

Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 79

An Act to enable parties holding Patents for Inventions confined to one section of this Province, to obtain the extension of the same to the other section thereof, and for other purposes therein mentioned. 30th August, 1851.

Whereas it is expedient that parties holding Patents for the invention of any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on the same, issued under the Acts of Parliament of the respective Provinces of Upper or Lower Canada previous to the Union of the same, should be enabled to obtain the extension of the exclusive privileges granted by such Patents, to that section of the United Province not embraced within such Patents; and whereas by the eighteenth section of the Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's Reign, chaptered twenty-four, and intituled, *An Act to consolidate and amend the Laws of Patents for Inventions in this Province*, it is provided that all Patents thereafter to be granted under the provisions of the said Acts or of that Act, should extend and be privileged throughout the said Province of Canada, but no effectual provision is made for the extension of privileges (heretofore granted in either section of the Province to the other section thereof, as aforesaid: 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, and 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 whenever any party holding a Patent for any such invention, issued under the authority of either of the Acts above mentioned, shall be desirous of obtaining the extension of the privileges thereby granted to the other section of this Province, it shall be lawful for the Governor of this Province, upon application made to him to that effect, and on the due proceedings being had, as directed by this Act, (except that no declaration of invention or discovery shall be required, hut it shall be sufficient to allege that the applicant holds a Patent for the other section of the Province,) to issue Letters Patent to such grantee, which shall be available in that section of the Province not embraced by the Patent already issued as aforesaid, which said Letters Patent so to be issued as aforesaid, shall be subject to all the provisos, conditions, reservations and restrictions mentioned and contained in the said Act of this Province, and shall, as regards such section of the Province, convey to the grantee all the privileges conferred by the said last mentioned Act, for and during the period of fourteen years, and shall, for such section of the Province as aforesaid, be renewable for the period and under the conditions prescribed in the eleventh section of the said last mentioned Act: Provided always, that nothing herein contained shall be construed to extend the period limited by Patents heretofore issued under either of the said Acts of the late Provinces of Upper or Lower Canada, within the sections to which the said Patents are thereby confined: Provided also, that every person or corporation in that section of the Province to which such Letters Patent shall extend solely by virtue of this Act, who has or shall have purchased, constructed or used, within such section of the Province as last

aforesaid, any machine, manufacture or composition of matter, included in such Letters Patent, prior to the application therefor by the party entitled thereto, under this Act, shall be held to possess the right to use and to vend to others to be used, the specific machine, manufacture or composition of matter, so actually purchased, constructed or used by him, before such application as aforesaid, without liability to the Patentee or other person interested in the invention for which Letters Patent shall have been obtained as aforesaid, for such section of the Province.

II. And whereas it is expedient to repeal the several Acts of Upper and Lower Canada respectively, relating to Letters Patent for Inventions, and to consolidate and re-enact as applicable to the whole Province, such of the provisions thereof as have been found useful, and as are not inconsistent with the Act cited in the preamble to this Act: Be it therefore enacted, That the Act of the Parliament of Lower Canada, passed in the sixth year of the Reign of King William the Fourth, and 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 Parliament of Upper Canada, passed in the seventh year of the Reign of King George the Third, and intituled, *An Act to encourage the progress of useful Arts within this Province*, shall be, and the said Acts are hereby repealed; but all Letters Patent lawfully issued under either of them, shall remain in force and be of the same effect, as if the Act under which it was issued had not been repealed, but subject to the provisions of this Act and to those of the Act cited in the preamble of this Act.

III. And be it enacted, That the Letters Patent to be hereafter granted under the Act cited in the preamble to this Act, shall recite briefly the substance of the Petition upon which they are granted, and shall contain a short description of the invention or discovery for which they are granted, referring for a fuller description thereof, and for more ample details, to the specification, and shall grant to the Petitioner, his assigns and legal representatives, for the period of fourteen years from the granting of the same, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said invention or discovery, and such Letters Patent shall, before the same are represented to the Governor for his signature, and before the Great Seal of the Province is thereunto affixed, be examined by Her Majesty's Attorney General or Solicitor General for Upper or Lower Canada, who shall, if he shall find them conformable to Law, certify accordingly, and the same shall then be presented to the Governor for his signature, and the Great Seal of the Province shall be thereunto affixed after they have been signed by him, and the same shall be good and available to the Grantee, after they shall have been recorded in a Book to be kept for that purpose in the office of the Provincial Secretary and Registrar, and shall, when so recorded, be delivered by the proper Officer to the Patentee or his order.

IV. Provided always, and be it enacted, That any person who shall have discovered an improvement in 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 invention, 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.

V. And be it enacted, That every Inventor, before he can receive a Patent, shall make a solemn declaration 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 declaration may be made before any Justice of the Peace,) and shall deliver a written description or specification in duplicate 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 enable any person skilled in the art or science of which it is a branch, or with which it is most nearly 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 made in duplicate, where the nature of the case admits of drawings, or with specimens of the ingredients, or of the composition of matter, sufficient in quantity for the purpose of experiment; which description or specification, 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 Courts where any matter or thing touching Patent Right, shall come in question; and such inventor shall moreover deliver a model of the Machine by him invented, provided the Provincial Secretary shall deem such model to be necessary.

VI. And be it declared and enacted, That every Patent, whether issued before or after the passing of this Act, is and shall be assignable at law, and that the fifth section of the Act cited in the preamble to this Act, does and shall apply, as well to Patents issued before, as after the passing of this Act.

VII. And be it enacted, 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 assigns or other lawful representatives, 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 party injured shall also recover treble costs, to be taxed according to the course and practice of the Court in which the action shall have been brought.

VIII. Provided always, and be it enacted, That if at the 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 Patentee does not contain the whole truth relative to the invention or discovery to which it refers, or that it contains more than is necessary to produce the described effect, (such concealment or addition fully appearing 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 or party claiming to be the Inventor or Discoverer in the specification referred to in the Patent, 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 invention or discovery of another person, in either of the said cases, judgment shall be rendered for the defendant, with costs, and the Patent shall be declared void.

IX. And be it enacted, That in cases of interfering applications for any Patent, the same shall be submitted to the arbitration of three skilled persons, one of whom shall be chosen by each of the applicants, and the third person shall be chosen by the Secretary of the Province, or by his Deputy or person appointed to perform the duty of that office; and the decision or award of such Arbitrators or any two of them, delivered to the 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, when required so to do by the Secretary of the Province, the Patent shall issue to the opposite party; and when there shall be more than two interfering applicants, and the parties applying shall not all unite in appointing three Arbitrators, it shall be in the power of the said Secretary of the Province or his Deputy, or person appointed to perform the duty of that office, to appoint the three Arbitrators for the purposes aforesaid.

X. And be it enacted, That every applicant as aforesaid, presenting a petition and signifying his desire to obtain a Patent pursuant to this Act, and the Act cited in the preamble to this Act, shall pay into the hands of the Secretary of the Province, or his Deputy, or person appointed to perform the duty of that office, the sum of Five Pounds Currency, which shall be in full of all fees due and payable by any such person petitioning for a Patent as aforesaid, with respect to such Patent, and for all services by what Public Officer soever performed, in relation thereto, whether by such Provincial Secretary, or any other: Provided always, that for every copy or exemplification which may be required at the office of the said Secretary, of the enrolment of any such Patent, or of the specification or other document relating thereto, the person obtaining such copy shall pay at the rate of One Shilling for every folio of seventy-two words, and a further sum of Ten Shillings for affixing the Great Seal to the exemplification of any such Patent; and for every copy of any drawing relating to such Patent, the party entitled to and obtaining the same, shall pay such sum as the Provincial Secretary, or his Deputy, or person performing his duty as aforesaid, shall consider a reasonable compensation for the time and labor expended thereon.

XI. Provided always, and be it enacted, That the privileges, clauses, provisions, powers and legal remedies intended and mentioned by this Act, which are secured to, imposed upon, and apply to the inventor and discoverer of any new and useful art, machine, manufacture, or composition of matter, for which he or she shall make application for a Patent, shall be construed to extend to and to include, and are hereby declared to extend to and include any subject of Her Majesty, being an inhabitant, of this Province, who shall in his or her travels in any foreign country have discovered or obtained a knowledge of and be desirous of introducing in this Province, any new and useful art, machine, manufacture, or composition of matter, not known or not in use in this Province, before his or her application for the same: Provided nevertheless, that nothing herein contained shall extend to inventions or discoveries of any new and useful art, machine, manufacture, or composition of matter, made, discovered or used in the United States of America, or in any part of Her Majesty's Dominions, in Europe or 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.

XII. Provided always, and be it enacted, That such person so desirous of introducing into this Province any invention, art, machine, manufacture, or composition of matter, which he or she shall have discovered or obtained a knowledge of in any foreign country, shall, previous to obtaining a Patent for the same, in the manner prescribed in this Act as to inventors and discoverers, make a solemn declaration, that he or she believes himself or herself to be the first introducer or publisher of such invention, art, machine, manufacture, or composition of matter, in this Province, and that he discovered or obtained a knowledge thereof while on his travels in some foreign country, not being one of the United States of America, or any of Her Majesty's Dominions in Europe or America.

XIII. And be it enacted, That all the provisions and enactments of the Act cited in the preamble to this Act, shall apply to Patents issued under this Act, as fully and effectually as to Patents issued under either of the Acts hereby repealed, and the said Act shall, with regard to Patents to be issued hereafter, be construed and have effect as if this Act were referred to in the said Act wherever reference is therein made to the Acts hereby repealed or either of them; and the provisions of this Act relative to matters subsequent to the issuing of any Letters Patent, shall apply to Letters Patent issued under either of the Acts hereby repealed, as fully as to Letters Patent issuing after the passing hereof: Provided always, that the words "or the principle thereof," in the first section of the Act cited in the Preamble, shall be and are hereby repealed.