

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1853. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1853.

16 Victoria – Chapter 32

An Act to regulate the granting of Patents for useful inventions. Passed 3rd May 1853.

- | Section. | Section. |
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| 1. Letters Patent may be granted by Lieutenant Governor. | 18. Cavet may be filed for incomplete invention; proceedings in case of another application for Patent. |
| 2. Mode of applying for Patent. | 19. Each Patentee confined to his own invention or improvement. |
| 3. Specifications, drawings, and models to be lodged with Provincial Secretary. | 20. Provision in case Patentee, without fraud, claims too much. |
| 4. Patents may be granted for articles patented elsewhere. | 21. Patentee in such case may disclaim excess. |
| 5. Executor or Administrator may take out Patent for deceased inventor. | 22. Defective Patent may be surrendered and new Patent may issue. |
| 6. Assignee of inventor in this Province may also take out Patent. | 23. Original Patentee may secure improvement made by him. |
| 7. Assignee of Foreign Patentee may also take out Patent. | 24. Patents may issue for new and original designs in any art of manufacture. |
| 8. Patents may be assigned wholly, or in part. | 25. English Patents not to be in force in this Province, until copies of drawings and specifications, and duplicate of model, shall be lodged. |
| 9. Damages for infringement of Patent right. | 26. The term of a Patent may be extended. |
| 10. Copies of documents and drawings, certified by Provincial Secretary, to be received in evidence. | 27. Proceedings in order to obtain such extension. |
| 11. Copies of Patents, documents, and drawings, certified by Provincial Secretary to any person applying. | 28. Penalties for falsely marking patented articles, or vending unpatented articles as being Patent. |
| 12. If Attorney General is of opinion that application interferes with previous application or Patent, to appeal may be made to Lieutenant Governor in Council. | 29. Date of Patent to be affixed to each patented article. |
| 13. Board of examiners to be appointed to hear appeal. | 30. Special pleas prohibited; special matter may be given in evidence under general issue: provision as to costs. |
| 14. Powers and duties of Board of Examiners. | 31. Quakers may affirm; before whom oath or affirmation may be taken. |
| 15. Attorney General may apply for Board Examiners. | 32. Fees established as in Schedule annexed. |

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| 16. Appellant may apply for Board of Examiners, or appeal to Judge of Supreme Court. | 33. Letters Patent null and void if manufacture not established, or article introduced within three years. |
| 17. Mode of proceeding by and before the Judge. | 34. Interpretation clause. |
| | 35. Repealing clause. |

Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, as follows: -

1. The Lieutenant Governor may direct Letters Patent under the Great Seal of this Province to be issued to any person applying for the same, granting to such person and his legal representatives, for a term not exceeding ten years, the full and exclusive right of making, using and vending any new invention or discovery, under the conditions and regulations, and conformably to the provisions of this Act.
2. The applicant for a patent shall state in his Petition to the Lieutenant Governor that he has invented or discovered a new and useful art, machine, manufacture, or composition of matter; or a new and useful improvement in some art, machine, manufacture, or composition of matter, not known and used by others before his discovery or invention thereof, and at the time of the application not in public or common use in this Province; to which Petition shall be annexed an affidavit sworn to by the applicant, setting forth that the allegations in the same are just and true to the best of his knowledge and belief.
3. With his Petition and affidavit, the applicant shall deliver into the office of the Provincial Secretary, a written description of his invention, signed by him, and attested by two witnesses, setting forth the manner of making or compounding, and mode of using the same, in such full, clear and exact terms, as to distinguish it from all other things before known, and enable any skilled person to make, compound and use the invention; the description shall also set forth the principle of the invention, and the several modes by which it is contemplated to apply that principle, or the characteristics which distinguish it from other inventions; and it shall be accompanied by drawings and written references, and by a model, where the nature of the case admits of the same, or with specimens of the ingredients and of the composition of matter, sufficient in quantity for the purpose of experiment, when the invention is a composition of matter.
4. No applicant shall be deprived of his right to a patent in this Province for his invention, by reason of his having previously taken out Letters Patent therefor in any other country, provided that such invention shall not have been introduced into public and common use in this Province prior to the application for a patent therein, and that the patent granted in this Province shall not continue in force after the expiration of the patent granted elsewhere.
5. If any person entitled to a patent in this Province for a new invention or discovery, shall die before the same is granted to him, the right to apply for and obtain such patent shall devolve on his executor or administrator, and shall be granted in as full and ample a manner, and under the same conditions and restrictions as if issued to the inventor in his life time; and when a Petition for

a patent is made by an executor or administrator, the deposition attached thereto shall be varied to suit the circumstances of the case.

6. Letters Patent may issue to the assignee of any person entitled to a patent for any invention or discovery made in this Province, but for which no patent has previously issued, the assignment duly proved shall accompany the application and be filed therewith, together with an affidavit of the assignee that the same was made for good consideration, and also an affidavit of the assignor that the invention or discovery was made by him as required by the second section of this Act.

7. Letters Patent may also issue to the assignee of any person who may have taken out Letters Patent for his invention or discovery in any other country, but not for any discovery or invention made abroad for which no Letters Patent have been there obtained, provided that the invention or discovery so assigned shall not have been introduced into public and common use in this Province prior to the application for a patent, and that the assignee of such foreign patent shall file with his application the assignment duly proved under which he claims a patent in this Province, and an affidavit setting forth the date of the patent abroad, that the article thereby patented has not been in public and common use in this Province, and that he is the assignee for a good consideration.

8. Every patent granted in this Province shall be assignable either as to the whole interest therein, or any fractional part thereof, by instrument in writing, which assignments, and also every grant or conveyance of the exclusive right, under any patent, to make and use, and to grant to others the right to make and use the thing patented in this Province or in any part thereof, shall be recorded in the Office of the Provincial Secretary within three months after the execution thereof, such execution being duly proved by the oath of a subscribing witness; and thereafter every such grantee or assignee shall, in all respects, and to all intents and purposes, stand in the stead or place of the original patentee to the extent or proportion of the interest so granted or assigned.

9. If without the consent in writing of a patentee or of his legal representatives, any person shall make, devise, use or sell the thing, invention or discovery, whereof the exclusive right is secured to such patentee, the person so offending shall forfeit and pay to the patentee or his legal representatives a sum equal to three times the actual damage sustained by reason of such offence; which sum shall be recoverable, with costs of suit, by action on the case founded on this Act in the Supreme Court.

10. Copies of specifications, depositions, assignments, grants, and of all other papers or documents filed in the Provincial Secretary's Office in connection with a patent under the provisions of this Act, certified under the hand of the Secretary of the Province, shall be received as competent evidence in all Courts where any matter or thing concerning such patent shall come in question.

11. Any person desiring the same shall be entitled to demand and obtain from the Provincial Secretary a copy of any Letters Patent, or of any petition, deposition, drawing, specification or document whatsoever in connection therewith, or on which the same were granted.

12. When an application is made for a patent, and Her Majesty's Attorney General shall decide that it will interfere with any other application then pending, or with any unexpired patent already granted, it shall be the duty of the Provincial Secretary, upon the representation of the Attorney General, to give notice to the several applicants or patentees; and if any of them shall be dissatisfied with the decision of the Attorney General, he may appeal from such decision to the Lieutenant Governor in Council.

13. On such appeal being made in writing, the Lieutenant Governor in Council shall appoint a Board of Examiners, to consist of three disinterested persons, one of whom at least shall be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture or branch of science to which the alleged invention appertains; the Examiners shall be sworn before a Justice of the Peace to the faithful and impartial performance of the duty confided to them; they shall be furnished with a certified copy of the opinion and decision of the Attorney General, stating the particular grounds thereof, and specifying what part of the invention he considers not entitled to be patented; they shall give reasonable notice to the Attorney General, and to the several parties interested, of the time and place of their meeting, and it shall be the duty of the Attorney General to furnish to the Examiners such information as he may possess relative to the matter referred to.

14. The Board of Examiners shall have power to examine on oath all parties giving *viva voce* testimony before them, which oath any one of the Examiners may administer, and after examination and consideration, the Examiners or a majority of them, may either reverse or confirm the decision of the Attorney General in whole or in part, and their opinion being certified in writing to the Attorney General, he shall be governed thereby in any further proceedings; provided always, that before a Board of Examiners shall be instituted in any case, the party applying for the same shall pay into the Office of the Provincial Secretary the sum of twenty five pounds, for the purpose of paying reasonable compensation to the Examiners, and defraying any other expenses connected with the appeal.

15. If the Attorney General from any cause entertains doubts as to the applicants right to a Patent, and desires further evidence, he shall apply to the Lieutenant Governor in Council to appoint a Board of Examiners, and such Board shall thereupon be appointed, and shall possess the same powers and functions as if appointed at the instance of a party appealing, but before such Board shall enter upon its duties, the applicant whose case is to be considered, shall pay into the Provincial Secretary's Office the sum of twenty pounds for the purposes mentioned in the preceding section.

16. In every case of appeal from the decision of the Attorney General, it shall be optional with the appellant either to apply for a Board of Examiners or to appeal to any Judge of the Supreme Court; in case of appeal to a Judge, the appellant shall give notice of his intention to the Attorney General, and at the same time file in the Provincial Secretary's Office the reasons for his appeal, specifically set forth in writing.

17. The appellant shall apply to the Judge by petition, and it shall be the duty of the Judge thereupon to hear and determine the appeal in a summary way, upon the evidence produced before the Attorney General, at such early and convenient time as the Judge may appoint, due notice of the time and place of hearing shall be given by the appellant to the Attorney General, who shall notify all parties interested in the appeal in such manner as the Judge shall prescribe; the Attorney General shall lay before the Judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in Writing; after the hearing of such appeal, it shall be the duty of the Judge to return all the papers to the Attorney General, with a certificate of his proceedings and judgment, which shall be recorded in the Provincial Secretary's Office, and the judgment so recorded shall govern the further proceedings of the Attorney General in the case, but no such judgment shall preclude any person interested from the right to contest the same in any Court where it may come in question; provided always, that before making such appeal to a Judge, the appellant shall deposit with the Provincial Secretary the sum of twenty pounds to defray the expenses of the same.

18. Any person who shall have made a new and useful discovery or invention, but desires further time to mature the same, may file in the Office of the Provincial Secretary a caveat, setting forth its design or purpose, as also its principle and distinguishing characteristics, and praying that his rights may be protected until his invention is matured; such caveat shall be in force for one year and no longer, and shall be filed in the confidential archives of the Provincial Secretary's Office, and preserved in secrecy; and if application shall be made by any person within one year from the time of filing the caveat, for a patent of any discovery or invention which apparently would interfere with the rights of the party filing the caveat, it shall be the duty of the Provincial Secretary to deposit the description, specification and drawings of the second applicant in the confidential archives of his office, and to give notice of the application, by mail or otherwise, to the person that filed the caveat, who within three months after receiving such notice, if he would avail himself of the benefit of his caveat, shall file his description, specification and drawings; if in the opinion of the Attorney General the specifications filed by the respective parties interfere with each other, the like proceedings shall be had by appeal as hereinbefore prescribed; provided however that the opinion or decision of the Board of Examiners in such case shall not prevent any person interested from the right to contest the same in any Court where the validity of a patent may come in question.

19. When Letters Patent shall be obtained for any new and useful invention or discovery, and thereafter any person shall discover or invent an improvement thereupon, and shall apply for and obtain a patent under this Act for the exclusive right to such improvement, it shall not be lawful for him to make, use or vend the original invention or discovery, nor for the person who procured the patent for the original invention or discovery to make, use or vend the improvement thereupon; and it is hereby declared and enacted, that simply changing the form or proportions of any machine, article or composition of matter, in any degree, shall not be deemed a discovery or improvement within the meaning of this Act.

20. If by mistake, accident or inadvertence, and without any wilful default or intent to defraud or mislead the public, a patentee shall in his specification have claimed to be the original and first

inventor or discoverer of any material or substantial part of the thing patented, but of which he was not the original or first inventor, and shall have no just or legal right to claim the same, his patent in such case shall be deemed good and valid for so much of the invention or discovery as shall be actually his own, provided that it is a material and substantial part of the thing patented, and be plainly distinguishable from other parts patented without right; and every such patentee and his legal representatives, whether holding the whole or a particular interest in the patent, may maintain suits at law or in equity for any infringement of such part of the same as is actually the invention or discovery of the patentee, although his specification may embrace more than he has a legal right to claim; but if in such case the plaintiff shall obtain a verdict or judgment, he shall not be entitled to costs, unless before the commencement of the suit he shall have filed in the Office of the Provincial Secretary a disclaimer, attested by one witness or more, of that part of the thing patented which was claimed without right; provided always that no person bringing a suit shall be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to record his disclaimer.

21. If through inadvertence, accident or mistake a patentee shall have made his specification too broad by claiming more than that of which he was the original or first inventor, (some material and substantial part of the thing patented being justly and truly his own,) such patentee or his legal representatives, may disclaim the excess; the disclaimer shall be in writing, and shall state the extent of interest in the patent held by the party making the same, it shall be attested by one or more witnesses, and be recorded in the Office of the Provincial Secretary; thereafter such disclaimer shall be taken and considered as part of the original specification, to the extent of the interest possessed by the party making the same, or by those claiming under him, but no such disclaimer shall affect any action or suit pending at the time of its being recorded, except so far as may relate to the question of unreasonable neglect or delay in recording the same.

22. If any patent shall become inoperative or invalid by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention more than he had a right to claim, and the error has arisen from inadvertency, accident or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Lieutenant Governor, upon the surrender of such patent and upon petition therefor, to cause a new patent to be issued to the patentee for the residue of the term mentioned in the first patent, in accordance with the patentee's amended description and specification; in case of his death or the assignment by him of the original patent, or any fractional interest therein, the right shall vest in his legal representatives to the extent of their respective interests in such patent; and the patent so re-issued, together with the amended description and specification, shall have the same effect and operation in law as though the same had been originally filed in such amended form before the issuing of the original patent.

23. If an original patentee shall be desirous of adding a description and specification of an improvement upon his original invention or discovery, made or discovered by him subsequent to the date of his patent, he may upon the like proceedings being had in all respects as in the case of an original application, have the same annexed to his original description and specification; and the Provincial Secretary shall certify upon such annexed description and specification, the time of

its being annexed and recorded, and thereafter it shall have the same effect in law as if it had been embraced in the original description and specification, and had been recorded therewith.

24. Any person in this Province who may have invented or produced any new or original design for a manufacture of whatsoever material, or any new or original design for the printing of woollen, silk, cotton or other fabrics, paper or other material, or any new or original design of art or ornament not previously known or used by others, shall be entitled to a patent granting him the exclusive right and property therein, to make, use, and vend the same for a term not exceeding seven years, upon such proceedings being had thereon in every respect as provided by this Act with reference to other patents.

25. No patent for any invention or discovery granted in England subsequent to this Act coming into operation, and extending to the Colonies, shall be of force and effect in this Province, until copies of the original specification and drawings filed or duplicate of the models lodged in England, upon which such patent was there obtained, shall be filed or lodged in the Office of the Provincial Secretary, who shall grant a certificate of the lodging or filing of the same.

26. If a patentee shall desire an extension of his patent beyond the term to which it is limited, he shall apply in writing to the Lieutenant Governor in Council, setting forth the grounds of his application, and shall deposit with the Provincial Secretary the sum of twenty pounds to defray expenses; the Provincial Secretary shall thereupon cause to be published in the Royal Gazette, and also in at least one newspaper in every County of the Province in which a newspaper is published, a notice of such application, and of the time and place that the same will be considered, which time shall not be sooner than sixty days after publication of the notice; the Lieutenant Governor in Council shall appoint three fit and proper persons, who shall constitute a Board to hear and decide upon such application, they shall meet at the time and place appointed, and shall hear any person who may appear to show cause why such extension should not be granted; the patentee shall furnish to the Board a statement in writing, under oath, of the ascertained value of his invention, and of its receipts and expenditures, sufficiently in detail to ascertain the amount of profit or loss from the same.

27. If upon the bearing it shall appear to the satisfaction of the Board, having due regard to the public interest, that the term of the patent should be extended, by reason of the patentee, without default or neglect on his part, having failed to obtain from the sale of his invention a reasonable remuneration for the time, ingenuity and expense bestowed upon the same, and its introduction into use, they shall certify the same to the Lieutenant Governor, who shall thereupon direct the Provincial Secretary to endorse upon the Letters Patent a certificate that the same has been extended for a farther term of seven years from and after the expiration of the original term; the certificate of the Board to the Lieutenant Governor, and his order thereupon for an extension of the term of the patent, with a copy of the certificate endorsed on the patent, shall be recorded in the Provincial Secretary's Office, and thereupon the said patent shall have the same legal effect as if the additional term so added had been included in the term originally granted, and the benefit of such extension of term shall extend to all grantees and assignees of the original patentee to the extent of their respective interests in the patent; provided always, that no

extension of a patent shall be granted after the expiration of the term for which it was originally granted.

28. If any person shall affix to any thing made, used or sold by him, the name or imitation of, or a fraudulent similarity to the name of any other person who shall have obtained Letters Patent for the sole making or vending of such thing, without consent of the patentee or his legal representatives, or shall affix the words "Patent," "Patentee," or "Letters Patent," or other words of the same meaning or import on any unpatented article for the purpose of deceiving the public, the person so offending shall be liable for each offence to a penalty of twenty five pounds with costs, to be recovered by action in the Supreme Court of this Province; one half of such penalty when recovered to be paid into the Provincial Treasury, and the other half to the party who shall sue for the same.

29. Patentees and their representatives are hereby required to stamp or affix on each patented article offered for sale, or on the vessel or package containing the same, the date of the patent, and every party offending shall for each offence be liable to a penalty of five pounds, to be recovered and applied as provided in the preceding section.

30. In actions brought under this Act no special plea shall be allowed; but every defendant may plead the general issue and give this Act in evidence, and also any special matter of which he shall have given notice in writing at the time of delivering the general issue; and whenever a defendant relies on a previous invention, knowledge or use of the thing patented, he shall state in his notice of special matter to be given in evidence the names and places of residence of those by whom he intends to prove the same; and if a verdict and judgment shall pass for the defendant, the patent under which the plaintiff claims shall thenceforth be void and of no effect; and whenever a plaintiff fails to sustain his action on the ground that in his specification or claim for a patent is embraced more than that of which he is the first inventor, and it shall appear that the defendant had used any part of the invention justly and truly specified and claimed as new, the Court may make such order as to costs as shall be just and equitable, but no action shall be sustained for an offence committed under the provisions of this Act, unless the same shall be commenced within six months next after the knowledge of the offence committed.

31. Quakers may affirm in all cases where an oath is required by this Act; and all oaths or affirmations under this Act, unless otherwise provided, may be taken in this Province before a Judge of the Supreme Court, or a Commissioner for taking affidavits in the same, or in Great Britain or Ireland before the Mayor of a City or Borough, the depositions being certified under the Corporate Seal; or in a Foreign Country before a British Consul or Vice Consul, and certified by his Seal of Office.

32. The fees to be demanded and received under this Act shall be as stated in the Schedule annexed.

33. All Letters Patent granted under this Act shall become utterly null and void, if within three years after the granting thereof the patentee shall not establish in this Province the manufacture

of, or in case the materials for manufacturing the same are not here to be had, introduce into this Province the article, improvement or composition for which the same were issued.

34. Throughout this Act, wheresoever words are used importing the singular number or the masculine gender only, yet they may be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males; and wheresoever words are used denoting the plural number, yet they may be understood to apply to one matter as well as more than one, and to one person as well as more than one, unless it be otherwise provided, or there be something in the subject or context repugnant to such construction; and the word "Patent" shall be deemed synonymous with the words "Letters Patent."

35. An Act passed in the fourth year of the Reign of His late Majesty William the Fourth, intituled *An Act for granting Patents for useful inventions*; also an Act passed in the sixth year of the Reign of Her present Majesty, intituled *An Act to amend an Act for granting Patents for useful inventions*; also an Act made and passed in the fourteenth year of the Reign of Her present Majesty, intituled *An Act in further amendment of an Act intituled 'An Act for granting Patents for useful inventions'* and all other Acts and parts of Acts repugnant to this Act, shall be and the same are hereby repealed, so far as relates to all Patents that shall be granted after the passing of this Act.

Schedule.

Table of Fees.

If a British subject, whether original inventor or assignee of an invention in the Province or of any Letters Patent from abroad, in full for obtaining Letters Patent, exclusive of recording assignment, ...	£5	7	6
If a Foreigner, whether original inventor or assignee, ...	50	0	0
Fee on entering a Caveat, ...	5	0	0
Fee to be paid by applicant under the 14th Section of this Act; surplus, if any remaining after paying compensation fees and expenses, to be returned to applicant, ...	25	0	0
Ditto under 15th Section, ...	20	0	0
Ditto under 17th Section, ...	20	0	0
Ditto under 26th Section, ...	20	0	0
Fee for adding to a Patent specifications of a subsequent improvement, ...	4	0	0
On surrender of old Patent to be re-issued, for correcting mistake of the Patentee, ...	4	0	0

On application for a design,	3	0	0
For a disclaimer,	3	0	0
For copies of Patents, or any other paper on file (not including drawings) for each 100 words, ...	0	2	0
For recording all assignments, powers of Attorney, Licences or other papers, which shall not contain over 300 words,	0	2	0
And for every additional 100 words,	0	1	0
Copies of drawings and models to be matter of agreement.			