics and others, a Lien on Buildings erected by them in certain Cities of Upper Canada.

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Received and read a first time, Tuesday, 31st August, 1852.

Second reading, Monday, 6th September, 1852.

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**MR. BOULTON.**

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QUEBEC

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

**B I L L .**

**An Act to secure Mechanics and others a Lien on Buildings erected by them in certain Cities of Upper Canada.**

**B**E it enacted, &c.,

That any person who shall hereafter by virtue of any contract with the owner thereof or his agent, or any person, who in pursuance of an agreement with any such contractor, shall in conformity with the terms of the contract with such owner or agent, perform any labor or furnish materials in building, altering or repairing any house or other building, or appurtenances to any house or other building within the City of Toronto, or the liberties thereof, or within the City of Hamilton, or the liberties thereof, shall have a lien for the value of such labor and materials upon such house or building and appurtenances, and upon the lot of land on which the same stand, to the extent of the right, title and interest, at that time existing of such owner, in the manner and to the extent hereinafter provided ; but the aggregate of all the liens authorized by this Act, to be created for the labor performed and materials furnished in building, altering or repairing any house or other building or appurtenances, shall not exceed the price stipulated in the contract with such owner or his said agent to be paid therefor, and such owner shall not be obliged to pay for, or on account of such house, building or appurtenances, any greater sum or amount than the price so stipulated and agreed to be paid therefor, in and by such contract.

Lien given to builders on buildings erected by them, &c.

Amount of lien limited.

II. The person performing such labor or furnishing such materials, shall cause to be drawn up specifications of the work by him contracted to be performed, or materials to be furnished, and stating the price or prices agreed to be paid therefor, and shall file them, or if there be a contract, a true copy thereof, if the same be in writing, in the office of the Clerk of the Common Council of the City, and serve a notice thereof personally, on such owner or his said agent, within twenty days after the making such contract, or after commencing such labor or the furnishing of such materials ; the said Clerk shall provide and keep a book, which shall be called "*The Mechanics and Laborers Lien Register*," in which he shall enter alphabetically the names of the owners, and opposite to them the names of the contractors or laborers, or other persons claiming a lien, and the lot or street on which such work is to be done, or materials furnished, and the time of filing such specification or copy of such contract, and the said Clerk shall in each case receive the sum of

Specification or contract to be fulfilled.

Fee.

one shilling.

- Date and duration of lien. III. The lien so created by this Act shall take effect from such fying, and such service of the said notice, and shall continue in full force for the space of one year thereafter: such lien may be discharged on such Register at any time by the Clerk on the production to and fying with him of a certificate signed by the contractor, laborer or other person claiming such lien, that the claim for which such lien was created is satisfied and discharged, which certificate shall be acknowledged or proved in the same manner as deeds are required to be acknowledged or proved to entitle the same to be recorded. 5
- Discharge of lien. 5
- Mode of enforcing lien. IV. Any owner, and any contractor or laborer, or any person furnishing materials in pursuance of any contract made by such contractor, with such owner or his said agent therefor, may, after such labor has been performed or materials furnished, enforce or bring to a close such lien by serving or causing to be served personally on such owner or his agent, contractor or laborer or person furnishing materials, a notice requiring him to appear in the Division Court for the City, in which such building is situated, either in person or by Attorney; at a time certain on some day, to be specified in such notice not less than twenty days from the service thereof, and submit to an accounting and settlement in such Court of the amount due or claimed to be due under such contract for the labor thus performed or the materials thus furnished. 10 15 20
- Bill of particulars. V. At the time of, or within ten days after the service of such notice, a bill of particulars of the amount claimed to be due shall be served personally on such owner, and accompanying the same shall be a notice to produce a bill of particulars of any off-set which may be claimed to the same, within ten days thereafter, which shall be served in like manner. 25
- Bill of offset. 25
- Claimant not appearing. VI. In case such contractor, laborer or person furnishing materials shall not appear and produce his claim as specified in sections four and five, he shall for ever lose the benefit and be precluded of his said lien; and in case such owner shall not appear in pursuance of the requirements of the said sections at the time and place specified in such notice, then his default may be entered in the book of the Judge of such Division Court, and thereupon a writ of enquiry and inquisition may issue to the Sheriff of the said County in which such City may be situate, to be executed on the amount of such claim as shall be assessed by the said Division Court, as the case may be, and judgment shall be entered upon the same, and execution shall issue for the enforcement of the said claim so adjudicated and established in the same manner as in cases upon judgments in such Courts in actions of *assumpsit*. 30 35 40
- If both parties appear. VII. On the appearance of both parties in pursuance of the above requirements, issue shall be joined upon the claims made, and notices of set-off served; and the same may be noticed for trial and put upon the docket of the said Court by either party, and shall be governed, tried, and the judgment therein enforced in all respects in the same manner as upon issues joined and judgments rendered in actions of *assumpsit* in said Court. 45

VIII. Costs shall be allowed upon the same principles and by the same rules in such proceedings as they are now allowed by Statute in an action of *assumpsit*, and shall form a part of the judgment recovered in the same.

5 IX. Any person performing such labor or furnishing such materials in pursuance of any agreement made by him with the original contractor, with such owner or his said agent, who shall have done the acts prescribed by the second section of this Act, to create a lien therefor, shall have a lien for only such labor as shall be performed and for only such  
10 materials as shall be furnished subsequently thereto.

Lien of sub-contractors.

X. Any person performing such labor or furnishing such materials as mentioned in the preceding section, in pursuance of any agreement made by him "with the original contractor, with such owner or his said  
15 "agent" within twenty days after such labor has been performed, or such materials have been furnished, and claiming to have a lien therefor, by virtue of this Act, shall produce and deliver to such owner or his said agent, a statement in writing, signed by himself, and the said contractor specifying how much is due to such person for labor done or materials furnished, or in default of so doing shall take the necessary proceedings against  
20 such contractor to procure an accounting and settlement of the amount due or owing for such labor or materials, which proceedings shall be conducted in all respects as prescribed by and be subject to all the provisions contained in sections six, seven, and eight of this Act; and in case such person shall fail to produce and deliver such statement or  
25 take the necessary proceedings within the said period of thirty days, to compel such accounting and settlement between himself and such contractor, or shall fail to prosecute the proceedings so to be taken with effect, and without delay to a final judgment, he shall forever lose the benefit, and be precluded of his said lien,—The amount of any judgment  
30 which may be recovered by such person against such contractor or the amount which by their written statement to be signed by them as aforesaid, shall be specified to be due to such person from such contractor, shall be paid by such owner or his said agent to such person, and when so paid shall be deemed to be a payment of such amount by the said  
35 owner on the contract made with such owner or his said agent, and if such owner or his said agent shall refuse or neglect to pay such sum after being served with such statement or a transcript of the docket of such judgment, for ten days after being requested so to do, the Clerk of the Court on having filed with him a duplicate copy of such statement  
40 with the affidavit of such person, that it is a true copy thereof and of the delivery thereof to such owner as required by this section, or on having filed with him, a transcript of the docket of such judgment, and an affidavit of a demand of the said owner or his said agent, ten days prior thereto, of the amount thereof, and of his refusal or neglect to pay,  
45 may issue an execution in favor of such person against such owner in form as upon a judgment recovered in *assumpsit* on the day of the attaching of such lien, reciting that such execution is issued pursuant to the tenth section of this Act which execution shall be subject in all respects to the jurisdiction and control of the Division Court of the said  
50 County, to make such order in respect of the same, as shall be just

What a sub-contractor must do to enforce his claim.

Forfeiture of lien of such proceedings be not taken.

Mode of enforcing payment of sums secured by such lien.

Execution.

Fee to Clerk. between the parties, according to their rights as defined and regulated by this Act; for such execution the Clerk shall be entitled to a fee of five shillings which shall be collected under such execution, in addition to the amount therein directed to be collected thereby and the fee prescribed by law for making such collection. 5

Contractor  
&c., may re-  
nounce his lien

XI. Any person who shall furnish materials or perform labor in the erecting, altering or repairing any house or other building or appurtenances, may certify to the owner or his agent at any time previous to, or during the progress of the work that such person will discharge the owner or his agent from any liability as to lien, and such certificate executed by himself in presence of one subscribing witness, shall be conclusive upon such person in barring him from the benefit of a lien by virtue of this Act. 10