

## PATENT LAW FOR THE DOMINION OF CANADA.

THIS Act, which is to commence and take effect on the first day of July, 1869, after constituting the Patent Office, attached to the Department of Agriculture, the Minister of which is to be the Commissioner of Patents of Invention, goes on to enact:—

## WHO MAY OBTAIN PATENTS.

6. Any person having been a resident of Canada for at least one year next before his application, and having invented or discovered any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention or discovery thereof, or not being at the time of his application for a patent in public use or on sale in any of the Provinces of the Dominion, with the consent or allowance of inventor or discoverer thereof, may, on a petition to that effect presented to the Commissioner and on compliance with the other requirements of this Act, obtain a Patent granting to such person an exclusive property therein; and the said Patent shall be under the seal of the Patent office and the signature of the Commissioner, or the signature of another member of the Privy Council, and shall be good and avail to the grantee, his heirs, assigns or other legal representatives for the period mentioned in such Patent but no Patent shall issue for an invention or discovery having an illicit object in view, nor for any mere scientific principle or abstract theorem.

7. An original and true inventor or discoverer shall not be deprived of the right to a Patent for his invention or discovery by reason of his having, previously to his application, taken out a Patent therefor in any other country, at any time within six months next preceding the filing of his specification and drawing as required by this Act.

8. The Patent may be granted to any person to whom the inventor or discoverer, entitled under the sixth section to obtain a Patent, has assigned or bequeathed the right of obtaining the same, and the exclusive property in the invention or discovery in Canada, or in default of such assignment or bequest, to the executor or administrator of the deceased inventor, or discoverer, or other legal representative.

9. Any person, having been a resident of Canada for at least one year next before his application, and who has invented or discovered any improvement on any Patented invention or discovery, may obtain a Patent for such improvement, but shall not thereby obtain the right of vending or using the original invention or discovery, nor shall the Patent for the original invention or discovery confer the right of vending or using the patented improvement.

10. In cases of joint applications, Patents shall be granted in the names of all the applicants; and in such cases, any assignment from one of the said applicants or patentees to the other shall be registered in the manner of other assignments.

## CONDITIONS AND FORMALITIES.

11. Every applicant for a Patent, before he can obtain the same, shall make oath, or when entitled by law to make an affirmation instead of an oath, shall make an affirmation that he verily believes that he is, or that the person whose assignee or representative he is or was the true inventor or discoverer of the invention or discovery for which the Patent is solicited, and that he, or the person whose assignee or representative he is, was a resident of Canada for one year next before the application, or in case of death of the inventor or discoverer, for one year next before such death. Such oath or affirmation may be made before any Justice of the Peace in Canada; but if the applicant is not at the time in Canada, the oath or affirmation may be made before any Minister Plenipotentiary, *chargé d'affaires*, consul or consular agent holding commission under the government of the United Kingdom, or any Judge of the country in which the applicant happens at the time to be.

12. The Petitioner for a Patent shall for all the purposes of this Act elect his domicile at some known or specified place in Canada, and mention the same in his Petition for a Patent, and he shall in the same petition state the place or places in Canada, at which he, or, if his application be by assignee or representative of the person whose assignee or representative he is, was resident during the year of residence required by this Act, and the period of residence at each such place.

13. The applicant shall in his petition for a Patent, insert the title or name of his invention or discovery, its object, and a short description of the same, and shall distinctly allege all the facts which are necessary under this Act to entitle him to a patent therefor, and shall with the petition send in

a written specification, in duplicate, of his invention or discovery, describing the same in such full clear and exact terms as to distinguish it from all contrivances or processes for similar purposes.

14. The application shall correctly and fully describe the mode or modes of operating contemplated by the applicant—and shall state clearly and distinctly the contrivances and things which he claims as new, and for the use of which he claims an exclusive property and privilege—it shall bear the name of the place where it is made, the date, and be signed by the applicant and two witnesses—in the case of a machine the specification shall fully explain the principle and the several modes in which it is intended to apply and work out the same; in the case of a machine or in any other case where the invention or discovery admits of illustration by means of drawings, the applicant shall also, with his application send in drawings induplicate showing clearly all parts of the invention or discovery; and each drawing shall bear the name of the inventor or discoverer and shall have written references, corresponding with the specification, and a certificate of the applicant that it is the drawing referred to in the specification; but the Commissioner may require any greater number of drawings than those above mentioned, or dispense with any of them, as he may see fit; one duplicate of the specifications and of the drawings, if any drawings, shall be annexed to the Patent, of which it forms an essential part, and the other duplicate shall remain deposited in the Patent Office.

15. The applicant shall also deliver to the Commissioner, unless specially dispensed from so doing for some good reason, a neat, working model of his invention or discovery, on a convenient scale, exhibiting its several parts in due proportion, whenever the invention or discovery admits of such model, and shall deliver to the Commissioner specimens of the ingredients, and of the composition of matter sufficient in quantity for the purpose of experiment, whenever the invention is a composition of matter, provided such ingredients and composition are not of an explosive character or otherwise dangerous, in which case they are to be furnished only when specially required by the Commissioner, and then with such precautions as shall be prescribed in the said requisition.

The Act next contains a provision that every patent granted shall recite briefly the substance of the petition on which it is granted, and shall grant to the patentee or his legal representative the usual rights of manufacture and sale. It then provides that Patents shall be valid for five years, renewable for five years more, and finally renewable for a third term of five years. If any mistake has been made in the description or specification on which the patent is obtained, if made through inadvertence or accident, the Patentee may, by surrender of his patent and payment of a certain fine, obtain a new patent in accordance with an amended description.

The following sections contain the regulations concerning the

## ASSIGNMENT AND INFRINGEMENT OF PATENTS.

21. The Government of Canada may always use any patented invention or discovery, paying to the patentee such sum as the Commissioner may report to be a reasonable compensation for the use thereof.

22. Every Patent for an invention or discovery whenever issued shall be assignable in law either as to the whole interest or as to any part thereof, by any instrument in writing; but such assignment and also every grant and conveyance of any exclusive right to make and use and to grant to others the right to make and use the invention or discovery patented within and throughout the Dominion of Canada, or within and throughout any one or more of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, or any part of any of such Provinces or of the Dominion shall be registered in the office of the Commissioner; and every assignment affecting a Patent for invention or discovery shall be deemed null and void against any subsequent assignee unless such instrument is registered as herein before prescribed, before the registering of the instrument under which such subsequent assignee may claim.

23. Every person who, without the consent in writing of the Patentee, makes, constructs or puts in practice any invention or discovery for which a Patent has been obtained under this Act, or procures such invention or discovery from any person not authorized to make or use it by the Patentee, and uses it, shall be liable to the Pa-

tentee in an action of damages for so doing;—and the judgment shall be enforced and the damages, and costs as may be adjudged, shall be recovered in like manner as in other cases in the Court in which the action is brought.

24. An action for the infringement of a Patent may be brought before any Court of Record having jurisdiction to the amount of damages asked for and having its sittings within the Province in which the infringement is said to have taken place, and being at the same time of the Courts of such jurisdiction within such Province the one of which the place of holding is nearest to the place of residence or of business of the defendant; and such Court shall decide the case and determine as to cost. In any action for the infringement of a Patent, the Court if sitting, or any Judge thereof in Chambers if the Court be not sitting, may, on the application of plaintiff or defendant respectively, make such order for an injunction, restraining the opposite party from further use, manufacture or sale of the subject matter of the patent, and for his punishment in the event of disobedience to such order, or for inspection or account, and respecting the same and the proceedings in the action, as the Court or judge may see fit;—but from such order an appeal shall lie under the same circumstances and to the same Court, as from other judgments or orders of the Court in which the order was made.

25. Whenever the plaintiff fails to sustain his action, because his specification and claim embrace more than that of which he was the first inventor or discoverer, and it appears that the defendant used or infringed any part of the invention or discovery justly and truly specified and claimed as new, the Court may discriminate, and the judgment may be rendered accordingly.

26. The defendant in any such action may specially plead as matter of defence any fact or default which by this Act or by law would render the Patent void; and the Court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly.

## NULLITY, IMPEACHMENT AND VOIDANCE OF PATENTS.

27. A Patent shall be void, if any material allegation in the petition or declaration of the applicant be untrue, or if the specification and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, such omission or addition being wilfully made for the purpose of misleading; but, if it shall appear to the Court that such omission or addition is simply an involuntary error, and it is proved that the Patentee is entitled to the remainder of his Patent *pro tanto*, the Court shall render a judgment in accordance with the facts, and determine as to costs and the Patent shall be held valid for such part of the invention described, and two office copies of such judgment shall be furnished to the Patent Office by the Patentee, one to be registered and to remain of record in the office, and the other to be attached to the Patent and made a part of it by reference.

28. Every Patent granted under this Act shall be subject and expressed to be subject to the condition that such Patent and all the rights and privileges thereby granted shall cease and determine and the Patent shall be null and void, at the end of three years from the date thereof unless the Patentee shall within that period have commenced and shall after such commencement carry on in Canada the construction or manufacture of the invention or discovery patented in such manner that any person desiring to use it may obtain it or cause it to be made for him at a reasonable price at some manufactory or establishment for making or constructing it, in Canada, and that such patent shall be void if after the expiration of eighteen months from the granting thereof, the patentee or his assignee or assignees for the whole or a part of his interest in the Patent, imports or causes to be imported into Canada, the invention or discovery for which the Patent is granted.

Sections 29, 30 and 31 provide for the obtaining of certified copies of documents by persons desiring to impeach any patent, and the filing of them with the Clerks of the proper Courts in the different Provinces; for recording in the Patent Office a certificate of the judgment, voiding any patent, and for appealing to the higher Courts.

Sections 32 and 33 provide that patents under previous Acts of the several Provinces shall remain in force, and may be extended under this Act over the whole Dominion, after proper application and payment of fees, and that all the records of the