

The Provincial Statutes of Canada, passed in the year 1843. Kingston: Stewart Derbshire & George Desbarats, 1843.

7 Victoria – Chapter 22

An Act to amend the Ordinance providing for the Registration of Titles to Real Property or Incumbrances thereon in Lower Canada; and further to extend the time allowed by the said Ordinance for the Registration of certain claims. 9th December, 1843.

Whereas it is expedient to increase the facilities for the Registering of certain Instruments relative to Real and Immoveable Estates in Lower Canada, by amending and repealing certain parts of the Ordinance of the Governor and Special Council of the late Province of Lower Canada, intituled, *An Ordinance to prescribe and regulate the Registering of Titles to Lands, Tenements and Hereditaments, Real or Immoveable Estates, and of charges and incumbrances on the same; and for the alteration and improvement of the Law in relation to the Alienation and Hypothecation of Real Estates, and the Rights and Interest acquired therein*; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that the fifth section of the above in part recited Ordinance, and so much of the fifty-eighth section of the said Ordinance as substitutes the Districts to be constituted, by Proclamation, for the Judicial Districts mentioned in the said fifth section, shall be and the same is hereby repealed, from and after the first day of March, in the year one thousand eight hundred and forty four.

II. And be it enacted, that from and after the day last aforesaid, there shall be established in each and every County, in that part of this Province heretofore Lower Canada, at such place as the Governor or person administering the Government of this Province shall appoint, a Public Office for the Registering of all deeds, wills, conveyances, notarial obligations, contracts and instruments in writing, and all other acts and writings whatsoever, affecting or relating to real or Immoveable Estates, described or alluded to in the first section of the above in part recited Ordinance, in any manner affecting lands, tenements and hereditaments, Real or Immoveable Estates situate, lying or being within such Counties, respectively; and it shall be lawful for the Governor of this Province, from time to time, and as occasion may require, to appoint a person of fit integrity and ability, to be Registrar of each and every of the said Counties, respectively, by whom the said office shall be kept, and the duties imposed by the said Ordinance as amended by this Act in respect of the same, shall be performed; and to remove any such Registrar and in case of vacancy of the said office by death, resignation or removal, to appoint another fit person to fill such vacancy.

III. And be it enacted, that forthwith after the said first day of March in the year one thousand eight hundred and forty four, all and every the books, records, indexes, documents and papers appertaining to the County Registry Offices, established under and in pursuance of the several Acts of the late Province of Lower Canada, repealed by the said in part recited Ordinance, in the

Counties of Drummond, Sherbrooke, Stanstead, Shefford and Missisquoi, and also in the Counties of the Two Mountains, Beauharnois, Ottawa, Megantic and Acadie, which were by the said Ordinance required to be transmitted to the Registry Offices constituted under the Provisions of the said Ordinance in the several Municipal or Registration Districts in which the Registry Offices for the said Counties respectively were situate, shall be returned into the Registry Offices hereinbefore authorized to be established in or for the respective Counties from whence they were removed or to which they relate, and shall make part of the Records of the Registry Offices into which they shall be so returned or removed; and the Registrars in whose custody they shall be, shall have the same powers and duties with regard to them, and may grant certificates concerning them or any thing in them contained, as the Registrar in whose custody they were before such removal, would have had or might have done if this Act had not been passed.

IV. And provided also, and be it enacted, that all the Memorials, Books, Records, Indexes, Documents, and papers made under the provisions of the said in part recited Ordinance, shall remain in and form part of the Records and papers of the Registry Office for the Counties within - which the Registry Offices in which they now are shall have been respectively kept; and so soon as may be after the said first day of March one thousand eight hundred and forty four, there shall be transmitted by the Registrars in whose possession such Memorials, Books, Records Indexes, Documents and papers, shall respectively be, copies certified by such Registrar of all such entries therein as relate to or in any manner affect lands, tenements, hereditaments, real or immoveable Estates or any charges or incumbrances on the same, to the Registry Office of the County within which the property to which the said entries respectively relate shall be situate; and for such certified copies the Registrar furnishing the same, shall receive from and out of the Consolidated Revenue Fund of this Province a sum equal to six pence currency, per hundred words contained in the said copies.

V. And be it enacted, that all and every the documents, instruments in writing, acts and things mentioned and designated in the first section of the above in part recited Ordinance, or required by the said Ordinance to be registered by Memorial or otherwise, as well those passed or executed before Notaries as those passed and executed before witnesses, and judgments, judicial acts and proceedings and other matters of record, may, from and after the passing of this Act, be registered at full length, by transcribing the same into the Registers or Books of Registration, in the several Registry Offices to be established under the provisions of this Act, subject nevertheless to all the other requirements of the above in part recited Ordinance, in so far as the same may not be inconsistent with this Act, and such Registration at full length shall have the same legal effect as a registration by Memorial, and the certificate signed and indorsed on any such document, instrument in writing, act or thing registered at full length, shall be taken and allowed as evidence of such Registry in all Courts of Justice whatsoever: Provided, that if such document, instrument in writing, act or thing to be registered at full length, shall have been passed or executed before Notaries, or shall be a judicial Act or proceeding or any matter of record, the production to the Registrar or his Deputy of the Notarial copy thereof, or of an authentic copy thereof duly attested and certified by the proper officer, by the person presenting the same for Registration, shall be sufficient to authorize and oblige such Registrar or Deputy Registrar to register the same, without

any requisition in writing from or by either or any of the parties to the document, instrument in writing, act or thing to be registered.

VI. And be it enacted, that the Registration at full length of any document, instrument in writing, Act or thing shall avail to preserve the rights of all parties interested therein, as effectually as if it had been registered at the instance of such parties respectively.

VII. And be it enacted, that whenever the Registration shall be made by memorial in the manner prescribed by the said Ordinance, the certificate of the Registrar shall contain a copy of such memorial, or shall be indorsed upon a copy thereof.

VIII. And be it enacted, that an entry of the partial discharge of any incumbrance upon any Land or Real Property may be validly made by the Registrar in the margin of the Register, in the manner provided with regard to the total discharge of any such incumbrance; and such entry of discharge, whether total or partial, shall be made by the Registrar either on the production to and deposit with him of a certificate attested in the manner prescribed by the said Ordinance, or on the production to and deposit with him of an authentic copy of any Notarial Act, judgment, or other matter of record proving the total or partial discharge of such incumbrance; and any person and party having discharged or partly discharged any such incumbrance, may demand from the Incumbrancer such a certificate or Notarial Act proving such discharge or partial discharge as can be validly registered, and shall have an action for the same if refused, and for all damages arising from such refusal; and by the judgment in such action the total or partial discharge of the incumbrance may be declared.

IX. And be it enacted, that no registration of a title to any Land or Real Property subsequent to the title of any person or party in open and public possession thereof as proprietor, shall affect the title of such person or party to the same, although it be not registered at the time of the registration of such subsequent title.

X. And be it enacted, that the sixteenth section of the said Ordinance shall be construed as saving the right of the Creditor not only to the interest and arrears for two years, but also to the interest and arrears for the then current year, reckoning from the date of the document under which the same may arise; and that the hypothec arising from the registration of any claim to interest or arrears not preserved by the original registration, shall date only from the registration of such claim, and that such claim for interest or arrears may be registered without its being attested upon oath, when the claim is founded upon any authentic deed or document; and that the interest and arrears mentioned in the said Ordinance shall not be understood to include alimentary pensions, life rents, rent due for any property leased, interest on the price of any real property sold for a sum payable at any fixed term or terms, arrears on any real property sold for an irredeemable ground-rent, or for a perpetual but redeemable rent commonly called a *rente constituée*; and the registration made or to be made of the creditors' title in any of the cases aforesaid shall have the effect of saving his hypothec or privilege for five years' interest or arrears, and those for the then current year, reckoning from the date of the said title.

XI. And whereas it is expedient to provide greater facility than now exists for securing the payment of monies upon real Estate held in free and common Soccage in any part of Lower Canada, or within the Counties of Missisquoi, Shefford, Stanstead, Sherbrooke and Drummond, by the said tenure or by any other tenure, by a short and inexpensive and legal form of hypothecation; Be it therefore enacted, that from and after the passing of this Act, a simple act of acknowledgment of indebtedness, executed and delivered before two witnesses, whereby the intention to hypothecate shall be manifest, shall be deemed to be a good and valid hypothecation of the lands or tenements, or real or immoveable estate or property therein described, of which the party hypothecating is at the time of the execution thereof, lawfully and by right seized as of his own property; and the said hypothecation so as aforesaid executed, shall to all intents and purposes give the party, in whose favor it shall be made, the like claim and privilege in and upon the real estate therein described, as if the same had been executed before Notaries according to the customary laws of Lower Canada, any law, usage, or custom, to the contrary, in any wise notwithstanding: And provided also, that the said hypothecation may be made in the following or any like words having the same import, "I, R. M. of _____ hereby acknowledge myself to be justly and truly indebted to R. J. of _____, in the lawful sum of _____ currency, payable (here describe the terms of payment,) and for the better securing the payment of the same, I do hereby hypothecate all that piece, parcel or lot of Land lying and being in the (here describe the property,) together with all and every, the houses, buildings and appurtenances thereon, or thereunto belonging, (as the case may be,) unto the said R. J., his heirs and assigns. In testimony whereof I have hereunto set my hand and seal, at _____ in the _____ of _____ on the _____ day of _____ in the year _____

Signed, Sealed and Delivered in the presence of _____

C. D.
G. H.

A. B. { L. S. }

XII. And be it enacted, that the period limited by the fourth section of the said in part recited Ordinance, for the registering of Memorials of the instruments, documents and claims therein mentioned, and subsequently extended by an Act of the Parliament of this Province, until the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-three, shall be and is hereby extended until the first day of November, in the year of our Lord one thousand eight hundred and forty-four, until and upon which day all such instruments, documents and claims may be registered by memorial, or at full length, with the same effect as if they had been registered within twelve calendar months from and after the day on which the said Ordinance came into force and effect, any thing in the said Ordinance to the contrary notwithstanding: Provided always, that any such instrument, document or claim, which shall not be registered in the manner required by the said Ordinance, or by this Act, upon or before the said first day of November, in the year one thousand eight hundred and forty-four, shall from and after the said day be inoperative, void and of no effect whatever against any subsequent *bonâ fide* purchaser, grantee, mortgagee, hypothecary, or privileged creditor, or incumbrancer for or upon valuable consideration, whose claim shall have been registered before the registration of such instrument, document or claim as first aforesaid.

XIII. And be it enacted, that it shall be the duty of the Registrar of each County to cause the next preceding section of this Act to be read publicly at and posted on the Church door of each Parish in such County, in both languages, on the three Sundays next before the said first day of November, one thousand eight hundred and forty-four: Provided always, that any omission to give such notice as aforesaid on the part of such Registrar, shall not in any way invalidate any of the enactments of this Act, or of the said in part recited Ordinance.