

*Laws of Her Majesty's Province of Newfoundland, passed in the year 1856.*

19 Victoria – Chapter 19

**An Act to Repeal the Patent Acts of this Colony, and to make other Provisions in lieu thereof. (Passed 12th May, 1856.)**

Whereas it is expedient to Repeal an Act passed in the Fourteenth Year of the Reign of Her Majesty, intituled “An Act for Granting of Patents for Useful Inventions,” and an Act passed in the Nineteenth Year of Her Majesty’s Reign intituled “An Act to amend an Act passed by the Legislature of this Island, in the Fourteenth Year of the Reign of Her Majesty, intituled ‘An Act for the Granting of Patents for Useful Inventions,’” and to enact other provisions in lieu thereof:—

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

- I. That the said Act passed in the Fourteenth Year of the Reign of Her Majesty, intituled “An Act for granting of Patents for Useful Inventions”; and the said Act passed in the Nineteenth Year of the Reign of Her Majesty, intituled “An Act to amend an Act passed by the Legislature of this Island in the Fourteenth Year of the Reign of Her Majesty, intituled ‘An Act for the granting of Patents for Useful Inventions,’” be and the same are hereby respectively repealed: Provided always, that nothing herein contained shall in any way affect any Letters Patent already granted under and by virtue of the said recited Acts, or any matter or thing done in pursuance thereof.
  
- II. From and after the publication of this Act, whenever any person whomsoever shall apply to the Governor, alleging that he hath invented and discovered any new and useful Art, Machine, Manufacture or Composition of Matter, not theretofore known or used, and shall, by petition to the Governor, signify his desire to obtain an exclusive Property in such new Invention and Discovery, and shall pray that a Patent be granted for the same, it shall and may be lawful for the Governor, by and with the advice and consent of Her Majesty’s Council, to cause and direct Letters Patent, under the Great Seal of this Island, to be issued, which Letters Patent shall recite the allegations and suggestions of the said Petition so to be preferred as aforesaid, and shall therein give a short description of the said Invention and Discovery, and thereupon shall grant to such Person, so applying for the same, his Executors, Administrators or Assigns, for a term not exceeding Fourteen Years, the full and exclusive right and liberty of Making, Constructing and Using, and Vending to others to be used, the said new Invention or Discovery; which Letters Patent shall be good and available to the Grantee therein named, by force of this Act, and shall be recorded in the Office of the Colonial Secretary in a Book to be kept for that purpose, and shall be delivered to the Patentee: Provided always, that it shall be lawful for the Governor in Council, if they should deem it expedient, to insert in any such -Letters Patent a provision extending the operation thereof for a-further-term of Seven Years; and provided, further, that before the Great Seal of this Island shall be affixed to any such Letters Patent, or the same shall be issued and signed as aforesaid, such Letters Patent shall be delivered to Her Majesty’s Attorney General of this Island, who shall examine the same, and shall, if he finds the same conformable to this Act, certify

accordingly, and return the same within Fifteen Days into the Office of the Colonial Secretary, to be issued and signed.

III. Where any Letters Patent shall be obtained by any Person, in manner aforesaid, for any new and useful Invention or Discovery in any Art, Machine, or Composition of Matter, and thereafter any other Person shall discover or make any improvement in the principle or process of any such Art, Machine, or Composition of Matter, for which such Patent hath been granted, and shall make application for and obtain Letters Patent under this Act, for the exclusive right of such improvement, it shall not be lawful for the Person who shall obtain and procure Letters Patent for any such Improvement to Make, Use or Vend the Original Invention, or Discovery, nor for the Person who shall have procured Letters Patent for the original Invention or Discovery, to Make, Use or Vend any such Improvement: Provided always, that simply changing the form or the proportions of any Machine or Composition of Matter, in any degree, shall not be deemed a discovery or improvement within the meaning of this Act.

IV. It shall and may be lawful for any Person to obtain and receive from the Office of the Colonial Secretary, any copy or copies of any such Letters Patent, or of the Petition whereon the same were granted and issued, or of any Paper connected therewith or any Drawing relating to the same, on payment, for such copy or copies, of such Fees as are now payable at the Office of the Colonial Secretary for copies of other documents.

V. Before any Person shall obtain or receive any Letters Patent under this Act, such Person shall make Oath, or, if a Quaker, shall make solemn affirmation, in writing, before some one of the Justices of Her Majesty's Supreme Court, that he doth verily believe that he is the true Inventor or Discoverer of the Art, Machine, Composition of Matter, or Improvement, for which he solicits Letters Patent, and that such Invention or Discovery hath not, to the best of his knowledge or belief, been known or used in this Island or in any other Country, which oath or affirmation shall be delivered in with the Petition for such Letters Patent.

VI. Together with such Petition and Oath or Affirmation, before any Person, shall receive or obtain any Letters Patent as aforesaid, such Person, shall also deliver, into the Office of the Colonial Secretary, a written description of his Invention, and Of the manner of using 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 enable any Person skilled in the Art or Science of which it is a branch, or with which it most nearly connected, to make, compound and use the same, and, in case of any Machine, shall deliver a Model thereof into the Office of the Colonial Secretary, and shall explain the principle and the several modes in which such Person hath contemplated the application of that principle or character by which it may be distinguished from other Inventions; and shall accompany the whole with Drawings and Written References, where the nature of the case admits of Drawings, or with Specimens of the ingredients, and of the Composition of Matter, sufficient in quantity for the purpose of Experiment, where the Invention is of a Composition of Matter; which Description required by such Person so applying for such Letters Patent, and attested by two Witnesses, shall be filed in the Office of the Colonial Secretary, and copies thereof, certified under his hand, shall be competent Evidence in all Courts where any matter, or thing, touching or concerning the said Letters Patent, shall or may come into question: Provided nevertheless, that where, from the complicated nature of any Machinery, the

cost of a Model thereof may be so great as to prevent any ingenious but poor Persons from obtaining Patents for their Useful Inventions, it shall and may be lawful for the Governor, by and with the advice and consent of the Council, if they shall see fit and proper under all the circumstances so to do, to dispense with the delivery of such Model into the Office of the Colonial Secretary, previous to the granting of any such Patent; and in such case the Requisitions of said Act being in all other respects complied with, the Person applying for any Patent shall be entitled thereto in the same manner as if such Model had been so lodged as aforesaid.

VII. Any Patentee, his Executors or Administrators, may assign and transfer all his Right, Title and Interest, in the said Invention and Discovery, in the Letters Patent to him granted, to any Person whomsoever; and the Assignee thereof, having recorded the said Assignment in the Office of the Colonial Secretary, shall thereafter stand in the place and stead the original Patentee, as well as to all Right, Privilege and advantage, as also in respect of all liability and responsibility as to the said Letters, Patent, and the Invention and Discovery thereby secured; and in like manner shall the Assignees, of any such Assignee stand, and be considered to be, in the place and stead of the original Patentee or Inventor.

VIII. Whenever in any case, any Letters Patent, shall be, or shall or may have been granted to any Person, under and by virtue of this Act, and any Person, without the consent of the Patentee, his Executors, Administrators, or Assigns, first had and obtained in writing, shall make, devise, use or sell, the Thing Invention or Discovery, whereof the exclusive right is secured to the said Patentee, by such Letters Patent, such Person so offending Shall forfeit and pay to the said Patentee, his Executors, Administrators or Assigns, a Sum equal to three times the actual damage sustained by such Patentee, his Executors, Administrators or, Assigns, from or by reason of such offence, which sum shall and may be recoverable, together with costs of suit, by action on the case, founded on this Act, in any Superior Court of this Island.

IX. Provided always, that the Defendant in such action shall be permitted to plead the general issue, and give this Act and any special matter in evidence, tending to prove, that the specification filed by the plaintiff does not contain the whole truth relative to the Invention or Discovery therein alleged to have been made by the said Plaintiff, 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, Invention or Discovery, thus secured by Letters Patent, as aforesaid, was not originally discovered by the Patentee, but had been in use, or had been described in some public work, anterior to the supposed Invention or Discovery of the said Patentee, or that the said Patentee had surreptitiously obtained Letters Patent as aforesaid, for the Invention or Discovery of some other Person; in either of which cases, upon sufficient and legal, proof thereof, a Verdict shall be returned and Judgment shall be entered for the said defendant with costs, and the said Letters Patent shall thereupon be and become, and shall by the said Court be adjudged, void and of no effect.

X. No Applicant shall be deprived of his Right to a Patent in this Colony 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 Colony prior to the application for a Patent therein, and that the Patent granted in this Colony shall not continue in force

after the expiration of the Patent granted elsewhere, and that where more than one such Patent or like Privilege is obtained abroad, then immediately upon the expiration or determination of the term which shall first expire or be determined of such several Patents or like Privileges, the Patents granted in this Colony shall cease to be in force: Provided further, that no Letters Patent for or in respect of any Invention for which any such Patent or like Privilege as aforesaid shall have been obtained elsewhere, and which shall be granted in this Colony after the expiration of the term for which such Patent or Privilege was granted or was in force, shall be of any validity.

XI. Letters Patent maybe issued by the Governor and Council, 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 Invention or Discovery 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 into this Colony 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 Colony, 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 Colony, and that he is the Assignee for a good consideration.

XII. Any Letters Patent which may be taken out under or by virtue of this Act, and which shall not have been brought into operation within Two Years next ensuing, from and after the date thereof, such Letters Patent shall, at the expiration of the said period of Two Years, be deemed to be forfeited, and shall thence be and become void and of no effect.

XIII. No Letters Patent shall be granted under or by virtue of this Act, until Notice shall be published in the Royal Gazette, and one other of the newspapers of this colony, for at least four weeks, of the intention of the applicant to apply for such Letters Patent; and such notice shall contain, in general terms, the description of invention for which such Letters Patent shall be desired.

XIV. 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 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 judgement, he shall not be entitled to costs, unless before the commencement of the suit he shall have filed in the office of the Colonial 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.

XV. 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 Colonial 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.

XVI. 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 inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the 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.

XVII. 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 Colonial 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.

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

XIX. 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 Colony before a Judge of the Supreme Court, or any of the Circuit Courts, or a Commissioner for taking affidavits in the same; or in Great Britain or Ireland, before the Mayor of a City or Borough, the deposition 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.

XX. Any person who may take out Letters Patent under or by virtue of this Act shall pay for the same such Fees as are charged on documents issued under the Great Seal of this Island, and shall, in addition, deposit with the Colonial Secretary the sum of Five Pounds, to be by him paid to the Receiver General, for the uses of the Colony.