

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbshire & George Desbarats, 1849.

12 Victoria – Chapter 24

An Act to consolidate and amend the Laws of Patents for Inventions in this Province. 30th May, 1849.

Whereas the Acts severally in force in Upper-Canada and in Lower-Canada, for the encouragement of useful Arts, namely the Act of the heretofore Province of Lower-Canada, passed in the sixth year of the Reign of His late Majesty, King William the Fourth, intituled, *An Act to repeal certain Acts therein mentioned, and to consolidate the provisions therein made for the encouragement of useful Arts in this Province*,—and the Act of the heretofore Province of Upper-Canada, passed in the seventh year of the Reign of His late Majesty, King George the Fourth, intituled, *An Act to encourage the progress of useful Arts within this Province*, differ in several particulars, and it is expedient to assimilate the provisions of the law in this respect, and to amend and modify the said Acts, and to extend the advantages and privileges of Patent Rights hereafter to be granted, and to make the same co-extensive with the Province of Canada: 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 any person a subject of Her Majesty and resident in this Province having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, or the principle thereof, the same not being known or used in this Province by others before his or their discovery or invention thereof, and not at the time of the application for a Patent in public use or on sale in this Province with his consent or allowance, as the inventor or discoverer thereof, and desiring to obtain an exclusive property therein, may make application by petition, in the manner provided in and by the said recited Acts, to the Governor or Administrator of the Government of this Province, expressing such desire, and the said Governor or Administrator shall, on the due proceedings being had as by the said Acts directed to be done, grant such Patent, which shall be good and available to the said grantee, his heirs, lawful representatives, or assigns, for the period of fourteen years from the granting of the same, after the said Letters Patent shall have been recorded in the manner directed by the said Acts, and upon the assignment of the same previous to the grant aforesaid, for the same period, after such assignment shall have been recorded in the office of the Secretary of the Province.

II. And be it enacted, That in any action for damages for making, using or selling the thing whereof the exclusive right is secured by any Patent heretofore granted or to be hereafter granted, the issue shall be tried by a jury, and if a verdict shall be rendered for the Plaintiff in such action, it shall be in the power of the Court to render judgment on such verdict, to the amount found by such verdict, as the actual damages sustained by the Plaintiff, with treble costs, and such

judgment shall be enforced and recovered in the same manner and by the same proceedings at law, as are used and in practice in that part of this Province in which the action shall be brought, as to any other judgment for damages; Provided always, that nothing herein contained shall have the effect or be construed to have the effect of depriving a Defendant in any such action from specially pleading the matter of defence to the said action, specified and detailed in the said Acts; And further provided, that whenever it shall satisfactorily appear that the Patentee at the time of making his application for the Patent, believed himself to be the first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery or part thereof, having been before known or used in a foreign country, it not appearing that the same or any material or substantial part thereof, had before been patented or described in any printed publication; And provided also, that whenever; the Plaintiff shall fail to sustain his action, on the ground that in his specification of claim is embraced more than that of which he was the first inventor or discoverer, or if it shall appear that the Defendant had used or violated any part of the invention, justly and truly specified and claimed as new, it shall be in the power of the Court to adjudge and award as to costs, as may appear to be just and equitable.

III. And be it enacted, That when any such subject being an inhabitant of the said Province as aforesaid, hath made or shall have made any new invention, discovery or improvement, on account of which a Patent might, by virtue of the said recited Acts or of this Act, be granted, and such person shall die before any Patent shall be granted therefor, the right of applying for and obtaining such Patent shall devolve on the Executor or Administrator of such person in trust for the heir at law of the deceased, in case he shall have died intestate, or on his legal representative in any other case, in as full and ample a manner, and under the same conditions, limitations and restrictions, as the same was held or might have been claimed or enjoyed by the deceased in his lifetime; and when the application shall be made by such executor, administrator, or representative, the declaration required to be made and taken shall be so varied as to be applicable to him.

IV. And be it enacted, That in case of interfering applications for Patents, the decision of the same shall be made by Arbitrators in the manner and according to the directions in the said recited Acts contained: Provided always, that nothing in the said Acts nor in this Act contained shall be construed to deprive an original and true inventor of the right to a Patent for his invention by reason of his having previously taken out Letters Patent therefor in a foreign country, and of the same having been published at any time within six months next preceding the filing of his specification and drawing, as required by the said Acts or by this Act.

V. And be it enacted, That every Patent shall be assignable in law either as to the whole interest or any undivided part thereof, by an instrument in writing, which assignment and also every grant and conveyance of the exclusive right under any Patent to make and use and to grant to others to make and use the thing patented within and throughout this Province, shall be recorded in the Office of the Provincial Secretary within two months from the execution thereof.

VI. And be it enacted, That every Patent hereafter to be issued may be made and issued to the Assignee or Assignees of the inventor or discoverer, the assignment thereof being first entered as

aforesaid, and the application therefor being duly made, and specifications duly and solemnly declared by the said inventor; and in all cases the applicant for a Patent hereafter to be granted shall be held to furnish duplicate drawings, whenever the case admits of drawings, one of which shall be deposited in the Office of the Provincial Secretary, and the other shall be annexed to the Patent, and considered a part of the specification thereof, and a copy of the specification shall be in all cases annexed to such Patent.

VII. And be it enacted, That whenever any Patent heretofore granted or hereafter to be granted as aforesaid shall be inoperative or invalid by reason of a defective or insufficient description or specification, if the error have or shall have arisen from inadvertency, accident or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Patentee to surrender such Patent and to obtain a new Patent to be issued to him for the same invention for the residue of the unexpired period of the original Patent, in accordance with the Patentee's corrected description and specification: and in case of his death or of any assignment by him made of the original Patent, a similar right shall vest in his executor, administrator or legal representative, and the Patent so re-issued, together with the corrected description and specification thereof, shall have the same effect and operation in law on the trial of all actions thereafter commenced for causes subsequently accruing as if the same had been originally filed in such corrected form before the issuing of the original Patent.

VIII. And be it enacted, That whenever, by mistake, accident or inadvertence, and without any wilful default or intent to defraud or mislead the public, any Patentee shall have made his specification of claim too broad, claiming more than that of which he was the original or first inventor, some material and substantial part of the thing patented being truly, and justly his own, or shall have in his specification claimed to be the original and first inventor or discoverer, of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same, in every such case the said Patentee, his executor, administrator, legal representative or assigns, whether of the whole or of a fractional interest thereof, may make disclaimer of such parts as he shall not claim to hold by virtue of the Patent or assignment thereof, stating in the said disclaimer the extent of his interest in such Patent, and such disclaimer shall be in writing, attested by one witness and recorded in the Office of the said Secretary, and shall be thereafter taken and considered as part of the original specification, to the extent of the interest possessed in the Patent or right secured thereby by the disclaimant or by those claiming by or under him subsequent to the entry thereof: But such disclaimer shall not affect any actions pending at the time of its entry, except so far as may relate to the question of unreasonable neglect or delay in filing the same: and the Patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and *bonâ fide* his own, or not disclaimed, provided it shall be a material and substantial part of the thing patented, and he definitely distinguished from other parts so' claimed without right as aforesaid: and such Patentee, his executor, administrator or legal representative and assigns, whether of the whole or a fractional interest therein as aforesaid, shall be entitled to maintain a suit at law or in equity on such Patent for any infringement of so much of the invention or discovery as shall be *bonâ fide* his own, as aforesaid, notwithstanding such disclaimer or larger specification as aforesaid; and in case of judgment on verdict in his favour, he shall not be entitled to recover costs against the

Defendant unless he shall have entered as aforesaid in the Office of the Provincial Secretary, the said disclaimer of all that part of the thing patented so claimed without right; Provided also, that no person bringing such suit shall be entitled to the benefits contained in this Section who shall have unreasonably neglected or delayed to enter in the said Office the disclaimer as aforesaid.

IX. And be it enacted, That whenever any application shall be made to the Governor, or Administrator, as aforesaid, for any addition of a newly discovered Improvement, to be made to an existing Patent, or whenever a Patent shall be returned for correction and re-issue, the specification of claim annexed to every such Patent shall be subject to revision and restriction in the same manner as original applications for Patents, and such Improvement shall not be granted in the one case, nor the re-issue allowed in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the revision or restriction thereon.

X. And be it enacted, That whenever a Patent shall be returned for correction and re-issue, and the Patentee shall claim several Patents to be issued for distinct and separate parts of the thing patented, the same shall be granted in the same manner as original Patents; Provided always, that no addition of an Improvement shall be made to any Patent heretofore granted, nor any new Patent be issued for an improvement made in any machine, manufacture, or process, to the original Inventor, assignee, or possessor of a Patent therefor, nor any disclaimer be admitted to entry, until a duplicate model and drawing of the thing originally intended, verified as aforesaid, shall have been deposited in the proper Office therefor, nor shall any Patent be granted for an invention, improvement or discovery, the model or drawing of which shall have been lost, until another model and drawing shall in like manner be deposited.

XI. And be it enacted, That whenever any Patentee shall desire an extension of his patent beyond the term of its limitation, he may apply therefor in writing, to the Governor or Administrator as aforesaid, setting forth the grounds thereof, and causing the notice of such application to be published three times each in the Canada Gazette, and in two other Newspapers published respectively in the English and French languages in that section of the Province in which he shall reside, and also of the time of the said application, that any person may appear and show cause why the extension should not be granted; And the President of the Executive Council for the time being, the Attorney-General for that part of the Province in which the applicant resides, and the Inspector-General for the time being, shall constitute a Board to hear and decide upon the said application and objection thereto, if such there be, who shall sit for that purpose at the time designated in the published notice thereof, at the office of the Registrar of the Province, at the City of Montreal, or where the Seat of the Provincial Government may be, and a true statement on oath by the Patentee shall be then and there submitted to the said Board of the ascertained value of the invention, and of the receipts and expenditure in detail, exhibiting a true and faithful account of the loss or profit in any manner accruing to him from the same. And if upon a hearing of the matter it shall appear to the Board, having due regard to the public interest therein, that the said term should be extended, by reason of the Patentee without fault on his part, having failed to obtain from the use and sale of his invention, a reasonable remuneration for the time, ingenuity and expense bestowed thereon, and the introduction thereof into use, the said Patent shall be

renewed and extended by making a certificate thereon by the said Board, of such extension for the term of seven years from and after the expiration of the first term, which certificate, with a certificate of the judgment and opinion of the said Board shall be entered in the said Secretary's Office, and the said Patent shall thereupon have the same effect in law as if it had been originally granted for the term of twenty-one years; And the benefit of such renewal shall extend to Assignees and Grantees of the right to use the thing patented to the extent of their respective interest therein; Provided always, that no extension of a Patent shall be granted after the expiration of the term sought to be extended, nor unless the petition or application therefor shall be presented six calendar months at the least before the expiration of such term.

XII. And be it enacted, That every person, as aforesaid, or Corporation established in this Province, who has or shall have purchased, constructed, invented, or discovered, as aforesaid, any new machine, manufacture, or composition of matter, prior to the application for a Patent therefor, by a person claiming to be the inventor or discoverer thereof, shall be held to possess the right to use and vend to others to be used, the specific machine, manufacture, or composition of matter, so made, purchased, or introduced, without liability therefor to the Patentee or any other person, interested in such invention: and no Patent shall be held to be invalid by reason of such purchase, sale or use, prior to the application for such Patent as aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale or prior use has been or existed for more than one year prior to such application for a Patent.

XIII. And be it enacted, That any subject inhabitant of this Province as aforesaid, who, by his industry, genius, efforts, and expense, may have invented or produced any new or original design for a manufacture, whether of any metal or mixed metals, or other material or materials, or any new and original design for the printing of woollen, silk, cotton or other fabrics, or any new or original design for a bust, statue, or *bas relief*, or composition in *alto* or *basso relievo*, or any new or original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern or print or picture to be either worked into or worked on, or printed or painted or cast, or otherwise fixed on any article of manufacture, not known or used by others before his invention or production thereof, and prior to the time of his application for a Patent therefor, and who shall desire to obtain an exclusive property or right therein, to make, use, sell and vend the same or copies of the same to others, to be by them made, used, sold or vended, may make application in writing, by petition to the Governor or Administrator aforesaid therefor, expressing such desire; and the Governor or Administrator aforesaid, on due proceedings had as by the said Acts and this Act provided, may grant a Patent therefor as in the case now of an application for a Patent: Provided that the duration of the said Patent shall be limited to seven years from the grant of the same, and that all the regulations and provisions in the said Acts and in this Act for the obtaining or protection of Patents, shall apply to applications for and to Patents granted under this section.

XIV. And be it enacted, That a solemn declaration shall be substituted for the oath required to be taken in the said Act, in matters of Patents, to the effect of the requirements of the said oath, except in suits, actions or proceedings in Courts of Justice in relation to Patents, and that when the applicant is not for the time being residing in the said Province, the said declaration shall be made

before any Minister Plenipotentiary, *Chargé d’Affaires*, Consul or Agent, holding commission under the Government of Great Britain, or any Notary Public of the Country in which such applicant may be or happens to be at the time of making the same.

XV. And be it enacted, That if any person or persons shall write, paint, print, mould, cast, carve, engrave or stamp upon any thing made, used or sold by him, for the sole making or selling of which he hath not or shall not have obtained Letters Patent, the name or any imitation of the name of any Patentee for the sole making or vending of such thing without the consent, in writing, of such Patentee or of his assigns or legal representatives, or if any person upon any such thing not purchased from the Patentee or from his assigns or representatives, or from a vendee, or not having his license or consent in writing, shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise make or affix the word or words “Patent,” “Letters Patent,” by the “Queen’s Patent,” “Patentee,” or any word or words of like kind, meaning or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device of the Patentee, or shall affix the same or any word, stamp or device of like import on any unpatented article, for the purpose of deceiving the public, he shall be deemed to have committed a misdemeanor, and shall be punished by fine, or by imprisonment in the Common Gaol of the District or County in which the offender is brought to trial, or by both fine and imprisonment, at the discretion of the Court trying the same; Provided the fine do not exceed Fifty Pounds currency in amount, and the imprisonment do not exceed Three Months in duration.

XVI. And be it enacted, That from the passing of this Act, all Patentees and Assignees of Patents hereafter to be granted, shall stamp, engrave, or cause to be stamped or engraved on each article vended or offered for sale, the date of the Patent thereof; and any persons patented or assigned neglecting so to do shall be deemed to have committed a misdemeanor, and shall be liable therefor to the same penalties as are provided in the next preceding Section.

XVII. And whereas it is necessary that a similar and convenient remedy should be had for the said Province in general, for the repeal of Letters Patent issued under the authority of the said Acts or of this Act, and fraudulently or surreptitiously obtained, issued improvidently, or upon false suggestion; Be it therefore enacted, That from and after the passing of this Act, it shall and may be lawful for any person desirous to impeach such Letters Patent for any such cause as aforesaid, to obtain an exemplification under the Great Seal of this Province, of such Patent, and of the petition or application of the petitioner therefor or Patentee thereof, or his assigns, executor, administrator or legal representative as aforesaid, and of the drawings and specifications aforesaid, and to have the same filed in the office of the Clerk of the Superior Court, for such section of the said Province, as the case may be, in which such repeal shall be sought, and thereupon the Letters Patent, the petition and application, drawing and specification aforesaid, so exemplified, shall be considered and held by the said Court as remaining of record in the said Court, 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 Queen’s Bench in England aforesaid, and under the provisions of the said Acts and of this Act, the said Letters Patent so sought to be repealed, shall be adjudged and declared void;

and a Certificate of the said judgment shall, at the request of any person or party, be entered upon the margin, of the enrolment of such Patent, in the Office of the Secretary and Registrar of this Province, whereupon the said Patents shall be considered to be cancelled and made void from the entry thereof; Provided always, that no such *scire facias* shall issue or proceedings thereon be had, unless the same Writ shall issue and be returned into the said Court in a term of the said Court within two years after the grant of the said Letters Patent, or in the Term or Session of the said Court next after the said two years, and not afterwards.

XVIII. And be it enacted, That all Patents hereafter to be granted under the provisions of the said Acts or of this Act, shall extend and be privileged throughout the said Province of Canada; any law or statute in force in either section of the said Province to the contrary notwithstanding. Provided always that nothing herein contained shall extend to inventions or discoveries of any new or useful art, machine, manufacture or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, or the principle thereof made, discovered or used in the United States of America, or in any part of Her Majesty's Dominions in America, or be construed to prevent the free importation thereof into this Province, for sale by any person or persons or for their use or otherwise from the United States, or Her Majesty's said Dominions.

XIX. And be it enacted, That all and every of the provisions in the said recited Acts, inconsistent or at variance with the provisions of this Act, shall be and are hereby repealed; Provided that nothing in this Act contained shall have the effect of reviving or giving effect to any Act or Acts repealed by the said Act first recited of the heretofore Province of Lower-Canada, but the same shall remain and continue repealed; Provided that all actions and proceedings in law or equity sued out in other sections of the Province, prior to this Act coming into force and effect, shall and may be prosecuted to final judgment and execution as if this Act had not been passed, and that all applications or petitions for Patents pending at the time of this Act coming into force and effect, shall be proceeded with and acted on in the same manner as if they had been made after this Act shall have come into operation.

XXI. And for the interpretation of this Act—Be it enacted, That the expressions “useful art, machine, manufacture or composition of matter,” shall include any such thing herein referred to whether it be made by hand or by machinery or by both of those means; the expression “Foreign Country” shall include any country not under the British Dominion and subject to the Crown thereof, and the singular number shall include the plural as well as the singular number, and the masculine gender shall include the feminine gender as well as the masculine gender.