

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1826. York: Robert Stanton, 1826.

7 George IV – Chapter 5

**An Act to Encourage the Progress of Useful Arts within this Province. (Passed 30th January, 1826.)**

Whereas it is expedient for the encouragement of Genius and of Arts in this Province to secure an exclusive right to the Inventor of any New and Useful Art, Machine, Manufacture, or Composition of Matter: Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the Fourteenth Year of His Majesty's Reign intituled 'an Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That when any Subject of His Majesty, being an Inhabitant of this Province, shall allege that he has Invented any New and Useful Art, Machine, Manufacture or Composition of Matter, not known or used before the application; and shall present a Petition to the Governor, Lieutenant Governor, or Person Administering the Government of the Province for the time being; signifying a desire of obtaining an exclusive property in the same, and praying that a Patent may be granted: Therefore, it shall and may be Lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province for the time being, to direct that Letters Patent shall be made out, under the Great Seal of this Province, and passed in the usual form, reciting the substance of the said Petition, and giving a short description of the said Invention or Discovery, and granting therefore to the said Petitioner or Petitioners, his, her, or their Executors, Administrators, or Assigns, for a term not exceeding Fourteen years, the full and exclusive right and liberty of Making, Constructing, using, vending to others to be used, the said Invention or Discovery, which Letters Patent, so far as the same may be conformable to this Act, shall be good and available to the Grantee or Grantees, after the same shall have been recorded in a Book to be kept for that purpose, in the Office of the Secretary and Register of this Province, and the same shall, when so recorded, be delivered by the proper Officer to the Patentee or his order.

II. Provided always, and be it further enacted by the authority aforesaid, That any Person who shall have Discovered an improvement in the principle of any Machine or Composition of Matter, which shall have been Patented and shall have obtained a Patent for such Improvement, shall not be at liberty to Make, Use, or Vend the original Discovery, but the Improvement only, nor shall the first Inventor be at liberty to use the Improvement, and it is hereby enacted and declared, that simply changing the form or the proportion of any Machine or Composition in any degree, shall not be deemed a Discovery.

III. And be it further enacted by the authority aforesaid, That every Inventor, before he can receive a Patent shall swear, or being a Quaker, Menonist, Tunker, or belonging to the Society called United Brethren, or Moravians, affirm, that he does verily believe, that he is the true Inventor or Discoverer of the Art, Machine or Improvement, for which he solicits a Patent, (which oath or affirmation may be

made before any Justice of the Peace) and shall deliver a written description of his Invention or Improvement, and of the manner or process of Compounding the same, in such full, clear and exact terms as to distinguish the same from all other things before known, and to make any person skilled in the Art or Science, of which it is a branch, or with which it is most clearly connected, to Make, Compound and Use the same; and in the case of any Machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other Inventions, and he shall accompany the whole with Drawings and Written References, where the nature of the case admits of Drawings, or with the Specimens of the Ingredients or of the Composition of Matters, sufficient in quantity for the purpose of experiment, which description, signed by himself and attested by two witnesses; shall be filed in the Office of the Secretary of the Province, and certified copies thereof shall be competent evidence in all Court where any matter or thing touching Patent Right shall Come in question: Provided always nevertheless, That such Inventor shall, moreover, deliver a Model of the Machine by him Invented, provided, the Secretary shall deem such Model to be necessary,

IV. And be it further enacted by the authority aforesaid, That it shall be lawful for any Inventor, his Executors or Administrators, by an Instrument under Seal, duly executed, to Assign the Title and Interest in the said Invention at any time, and the Assignee or Assignees, and his or their Assignee or Assignees after any number of such Assignments, subsequently made, which Assignments shall be Inserted of Record in the Office of the said Secretary of the Province, upon proof of the execution thereof, by affidavit, made by a subscribing witness before any Judge of the Court of King's Bench, or a Commissioner for taking Affidavits in the said Court, shall stand and be to all intents and purposes in the place of the Original Patentee of any such Invention.

V. And be it further enacted by the authority aforesaid, That if any Person shall Make or Manufacture for sale, any Article or Composition so Invented, or shall Make or Manufacture, or make use of any Instrument or Machinery so Invented or specified, the exclusive right of which shall, as aforesaid, have been secured to any Person by Patent, without the consent of the Patentee, his Heirs and Assigns, or other lawful Representative first obtained in writing, every Person so Infringing such Patent, shall be liable to an Action for the same, in which, besides such Damages as shall be awarded by the Jury, the parties injured shall also receive Treble Costs, to be taxed by the Master.

VI. Provided always, and be it further enacted by the authority aforesaid, That if upon trial in any such Action it shall be made apparent, to the satisfaction of the Court, the Defendant having specially pleaded the same, that the specification filed by the Plaintiff does not contain the whole truth relative to his Discovery, or that it contains more than is necessary to produce the described effect, which concealment or addition shall fully appear to have been made for the purpose of deceiving the Public, or that the thing thus secured by Patent was not originally discovered by the Patentee, but had been in use, or had been described in some public work anterior to the supposed discovery of the Patentee, or that he had surreptitiously obtained a Patent for the discovery of another person, then, in either of these cases, a verdict shall be rendered for the Defendant, and such Patent shall be declared void.

VII. And be it further enacted by the authority aforesaid, That in case of interfering applications the same shall be submitted to the Arbitration of Three Persons, One of which shall be chosen by Each of

the Applicants, and the Third person shall be chosen by the said Secretary of the Province, or Person appointed to do the duty of that office; and the decision or award of such Arbitrators, delivered to the said Secretary, in writing, and subscribed by them, or any Two of them, shall be Final, as far as respects the granting of the Patent, and if either of the Applicants shall refuse or fail to choose an Arbitrator, the Patent shall issue to the opposite party, and when there shall be more than two interfering applications, and parties applying shall not all unite in appointing Three Arbitrators, it shall be in the power of the said Secretary of the Province, or Person appointed to do the duty of that Office, to appoint Three Arbitrators for that purpose.

VIII. And whereas it is necessary to provide a convenient remedy, in cases where Letters Patent, issued under the authority of this Act, have been fraudulently or surreptitiously obtained, or have issued improvidently, or upon false suggestion: Be it therefore further enacted by the authority aforesaid, That at any time within Three Years, after the issuing of any such Patent as aforesaid, it shall and may be lawful for any Person or Persons desirous of impeaching the same, for any such cause as aforesaid, to obtain an exemplification of such Patent under the Great Seal of this Province, and to have the same filed by the Clerk of the Crown and Pleas in this Province, and that upon such exemplification being so filed, the Letters Patent so exemplified, shall be considered as remaining of Record in the Court of King's Bench, so that a Writ of scire facias, under the Seal of the said Court, may issue, grounded upon the said Record, for the purpose of repealing the same for legal cause as aforesaid, if upon the proceedings which shall be had upon the said Writ of scire facias, according to the law and practice of the Court of King's Bench in England, the same shall be declared void.

IX. And be it further enacted by the authority aforesaid, That a certificate of the judgment by which any such Patent as aforesaid shall have been declared void, under the Seal of the Court of King's Bench, shall at the request of any Party, be entered upon the Margin of the enrolment of such Patent in the Office of the Secretary and Register of this Province, whereupon the said Patent shall be considered to be cancelled, and made void.

X. And be it further enacted by the authority aforesaid, That every Person claiming to be an Inventor as aforesaid, and presenting a Petition, signifying his desire to obtain a Patent, pursuant to this Act, shall pay into the hands of the Secretary of the Province, or other Person appointed to do the duty of that Office, the like Fee as is paid for other special instruments issued under the Great Seal of this Province, in full of all Fees demandable for the said Patent, and that for every Copy which may be required of the Enrolment of any such Patent, the Person requiring the same, shall pay the Fee ordinarily charged for Copies in the said Office, and the further sum of Ten Shillings, for the affixing the Great Seal to the exemplification of any such Patent, and that for every such certificate of judgment as is herein before mentioned, declaring any such Patent as aforesaid to be void, the Clerk of the Crown and Pleas, shall be entitled to receive the sum of Five Shillings, and the sum of Two shillings and Six Pence may be charged and taken by the Register of the Province for the entry of the same, and that the said Register may also charge the sum of One Shilling per folio, of seventy two words, for Recording every assignment as is mentioned in this Act.