

No. 172.

4th Session, 6th Parliament, 24 Victoria, 1861

BILL.

An Act to make more ample provision for the examination and protection of Inventions and to promote the application for Letters Patent therefor, and to provide for and encourage the Registration of Designs and Trade Marks.

Received and Read, first time, Monday, 15th
April, 1861.

Second Reading, Wednesday, 17th April,
1861.

Mr. ABBOTT.

QUEBEC:

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ST. URSULE STREET.

An Act to make more ample provision for the examination and protection of Inventions and to promote the application for Letters Patent therefor, and to provide for and encourage the Registration of Designs and Trade Marks.

WHEREAS the provisions of the Consolidated Statutes of Canada, chapter 132, and 23 Vic., chap. 27, do not meet the present wants of this Province, and it has become necessary to make more ample provision for the examination and protection of Inventions, and to encourage the application for Letters Patent for the same, and to provide for and encourage the Registration of Designs and Trade Marks: Therefore Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The said Acts mentioned in the Preamble to this Act are hereby repealed: but all Letters Patent lawfully issued under either of them shall remain in force, and be of the same effect, as if the Act under which they were issued had not been repealed, subject, however, to the provisions of this Act.

II. There shall be established and attached to the Department of the President of the Council a Bureau, to be denominated the Patent Bureau, the chief officer of which shall be called the Commissioner of Patents, to be appointed by the Governor General of this Province, and to be subordinate to the said President, in like manner as the Auditor and Commissioner of Customs are subordinate to the Minister of Finance.

III. It shall and may be lawful for the Governor, by Letters Patent under the Great Seal of this Province, to constitute and appoint, during pleasure, a Patent Board, which said Board shall be under the direction and supervision of the President in Council.

IV. The said Board shall consist of the President of the Council, who shall be Chairman thereof, the Commissioner of Patents, and the Attorneys General and Solicitors General for Upper and Lower Canada respectively, any three of whom shall constitute a *quorum*.

V. The said Board shall meet at least once in every month at the said Patent Bureau, which shall be located wherever the seat of the Provincial Government may be.

VI. It shall be lawful for the said Board to cause a seal to be made for the purposes of this Act, and from time to time to vary such seal, and to be caused to be sealed therewith, all Letters Patent under this Act, and all Instruments and Copies proceeding from the said Patent Bureau; and all Courts, Judges, and other persons whomsoever shall take notice of such Seal, and receive impressions thereof in evidence, in

Preamble.

Acts repealed

Patent
Bureau
established.Patent Board
established.Members of
the Board.

Meetings:

Board to have
a Seal.

like manner as impressions of the Great Seal of this Province are received in evidence ; and shall also take notice of, and receive in evidence without further proof or production of the originals, all Copies or Extracts, certified under the Seal of the said Office, and the signature of the Commissioner, of or from Documents deposited in such Office ; and any person making application therefor, may have certified copies of the Records, Drawings, and other papers deposited in said Office on paying for the written copies the sum of seven cents for every one hundred words ; and for copies of Drawings, the reasonable expense of making the same. 5

To make rules and regulations. VII. The said Board shall, from time to time, make such Rules and Regulations (not inconsistent with the provisions of this Act) respecting the business of the said Bureau, and all matters and things which, under the provisions herein contained, are to be under their control and direction, as may appear to them necessary and expedient for the purposes of this Act ; and all such Rules shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament. 10 15

Offices. VIII. It shall be lawful for the said Board to provide and appoint from time to time proper places or buildings for an office or offices for the purposes of this Act. 20

Clerk and Officers. IX. It shall be lawful for the said Board, from time to time, to appoint for the purposes of this Act, an examining clerk, and such clerks and officers (one at least of whom shall be a competent draughtsman,) as they may think proper ; and it shall be lawful for the said Board, from time to time, to remove any of the clerks and officers so appointed ; The said Board shall be and it is hereby authorized to employ temporary clerks, to do any necessary transcribing or copying, whenever the current business of the office requires it : Provided, however, that instead of salary, a compensation shall be allowed at a rate not greater than is hereinbefore provided to be paid by applicants for such copies ; and the Commissioner, clerks, officers, and every other person appointed and employed in said office, shall be disqualified and interdicted from acquiring or taking, except by inheritance, during the period for which he or they shall hold their appointments respectively, any right or interest, directly or indirectly, in any patent for an invention or discovery, or in any copyright, which has been or may be hereafter granted, and from demanding or receiving any fee or gratuity, other than the remuneration authorized by this Act, and by the Patent Bureau. 25 30 35

Oath to be taken. X. The said Commissioner, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation truly and faithfully to execute the trust committed to him. 40

The Register of Patents. XI. The said Board shall cause to be kept at the said Bureau a book or books, to be called "The Register of Patents," wherein shall be entered and recorded in chronological order, all Letters Patent of Invention granted under this Act, the Deposit or Filing of Applications, Specifications, Disclaimers, and memoranda of alterations filed in respect of such Letters Patent all amendments in such Letters Patent and Specifications, all Confirmations and Extensions of such Letters Patent, the Expiry, Vacating or Cancelling of such Letters Patent, with the dates thereof respectively, the names of the Patentees, and all other matters and things affecting the validity 45 50

of such Letters Patent, as the Board may direct; and such Register, or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the Board may make, and copies thereof shall be from time to time transmitted to the Boards of
5 Arts and Manufactures of Upper and Lower Canada respectively.

XII. There shall also be kept at the said office, a book or books entitled "the Register of Proprietors," wherein shall be entered, in such manner as the Commissioner shall direct, the Assignment of any Letters Patent, or of any share or interest therein; any License under Letters
10 Patent, and the district to which such License relates, with the name or names of any person or persons having any share or interest in such Letters Patent or License, the date of his or their acquiring such Letters Patent, share, and interest, and any other matter or thing relating to or affecting the Proprietorship in such Letters Patent or License;
15 and a copy of any entry in such Register, or of any entry in the Register mentioned in the preceding section, certified under the Seal of the Bureau, and signed by the Commissioner, shall be given to any person requiring the same, on payment of the fees hereinafter provided; and such copies so certified, shall be received in evidence in all Courts, and
20 in all proceedings, and shall be *prima facie* proof of the assignment of such Letters Patent, or share or interest therein, or of the License or Proprietorship, as therein expressed: Provided always, that until such entry shall have been made, the grantee or grantees of the Letters Patent shall be deemed and taken to be the sole and exclusive proprietor
25 or proprietors of such Letters Patent, and of all the licenses and privileges thereby given and granted: that such Register, or a copy thereof, shall be open to the inspection of the public at the office of the Commissioner, subject to such regulations as the Commissioner may make; that certified duplicates of all entries made in the said Register
30 of proprietors shall be transmitted without delay to the several Boards of Arts and Manufactures of this Province, where the same shall also be open to the inspection of the public.

The Register of proprietors.

Proviso.

XIII. If any person shall wilfully make, or cause to be made, any false entry in either of the said Registry Books, or shall wilfully make
35 or forge, or cause to be made or forged, any writing falsely purporting to be a copy of any entry in the said books, or shall produce or tender, or cause to be produced or tendered, in evidence, any such writing, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

False entries

XIV. If any person shall deem himself aggrieved by an entry made under color of this Act in the said Register of Proprietors, it shall be lawful for such person to apply by motion to any of the Superior Courts of Law of Lower Canada, or any of the Superior Courts of Law or
40 Equity of Upper Canada in term time, or by petition to a judge of any of the said courts in vacation, for an order that such entry may be expunged, vacated or varied; and upon any such application such Court or Judge respectively, may make such order for expunging, vacating or varying such entry, and as to the costs of such application as to such Court or Judge may seem fit; and the officer having the care and custody of such Register, on the production to him of any such order for
50 expunging, vacating or varying any such entry, shall expunge, vacate or vary the same, according to the requisitions of such order.

Remedy to have entry amended.

XV. It shall be the duty of the Commissioner of Patents to superin-

Duty of Commissioner;

tend, execute and perform all such acts and things touching and respecting the granting and issuing of Letters Patent of Invention, and the Registration of Designs, as are herein provided for, or shall hereafter be by law directed to be done and performed, and he shall have charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office; and said Commissioner shall receive the same compensation as is allowed by law to the Auditor, and shall be entitled to send and receive letters and packages by mail, relating to the business of the office, free of postage. 5

Who may apply for Letters Patent. XVI. Any person or persons of any condition or country whatever, having made any new discovery, invention or improvement having for its object— 10

- a, A new product of industry; or,
- b, A new means of production; or,
- c, A new method of production; 15

not known or used by others before his or their invention or discovery thereof, and not at the time of his application for a patent, in public use, or on view or described in any printed or written publication, or on sale with his knowledge, consent or allowance, as the inventor or discoverer, who shall desire to obtain an exclusive property therein, may make application, in writing, by petition to the Governor General expressing such desire: Provided, however, that no patent shall be granted for preparations of food, beverages, and medicines, or for any other discovery, invention or improvement, which cannot be worked for reasons of public health, morals or safety, or as being contrary to the general interest of the Province, according to existing regulations: Provided also, that scientific principles, or purely scientific theorems, cannot be patented, even if the principle or theorem admit of a direct application to industrial objects: Provided, however, that Patents may be granted for every new application of such principles or theorems as lead to the creation of a new industrial product, a new means or a new method of production: Provided further, that two or several discoveries, inventions or improvements that are different from each other may only be united into one Patent, if those discoveries, inventions or improvements relate to one and the same object, as component parts or operative means: Provided further, that each applicant shall, at the time of making such application as herein aforesaid, furnish the said Board with a solemn declaration, and with a written description and specification and drawings illustrative thereof: Provided further, that if such applicant be an alien, or not resident in this Province, he shall be held to commence the manufacture within this Province, of the thing so patented within one year from the date of his application for a Patent therefor: Provided, however, that the Patent Board shall have power to extend the period of such delay, if good and valid reasons be shewn therefor, on payment of the fee hereinafter provided: Provided further also, that before any such extension shall be granted as aforesaid, the Commissioner shall cause due notice of the said application for extension of delay to manufacture, to be published, as is hereinafter provided for in cases of application for prolongation of term of Letters Patent, at least one month previous to the expiry of the delay first granted, and that such further delay shall in no case exceed the term of six months. 20 25 30 35 40 45 50

Form of Petition. XVII. The Petition shall be in the form in the Schedule, as the case may be.

XVIII. The solemn Declaration shall be in the form in the Schedule, as the case may be. And Declaration.

XIX. The Specification and Description shall consist of— First, Short description of the Invention; second, Specification; third, Mode or Modes of Operation; fourth, Claim. Specification and Description.

XX. The Drawings shall fully exhibit all parts of the Invention, and shall consist of at least four figures, viz.:—No. 1, Elevation; No. 2, Plan; No. 3, Longitudinal Section; No. 4, Transverse Section; each drawing shall bear the name of the invention of which it is illustrative, written references to correspond with the specification, and a certificate that it is the drawing referred to in the accompanying specification and description; Provided, however, that the Commissioner shall have power to require any greater number of drawings, or to dispense with any of those herein prescribed, if he see fit so to do. Drawings.

XXI. The drawings and specifications shall be in duplicate; the solemn declaration, drawings and specifications shall be signed by the Inventor in the presence of a Justice of the Peace, or Commissioner for taking affidavits; each Inventor shall, moreover, deliver to the Commissioner of Patents a neat working model of his invention, of a convenient size, to exhibit advantageously its several parts, provided such invention admits of a model: Provided, however, that where the nature of the invention or discovery will not admit of drawings and models, the Commissioner shall be furnished with specimens of the ingredients, or of the composition of matter, sufficient in quantity for the purpose of experiment. To be in Duplicate.

XXII. At the time of making every such application for a Patent, the applicant therefore shall pay to the Commissioner the fee or fees hereinafter provided, on receipt of which the Commissioner shall make or cause to be made, an examination of the alleged new invention or discovery; and if on such examination, it shall appear to the Commissioner that the facts contained in the applicant's declaration are correct, he shall report the same to the Board, who shall, if satisfied of the correctness thereof, order the issuing of Letters Patent to the applicant, for his invention. Fees.

XXIII. If, however, it shall appear to the Commissioner, that the facts are not wholly in accordance with the applicant's declaration, or that the description is defective or insufficient, he shall notify the applicant thereof, giving him briefly such information and references as may be useful in judging of the propriety of renewing or withdrawing his application, or of altering his specification to embrace only that part of the invention or discovery which is new. Provided, however, that should the applicant in such case persist in his claim for a Patent, with or without any alteration of his specification, he may on appeal, and upon request in writing, have the decision of the Board thereon, who shall have the right to call in the aid of such skilled persons or *experts* as they may think fit, or such Board may, unless otherwise desired by such applicant, before proceeding to adjudicate upon such appeal to grant or refuse a Patent, refer the said application, reasons of refusal and reasons of appeal to *experts* to be named for that purpose by the Board of Arts and Manufactures nearest the residence of the applicant, if he reside in Canada, or by either of such Boards of Arts and Manufactures, if the applicant be a non-resident in the Province, each of which *experts* shall re- In case description be defective.

ceive five dollars a day for such reasonable time as they may be occupied in such examination, and they shall, without delay, report thereon to the Patent Board; and if upon examination, such report be found to be in accordance with the law and the facts, such Patent shall be issued or refused according to the recommendations thereof. Provided, however, that no opinion or decision of said Patent Board or *experts*, shall preclude any person interested in favor of or against the validity of any Patent which has been or may hereafter be granted, from the right to contest the same in any Judicial Court, in any action in which its validity may come in question. Provided also, that before such appeal shall be entertained, the applicant shall deposit in the hands of the Commissioner such sum as the Board shall consider sufficient to cover the expenses thereof, which sum shall be returned to the applicant in case his appeal be maintained.

Recommendation must be approved. XXIV. No application for a Patent shall be granted unless the recommendation therefor by the Commissioner be approved of by one or more of the Law Officers of the Crown.

Proceedings to obtain evidence relative to applications for Patents. XXV. The Commissioner, or any member of the Board may on behalf thereof, apply in term or in vacation, to any Judge of the Superior Court for Lower Canada, or of either of the Superior Courts of Law or Equity in Upper Canada, for an order that a Subpœna or Subpœnas be issued from the said Court, commanding any person therein named to appear before the Commissioner of the said Board, or the *experts* named by the said Board of Arts and Manufactures, at the time and place mentioned in such Subpœna, and then and there to testify to all matters within his knowledge relative to any application for a Patent submitted to the Commissioner or said Board, and (if the Commissioner or the Board so desire) to bring with him, and produce to the Commissioner or to the Board, any drawing, book, document, paper or thing which he may have in his possession relative to any such application as aforesaid; and such Subpœna shall issue accordingly upon the order of such Judge; and any such witness may be summoned from any part of this Province, whether within or without the ordinary jurisdiction of the Court issuing the Subpœna in like manner as witnesses may be so summoned in civil suits; and witnesses in such cases shall be allowed the same compensation as is allowed to witnesses attending the Superior Courts of this Province; and the said Commissioner and the said Board or such *experts* shall have full power to administer to every such witness such oath or affirmation as is usually administered to witnesses in causes before any of the Courts of this Province; and if any person summoned in the manner hereinbefore provided, to attend before the said Commissioner, or the said Board, or said *experts*, shall, without valid excuse, fail to attend accordingly, or, being commanded to produce any drawing, book, document, paper or thing in his possession, shall fail to produce the same, or shall refuse to be sworn or to answer any lawful and pertinent question put to him by such Commissioner, or by the Board, or by said *experts*, such person shall, for each such offence, forfeit the sum of \$100.00 to the Crown, for the public uses of the Province, to be recovered in any manner in which debts due to the Crown can be recovered, and may likewise be dealt with by the Court, out of which the subpœna issued, as having refused to obey the process of such Court, and as being guilty of a contempt thereof. Provided, however, that no witness shall be deemed guilty of contempt for refusing to disclose any secret invention made or owned by him, or entrusted to him. And provided, that at the time of every service of subpœna there shall be ten-

dered to every such witness, such fee or sum as shall defray his traveling expenses to and from, and the expenses of at least one day's attendance at the place of examination.

5 **XXVI.** Whenever an application shall be made for a Patent which in the opinion of the Commissioner, would interfere with any other Patent for which an application may be pending, or with any un- Case of inter-
 10 expired Patent which shall have been granted, it shall be the duty of the Commissioner to give notice thereof to such applicants or Patentees fering appli-
 15 ed for. cations.

20 **XXVII.** Every applicant for the grant of Letters Patent of Invention desirous of protecting his right till he shall have matured his invention, before proceeding to take out such Letters Patent, may, on payment of Provisional
 25 the fee hereafter provided, file at the Office of the Commissioner a provisional protection. specification which shall contain a description of the nature of the Invention, setting forth the design and purposes thereof, and its principal and distinguishing characteristics, and every such provisional specification shall be filed in the confidential archives of the Office and preserved in secrecy, and the day of the delivery of every such provisional specification shall be recorded at the said Office and endorsed on said provisional specification, and a certificate thereof given to such applicant, and every such application shall be duly registered.

30 **XXVIII.** Every such application shall be referred to the Patent Board subject to the same provisions respecting *experts* or other assistants as Proceedings
 35 are hereinbefore made for completed applications, and if such Board be to obtain. satisfied that such provisional specification describes the nature of the Invention, they shall allow the same and give a certificate of their allowance, and such certificate shall be filed at the Office of the Commissioner, and thereupon the Invention therein referred to, may, during the term of six months from the date of filing such provisional specification, be used and published without prejudice to any Letters Patent to be granted for the same. Provided always, that in case the title of the Invention or the provisional specification be too large or insufficient, it shall be lawful for the Board to allow or require the same to be amended. And provided, that in case any applicant should require an extension of the time for completing such application, the Board may extend the said term for such period not exceeding three months longer, as to the said Board may seem fit, on sufficient cause being shewn by every such applicant.

45 **XXIX.** Every applicant for Letters Patent of Invention, not an alien Temporary
 50 or non-resident, may, if he think proper, on payment of the fee hereinafter provided, lodge or deposit with the Commissioner a complete specification, description, drawings and model of his invention, subject in every respect to the provisions hereinbefore provided for applications for grants or Patents, and such deposit shall entitle the applicant to protection, called temporary protection, for a term not exceeding three years, at the termination of which period, or at any time previous thereto, the applicant may on payment of the further fee hereinafter provi-

ded, obtain Letters Patent for the term of fourteen years from the date of the application for such protection.

Interfering applications.

XXX. And if application be made by any other person during the term of protection provided for in any of the preceding sections, for a Patent of any invention in any way interfering with the invention so protected, it shall be the duty of the Commissioner to deposit the description, specification, drawings, and model of this latter application in the confidential archives of the Office, and to give notice (by mail) to the person to whom the provisional protection was granted, of such application, who shall, within the period to be fixed and set forth in said notice by the Commissioner, after receiving the notice, if he would avail himself of the benefit of his provisional protection, file his completed application and model, and if in the opinion of the Board the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this Act provided in the case of interfering applications.

Fraud.

XXXI. In case of any application for a Patent, and the obtaining upon such application, of provisional or temporary protection or a Patent for such invention, in fraud of the first and true inventor, any protection or Letters Patent granted to the true and first inventor of such invention, shall not be invalidated by reason of such application, or of such protection, or of such Letters Patent, or of any use or publication of the invention prior to such application, provided that such use or publication was not with the consent of the true inventor.

Advertisement of protection.

XXXII. Where any invention is protected under this Act, whether by the deposit of a provisional or a complete specification as aforesaid, the Commissioner shall cause such protection as aforesaid to be advertised in the "*Canada Gazette*" and in such other manner as he may see fit.

Conflicting applications.

XXXIII. In case of a conflict of applications for a Patent, the Commissioner may require sufficient and satisfactory security for costs of such conflict or contestation from each of the applicants.

Issue of letters patent.

XXXIV. The certificate of the Patent Board of their approval of an application for a Patent, shall be filed in the Office of the Commissioner and its receipt shall empower him to issue the Letters Patent, and all Letters Patent so to be issued shall be issued without delay and be sealed and bear date as of the day of the application for the same: Provided, however, that no Letters Patent (save those issued in lieu of others destroyed or lost), shall be issued or be of any force or effect, unless the same be granted previous to the expiry of the provisional or temporary protection herein provided, save that where the application to seal such Letters Patent has been made during the continuance of such provisional or temporary protection as aforesaid, and the sealing of such Letters Patent has been delayed by reason of a caveat or application to the Commissioner against or in relation to the sealing of such Letters Patent, then such Letters Patent may be sealed at such time as the Patent Board may direct: Provided also, that when the applicant for such Letters Patent dies during the continuance of the protection, provisional or temporary, as the case may be, such Letters Patent may be granted to the executors or administrators of such applicant during the continuance of such protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the

term of such protection, and the Letters Patent so granted, shall be of the like force and effect as if they had been granted to such applicant during the continuance of such protection.

- To issue in H. M's name.** XXXV. All Patents issuing from said Office, shall be issued in the name of Her Majesty, and under the seal of said Patent Bureau, and shall be signed by the Governor General, and countersigned by the Commissioner, and shall be recorded together with the descriptions, specifications and drawings in the said Office, in the register hereinbefore provided. 5
- Contents.** XXXVI. Every such Letters Patent 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 drawings thereof, thereunto to be annexed, and shall grant to the petitioner, his administrators, assigns and legal representatives for the period of fourteen years from the date thereof, 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 be good and available to the guarantee after they shall have been recorded as aforesaid, and shall, when so recorded, be delivered by the proper Officer to the Patentee or his order, and such Letters Patent shall extend to the whole of the United Provinces of Canada. 10 15 20
- Patents assignable.** XXXVII. 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 shall be recorded in the Office of the Commissioner on payment of the fees hereinafter provided, in the Register of proprietors hereinbefore provided, within thirty days from the execution thereof; otherwise such assignments shall not be valid. 25
- Patents may be issued to assignees.]** XXXVIII. Every Patent hereafter to be issued, may be made and issued to the assignee or assignees of the inventor or discoverer, or to both conjointly, the assignment thereof being first entered as aforesaid, and the application therefor being duly made by the said inventor. 30
- Granting of patent rights.** XXXIX. Every Patentee or his assignee may grant and convey an exclusive right under any Patent to make, use and vend, and to grant to others to make, use, and vend the thing patented within and throughout this Province, or any part thereof, for the unexpired term thereof, or any part thereof; which exclusive grant and conveyance shall be called a license, and shall be recorded in the same manner and within the same delay as assignments of Patents. 35
- New patent to issue in certain cases.** XL. Whenever any Patent, which has heretofore been granted, or which may hereafter be granted, shall be inoperative, or invalued, 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 or shall have a right to claim as new, if the error has or shall have arisen by inadvertency, accident or mistake, without any fraudulent or deceptive intention, it shall be lawful for the Commissioner upon the surrender to him of such Patent, and the payment of the further fee hereinafter provided to cause a new Patent to be issued to the said inventor for the same invention, for the residue of the period then unexpired, for which the original Patent was granted in accordance with the Patentee's corrected description and specification; and in case of his 40 45 50

5 death or any assignment by him made of the original Patent, a similar right shall vest in his executors, administrators or assigns, and the Patent so re-issued together with the corrected descriptions and specifications shall have the same effect and operation in law, on the trial of all actions hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form before the issuing of the original Patent.

10 **XXI.** 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 applied for and be dealt with in the same manner as separate original Patents.

Patents re-
turned for
correction.

15 **XLII.** 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, on payment of the fee hereinafter provided, make disclaimer of such parts as he or they shall not claim to hold by virtue of the Patent or assignment thereof, stating in the said disclaimer the extent of his or their interest in such Patent; and such disclaimer shall be in writing, attested by a Justice of the Peace or Commissioner for taking affidavits, and recorded in the Office of the Commissioner of Patents, 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 *bona fide* his own, or not disclaimed, provided it shall be a material and substantial part of the thing patented, and be 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 *bona fide* his own as aforesaid; and in case of judgment on verdict in his favor, he shall not be entitled to recover costs against the defendant unless he shall have entered as aforesaid, in the Office of the Commissioner, 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.

In case specification be made too broad.

50 **XLIII.** Whenever a Patent shall be returned for correction and re-issue, the specification annexed to every such Patent shall be subject to revision and examination in the same manner as original applications for Patents, and such re-issue shall not be allowed until the applicant

Specification to be subject to revision.

shall have entered a disclaimer in accordance with the revision and restriction thereon.

XLIV. And whenever the original Patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery, which shall have been invented or discovered by him subsequent to the date of his Patent, he may, (like proceedings being had in all respects as in the case of original applications, and on the payment of the fee hereinafter provided), have the same annexed to the original description and specification; and the Commissioner shall certify, on the margin of the annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes as though it had been embraced in the original description and specification: Provided, however, that in every such application for an improvement, the Commissioner shall not add any such improvement to the Patent granted, until the applicant shall have altered his specification of claim in accordance with the decision of the Commissioner; and in all such cases, the applicant, if dissatisfied with such decision, shall have the same remedy, and be entitled to the benefit of the same privileges and proceedings, as are provided by law in the case of original applications for Patents: Provided always, that any person other than the original inventor or his assigns, who shall have discovered an improvement in anything 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; and the first inventor shall not be at liberty to use the improvement: And it is hereby enacted and declared, that simply changing the form or proportion of any machine or composition in any degree shall not be deemed a discovery.

XLV. Nothing herein 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 previous to the fying of his application in this Province as required by this Act.

XLVI. Every such application shall be subject to the provisions hereinbefore made respecting applications for Letters Patent, save that such Patent shall only be granted for the term of the unexpired foreign Patent.

XLVII. Every person 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.

XLVIII. All Patentees and assignees of Patents hereafter to be granted, shall stamp, engrave or cause to be stamped or engraved, on each

Additions to specifications.

Patents taken out in foreign countries.

Limitation in such case.

Rights of Inventors, &c., before application for patents.

Articles to be stamped.

article which will admit of stamping or engraving, vended or offered for sale, the name of each Patentee, the date of the Patent thereof; and any patentee or assignee neglecting so to do shall be deemed to have committed a misdemeanor, and shall be liable therefor in the same penalties as are provided in the following section. 5

Penalty for counterfeiting

XLIX. 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, under him or them, 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 a view or intent of imitating or counterfeiting the stamp mark or other 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 Jail 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, however, that no such fine shall exceed the sum of \$200 in amount and no such imprisonment shall exceed six months in duration. 10 15 20 25

Repeal of Letters Patent.

L. And whereas it is necessary that a similar and convenient remedy should be had for this Province in general, for the repeal of Letters Patent issued under the authority of any Acts in force previous to the passing of this Act, or issued under the authority of this Act, and fraudulently or surreptitiously obtained, issued improvidently, or upon false suggestion: It is enacted, that from and after the passing of this Act, it shall and may be lawful for any person or persons desirous of impeaching such Letters Patent for any such cause as aforesaid, to obtain an exemplification under the seal of the Patent Bureau 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 fyled in the office of the Prothonotary of the Superior Court for Lower Canada, or with the Clerk of any Superior Court of Law or Equity in Upper Canada, as the case may be, in which such repeal shall be sought, and thereupon the Letters Patent, the petition and application, drawings and specifications aforesaid, so exemplified, shall be considered and held by the said Court as remaining of record in 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, and 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, and under the provisions of this Act, the said Letters Patent so sought to be repealed shall be adjudged and declared void, 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 Commissioner of Patents, whereupon the said Patent shall be considered to be cancelled and made void from the entry thereof. 30 35 40 45 50 55

LI. All Letters Patent for Inventions granted under the provisions hereinbefore contained, shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine at the end of one year, for Inventions patented
 5 by either Aliens or non-residents, and three years for Inventions patented by resident British subjects, from the date thereof, unless the said Patentees shall have commenced and carried on the manufacture or cause to be manufactured within the Province the articles so patented, in reasonable quantities: Provided, however, that the Board shall have
 10 power to extend such delay, on application to that effect being made to the said Board, and reasons shewn therefor, for a further term not exceeding six months: Provided also, however, that in case of any Patent issued under this Act to an Alien or non-resident becoming the sole property of any resident British subject, it shall, after the entry thereof
 15 as such in the Registry of Proprietors, be dealt with in every respect as if it had been issued to a resident British subject.

Letters Patent voided in certain cases,

LII. If any person shall make, or manufacture for sale, any article or composition so invented, or shall make or manufacture, or make use of, or sell or cause to be put in use, any instrument or machinery so invented or specified, the exclusive right of
 20 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 in damages for the same, and in every
 25 such action, the issue shall be tried by a Jury, and if a verdict be rendered for the plaintiff in such action, it shall be in the power of the Court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, according to the circumstances of the case; the party injured shall also recover
 30 treble costs, to be taxed according to the course and practice of the Court in which the action shall have been brought, 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
 35 damages.

Remedy of Patentee for infringement.

LIII. The Defendant in any such action shall be permitted to plead the general issue, and to give this Act and any special matter in evidence, tending to prove that the description and specification filed by the Plaintiff does not contain the whole truth relative to his invention
 40 or discovery, or that it contains more than is necessary to produce the desired effect, which concealment or addition shall fully appear to have been made for the purpose of deceiving the public, or that the Patentee was not the original and first inventor or discoverer of the thing patented, or of a substantial and material part thereof, claimed as new; or
 45 that it has been described in some printed publication anterior to the supposed discovery thereof by the Patentee, or had been in public use, or on sale with the allowance of the Patentee, before his application for a Patent, or that he had surreptitiously or unjustly obtained the Patent for that which was in fact invented or discovered by another who was
 50 using reasonable diligence in adapting and perfecting the same; or that the Patentee, if an Alien or non-resident, had failed or neglected, for the space of one year, or if a resident British subject for the space of five years, to commence and continue the manufacture of the articles so patented within the Province, according to the demand therefor; and
 55 whenever the Defendant relies, on his defence, on the fact of a previous

Pleadings and evidence.

Plaintiff failing to sustain his action.

invention, knowledge or use of the thing patented, he shall state in his notice of special matter, which notice is hereinafter provided, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing, and where the same had been used, in either of which cases judgment shall be rendered for the Defendant with costs: Provided, however, 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 any part thereof, having been before known or used, it not appearing that the same, or any 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 and claim is embraced more than that of which he was the first inventor, 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 just and equitable: Provided also, that in cases where the Patentee, having made his specification too broad, had filed a disclaimer in the Patent Bureau, of all that part of the thing patented which was so claimed without right, every such Patentee, his executors, administrators and assigns, whether of a whole or a sectional interest therein, shall be entitled to maintain a suit at law, or in equity, on such patent, for any infringement of such part of the invention or discovery as shall be *bona fide* his own as aforesaid, (notwithstanding the specification may embrace more than he shall have any legal right to claim,) as if the same had been originally filed in such corrected form before the issuing of the original Patent: Provided, however, that no person bringing any such suit shall be entitled to the benefits and provisions contained in this section who shall have unreasonably neglected or delayed to enter at the Patent Bureau a disclaimer as aforesaid: Provided always, and be it understood, 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 printed publication, 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, and in every such case he shall be deemed to have committed a misdemeanor, and shall be punished by fine, or by imprisonment in the Common Gaol for 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 that the fine do not exceed \$200 in amount, and the imprisonment do not exceed nine months in duration.

Particulars of breaches complained of.

LIV. In any action for the infringement of Letters Patent as aforesaid, the plaintiff shall deliver with his declaration, particulars of the breaches complained of in the said action, and the defendant in pleading thereto, shall deliver with his pleas, and the prosecutor in any proceed-

ings by *scire facias* to repeal Letters Patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas of the said action or of the suggestions of the said declaration in the proceedings by *scire facias* respectively; and
 5 at the trial of such action or proceeding by *scire facias*, no evidence shall be given in support of any alleged infringement or of any objection impeaching the validity of such Letters Patent, which shall not be contained in the particulars as aforesaid: Provided always, that the place or places, at or in which and in what manner the invention is alleged to
 10 have been used or published prior to the date of the Letters Patent shall be in such particulars: Provided also, that it shall or may be lawful for any Judge in term or in vacation to allow such plaintiff or defendant or prosecutor respectively to amend the particulars delivered as aforesaid, upon such terms as to such Judge shall seem fit: Provided also,
 15 that at the trial of any proceeding by *scire facias* to repeal Letters Patent the defendant shall be entitled to begin, and to give evidence in support of such Letters Patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such Letters Patent, the defendant shall be entitled to the reply.

20 LV. In any action for the infringement of Letters Patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a Judge of such Court in chambers, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection or account,
 25 and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or Judge may seem fit: Provided, however, that from all judgments and decrees from any such Court or Judge rendered in the premises a writ of error or appeal, as the case may be, shall lie to the Court of
 30 Queen's Bench, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of such Court or Judge, and in all cases in which the Court shall deem it reasonable to allow the same.

Order for inspection.

LVI. Whenever there shall be two interfering Patents, or when-
 35 ever a Patent or application for a Patent shall have been refused on an adverse decision of the Patent Board, any person interested in any such Patent, either by assignment or otherwise in the one case, and any such applicant in the other case, may have remedy by bill of equity, if he reside in Upper Canada, or by a petition to the
 40 Superior Court in term, or any Judge thereof in vacation, which bill of equity or petition shall contain all the reasons of appeal, and the Court or Judge having cognizance thereof, on proof of due notice having been given to all parties interested therein, (which notice shall be with the same delay as in other actions,) and other proceedings had, may adjudge
 45 and declare either of the Patents void in whole or in part, according to the interest which the parties to such suit may possess in the Patent or inventions patented; and may also adjudge that such applicant is entitled, according to the principles and provisions of this Act, to have and receive a Patent for his invention, as specified in his claim, or for any
 50 part thereof, as the fact of priority of right or invention shall, in any case, be made to appear; and such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such Patent, on such applicant's filing a copy of the adjudication, and otherwise complying with the requisition of this Act: Provided, however,
 55 that no such judgment or adjudication shall affect the rights of any per-

Case of refusal of application by Board.

son, except the parties to the action, and those deriving title from or under them subsequent to the rendition of such judgment; And provided further, that in all cases where there is no opposing party, a copy of the bill or petition as aforesaid, with a sufficient notice of the day on which the same shall be filed or presented, shall be served upon the Commissioner of Patents. 5

Security for costs.

LVII. In all such appeals, the opposing parties shall be held to give good and valid security for the payment of the costs and expenses of the proceedings; provided that in cases where there is no opposing party, and the notice required by the preceding section has been duly served upon the Commissioner, the whole of such expenses shall be borne and paid by the applicant or his security, whether the final decision shall be in his favor or otherwise. 10

Duty of Commissioner in case of appeal.

LVIII. In every such appeal, the Commissioner shall lay before the said Court or Judge all the original papers and evidence in the case, together with the grounds of the decision of the Board, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined; and at the request of any party interested, or at the desire of the Court or Judge, the Commissioner and the experts, if any, as hereinbefore provided, may be examined under oath, in explanation of the principles of the machine, or other thing for which a Patent in such case is prayed for; and it shall be the duty of such Court or Judge, after the hearing of any such case, to return all the papers to the Commissioner, with a certificate of its or his proceedings and decision, which shall be entered of record in the Patent Bureau; and such decision, so certified, shall govern the further proceedings of the Commissioner in such case: Provided, however, that no opinion or decision of the Court or Judge in any such case, shall preclude any person interested in favor or against the validity of any Patent which has been, or may be hereafter granted, from the right to contest the same in any Judicial Court, in any action in which its validity may come in question. 15 20 25 30

Extension of Patents,

LXIX. Whenever any Patentee shall desire an extension of his Patent beyond the term of its limitation, he may apply therefor by petition, in writing, to the Governor General setting forth the grounds thereof; and the Commissioner shall, on receipt of the sum hereinafter provided, order the publication of a notice of such application, by the Patentee, as follows, viz.: in *The Canada Gazette*, and in two other newspapers published respectively in the English and French languages, if the Patentee reside in Lower Canada, and in one newspaper if he reside in Upper Canada, in that section of the Province in which he shall at the time of such application reside, and of the time and place when and where the same will be considered, that any person may appear and shew cause why the application for the extension should not be granted; and the Patent Board herebefore provided, shall 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, as heretofore provided; and the said Patentee shall furnish to said Board a statement, in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditure, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention, and if upon a hearing of the matter it shall appear to the Board, having due regard to the public interest 35 40 45 50

therein, that the said term should be extended, by reason of the Patent
 tee, without fault on his part, having failed to attain 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, it
 5 shall be the duty of the Board to renew and extend the Patent by making
 a certificate thereon of such extension; and said extension shall be for
 a term not exceeding seven years from and after the expiration of the
 first term, according to the opinion of the said Board; which certificate
 as aforesaid, shall be entered on record in the Patent Bureau; and
 10 thereupon the said Patent shall have the same effect in law as though it
 had been originally granted for the term of twenty-one years, or under,
 as the case may be: Provided always, that no such application for extension
 shall be entertained, unless notice thereof be given at least six
 months previous to the expiration of the term for which it was originally
 15 granted; and provided further, that such new Letters Patent shall be
 sealed and bear date as of the day after the expiration of the term of
 the original Letters Patent which may first expire.

LX. Such inventor may assign or dispose of such extended right
 in the same manner and subject to the same provisions as are hereinbe-
 20 fore provided in cases of ordinary Patents. Extended
right assigna-
ble.

LXI. The importation into this Province of articles patented under
 and by virtue of this Act, after the manufacture thereof has been begun
 and carried on as is hereinbefore provided, is hereby declared illegal,
 and any person who shall import into this Province, any invention pro-
 25 tected by Patent granted under this Act, shall be liable to the same
 punishment as is hereinbefore provided, for counterfeiting any article
 so protected by Letters-Patent, and all such articles so imported shall,
 in addition to the penalties hereinbefore imposed, be seized and sold,
 and one-half of the proceeds thereof shall be paid to the informant, and
 30 the other half to the Crown. Penalty on
importation
of articles
patented.

LXII. Nothing herein contained, however, shall extend to prevent
 the use of such invention in any foreign ship or vessel, which may be in
 any port of this Province, or in any of the waters within the jurisdiction
 of any of the Courts of this Province, where such invention is not so
 35 used for the manufacture of any goods or commodities to be vended
 within or exported from this Province. Exception.

LXIII. If any person shall forge or alter, or shall in any way pub-
 lish, put off or utter as true, knowing the same to be forged or altered,
 any copy of Letters Patent, or of the enrolment or enregistration of
 40 Letters Patent, or of any certificate thereof, now or hereafter to be
 made or given, or purporting to be or to have been made or given, by
 virtue of any statute of Upper Canada or of Lower Canada, or of this
 Province, every such offender shall be guilty of felony, and being
 convicted thereof, shall be liable, at the discretion of the Court, to
 45 be kept confined at hard labour in the Provincial Penitentiary for any
 term not less than three years, nor more than seven years, or to be
 imprisoned in any Common Gaol for any term not more than two years. Forging let-
ters patent,
penalty for.

LXIV. And the said Commissioner shall revise and examine all the
 Patents granted previous to the passing of this Act, and shall notify the
 50 holders of all such Patents of all interfering applications, to be dealt with
 in every respect as though such Patents had been applied for under this
 Act; and he shall inform the owners of such Patents of all inventions Patents before
this Act,

made public abroad previous to the date thereof tending to invalidate such Patent, so soon as he shall ascertain the same.

Bureau to have a library.

LXV. There shall be provided for the use of the Patent Bureau, a library of scientific works and periodical publications, both British and foreign, calculated to facilitate the discharge of the duties hereby required of the chief officers therein, to be purchased under the direction of the Patent Board, out of such money as Parliament may hereafter from time to time provide for that purpose.

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Models, &c., to be classified and arranged.

LXVI. It shall be the duty of the Commissioner to cause to be classified and arranged, in such rooms or galleries as may be provided for that purpose, in suitable cases, when necessary for their preservation, and in such manner as shall be conducive to a beneficial and favorable display thereof, the models and specimens of compositions and fabrics, and other manufactures and works of art, patented and unpatented, which have been, or shall hereafter be deposited in said Bureau; and said rooms and galleries shall be kept open during suitable hours for public inspection.

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Specifications, to be printed and published.

LXVII. The Patent Board shall cause to be printed, published, sold and distributed, at such prices and in such manner as they may think fit, all specifications, disclaimers, and memoranda of alterations deposited or filed under this Act, and such specifications (not being provisional specifications,) disclaimers and memoranda respectively, shall be so printed and published as soon as conveniently may be after the filing thereof respectively, and all such provisional specifications shall be so printed and published as soon as conveniently may be after the expiration of the provisional protection obtained in respect thereof; and it shall be lawful for the Board or the Commissioner to present copies of all such publications to such public libraries and museums as they or he may think fit, and to allow the person depositing or filing any such specification, disclaimer, or memorandum of alteration to have such number, not exceeding twenty-five of the copies thereof so published, without any payment for the same, as they or he may think fit.

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Indexes to specifications.

LXVIII. The Commissioner shall cause Indexes to all specifications, disclaimers and memoranda of alterations hereinbefore or hereinafter enrolled as aforesaid, to be prepared in such form as he may think fit, and such Indexes shall be open to the inspection of the public at such place or places as the Commissioner shall appoint, and copies thereof shall be lodged with the Boards of Arts and Manufactures for both sections of the Province, and subject to the Regulations to be made by the Commissioner; and the Commissioner may cause all or any of such indexes, specifications, disclaimers, and memoranda of alterations to be printed, published, and disposed of in such manner and at such prices as he may think fit.

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Copies to be sent to Boards of Arts and Manufactures.

LXIX. The Commissioner shall cause true copies of all specifications (other than provisional specifications), disclaimers, and memoranda of alterations filed under or in pursuance of this or any other Act, and of all provisional specifications after the term of the provisional protection of the Invention has expired, to be open to the inspection of the public at the Patent Bureau, and at the offices of the Boards of Arts and Manufactures of this Province respectively, at all reasonable times, subject to such regulations as the Commissioner may direct; and the Commissioner shall cause a transcript of the said Letters Patent to be

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deposited at the said offices for the purposes aforesaid, with the least possible delay.

LXX. It shall be lawful for the Governor in Council to allow such salaries and payments to any clerks and officers to be appointed under this Act, and such additional salaries and payments to any other clerks and officers in respect of any additional duties imposed on them by this Act, as the Patent Board may recommend. Salaries to Officers, &c.

LXXI. It shall be lawful for the said Governor in Council to allow from time to time the necessary sums for providing offices under this Act, and for the fees, salaries, and payments allowed as aforesaid, and for defraying the current and incidental expenses of such office or offices; and the sums to be so allowed shall be paid out of such monies as may be provided by Parliament for that purpose: and the Commissioner is hereby authorized to draw upon such moneys, from time to time, for such sums as shall be necessary to carry into effect the provisions of this Act, governed, however, by the several limitations herein contained: And it shall be his duty to lay before both Houses of Parliament, in the month of January annually, if Parliament be then sitting, or if Parliament be not then sitting, then within fourteen days after the next meeting of Parliament, a detailed statement of all salaries, fees, allowances, sums and compensations to be appointed, allowed or granted under this Act; and it shall also be his duty to lay before Parliament at the same time, a list of all applications, Patents and copyrights which shall have been protected or granted during the preceding year, designating, under proper heads, the subjects of such protections, patents and copyrights, and furnishing an alphabetical list of all the applicants so protected, and Patentees, with their places of residence: and he shall also furnish at the same time a list of all Patents which will expire before the next meeting of Parliament, as well as a list of all Patents which shall have become public property during the period elapsed since his previous report, together with such other information of the state and condition of the Patent Bureau as may be useful to Parliament or to the public. Appropriation of moneys for.

Statement of salaries, &c.

LXXII. The several forms in the schedule to this Act may be used for and in respect of the several matters therein mentioned, and the Commissioner may, when he thinks fit, vary such forms as occasion may require, and cause to be printed and circulated such other forms as he may think fit to be used for the purposes of this Act. Forms.

LXXIII. All applications for Patents, pending at the time of the passage of this Act, shall be proceeded with and acted on in the same manner as though filed after the passage hereof. Pending applications.

LXXIV. And with regard to any new and original design, whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape, or for the configuration, or for the ornament thereof, or for any two or more such purposes, and by whatever means such design may be so applicable, whether by printing or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined: Be it enacted, that the proprietor of every such design, not previously published or made known, shall have the sole right to apply. Recital.

Rights of proprietors of designs, &c.

the same to any articles of manufacture, or to any such substances as aforesaid, after having duly registered such design on the conditions hereinafter set forth, provided that such right thus granted shall only exist during the respective terms hereinafter mentioned, to be computed from the time of registration; and every such registration shall be termed a "Copyright." 5

Periods for which rights may be granted.

LXXV. In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, sixth, eleventh or thirteenth of the classes following for the term of seven years. 10

In respect of the application of any such design to ornamenting any article of manufacture contained in the fifth, seventh, eighth, ninth, tenth, twelfth or fourteenth classes following, for the term of three years.

- CLASS I.** Articles of manufacture wholly or chiefly composed of metals or of mixed metals. 15
- “ II. Articles of manufacture wholly or chiefly composed of wood or to the ornamenting of ivory, bone, papier maché, and other solid substances not enumerated.
- “ III. Articles of manufacture wholly or chiefly composed of glass. 20
- “ IV. Articles of manufacture wholly or chiefly composed of earthenware.
- “ V. Paperhangings.
- “ VI. Carpets, Floor or Oilcloths.
- “ VII. Shawls, if solely by printing or colors upon tissue or textile fabrics. 25
- “ VIII. Shawls other than those in class VII.
- “ IX. Yarn, Thread or Warp, if the design be applied by printing or other process by which colors are or may be hereafter produced. 30
- “ X. Woven fabrics, composed of Linen, Cotton, Wool, Silk, or Hair, or of any two or more such materials, if design be by printing, or by any other process by which colors are or may be hereafter produced upon tissue or textile fabrics, excepting articles included in class XI. 35
- “ XI. Woven fabrics, composed of Linen, Cotton, Wool, Silk, Hair, or of any two or more such materials, if design be by printing, or by any other process by which colors are or may be hereafter produced upon tissue or textile fabrics, such woven fabrics being or coming within the description called furnitures, and the repeat of the design whereof shall be more than 12 x 8 inches. 40
- “ XII. Woven fabrics not included in any preceding class.

“ XIII. Lace, and any article of manufacture or substance not comprised in any preceding class.

5 “ XIV. Articles of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and whether it be for the whole or part of the shape or configuration thereof.

LXXVI. Every design to be protected must be registered before publication, and, at the time of the registration, applied to some article in the above mentioned classes, by specifying the number of the class.—
 10 The name of the person registering must be registered as the proprietor of the design; and after publication, the name of the proprietor shall appear upon the article to which his design applies: if the manufacture be a woven fabric, by printing upon one end; if another substance, at the edge, or upon any convenient parts, the letters R^d, with the number
 15 or letter, or number and letter, corresponding with the date of the registration. The mark may be put upon the manufacture by making it on the material itself, or by attaching thereto a label containing the proper marks.

Designs must be registered.

LXXVII. The author of the design shall be considered the proprietor thereof, unless he has executed the design for another person, for a good or valuable consideration, then such other person shall be considered the proprietor, and shall alone be entitled to register it; but his right to the property shall only be co-extensive with the right which he may have acquired; for, it may be, he has not the exclusive right, but a right of
 20 application in conjunction with another person.

Who to be deemed proprietor.

LXXVIII. The Commissioner of Patents shall keep at the Patent Bureau, a book or books to be called the “ Register of Designs,” and another or others to be called the “ Register of Proprietors,” to be kept in a manner similar to that provided for the “ Register of Patents,” and
 30 the “ Register of Proprietors,” in sections 11 and 12 of this Act.

Register of Designs.

LXXIX. Every design shall be assignable in the same manner as Letters Patent of Invention and subject to the same conditions.

Designs assignable.

LXXX. During the existence of the right, (whether it be of the entire or partial use of such design) no person shall, without the license
 35 in writing of the registered proprietor, apply such design, or a fraudulent imitation thereof, to the ornamenting of any article of manufacture, &c., for the purposes of sale, or publish, sell, or expose for sale, or use any article of manufacture, &c., to which such design, or fraudulent imitation thereof, shall have been applied, under penalty of a sum not
 40 less than twenty dollars, and not exceeding one hundred and twenty dollars to the proprietor of the design. The penalty may be recovered as follows :—

Penalty for making use of design.

Recovery of penalty.

By a summary proceeding before two justices, having jurisdiction in the district wherein the offender resides, or by an action of debt.

45 Any Justice or Superintendent of Police acting for the county, district, city or town wherein the offender resides, may act, but he must not be concerned in the sale or manufacture of the article, or in the property of the design. Every offender shall be summoned to answer the *demande* or complaint by a summons appointing a time and place;

which time must not be less than one clear day from the date of the summons, and service thereof shall be made on the person or at the residence of the offender, and one clear day additional shall be allowed for every fifteen miles additional from the place of trial.

Proof,

LXXXI Whether the party appear or make default, two justices, as above, may hear the complaint, and on proof by the confession of the offender, or by the oath of one or more creditable witnesses, (to be administered by the justices,) they may convict the offender, for each offence, in the penalty aforesaid—the aggregate amount of the penalties up to the time of the institution of the proceedings not to exceed \$400.00 against one person. 5 10

Levy of Penalty.

LXXXII. If the amount of the penalty and the costs attending the conviction are not paid, then the amount of the penalty, costs, and the costs of distress and sale shall be levied by distress upon the goods, chattels and effects of the offender, wherever they may happen to be in this Province, and the justices before whom the conviction was had, or any two justices acting for any county or district wherein the goods of the offender may happen to be, may grant a warrant of distress and sale: Provided, however, that where the penalty has been sought to be recovered by proceedings as in an action of debt, a writ of execution shall issue from the Court wherein the judgment on such action shall have been obtained; and provided that any surplus shall be delivered to the offender on demand. 15 20

Penalty for using word "R'd" on unregistered articles.

LXXXIII. Every person placing the words "registered," or the letters "Rd." upon any unregistered article, or upon any article the copy-right of which has run out, or advertising the same for sale as a registered article, knowing the same to have been fraudulently stamped or that the copyright thereof had expired, shall forfeit for every offence a sum not less than \$4, and not exceeding \$30, to be recovered in the same manner as penalties under the preceding section, and that by any person whatever, who shall receive one half the amount of the said last mentioned penalty, on the recovery of the amount which the offender may have been condemned to pay. 25 30

Proprietor to have an action of damages.

LXXXIV. The proprietor of any design may bring an action for the damages he has sustained by the application or imitation of the design for the purpose of sale against any person so offending, he (the offender) knowing that the proprietor of the design had not given his consent to such application. Every such action shall be tried by a jury, provided the amount of the action exceed \$200: Provided farther that nothing herein contained shall be construed to limit any proprietor to make option of proceedings, but that he shall have the right to proceed against every offender according to the provisions of the five preceding sections, and to those of this section at the same time. 35 40

In case person be wrongly registered.

LXXXV. If any person, not being the lawful proprietor of a design be registered as proprietor thereof, the rightful owner may, if he reside in Lower Canada, present a petition to any judge of the Superior Court in term, or in vacation, or if he reside in Upper Canada, institute a suit in equity, and the judge having cognizance of such suit, may, if it appear to him that the design has been registered in the name of a wrong person, in his discretion either direct the registration to be cancelled, or direct that the name of the lawful proprietor shall be substituted for the name in the register, and shall adjudge as to costs as he may think fit. 45 50

LXXXVI. The Commissioner of Patents, after due service of such order and payment of the fee hereinafter provided, shall make such alteration in the Register as shall in said order be directed. Alteration.

LXXXVII. All proceedings under the sections of this Act shall be brought within 12 months from the commission of the offence, and not after. Limitation of Proceedings.

LXXXVIII. The Commissioner of Patents shall not register any design unless he is furnished, in respect of each application, with duplicate drawings of such design, accompanied with the name of the person who shall claim as proprietor, with his place of abode, or place of carrying on business, or other place of address, and the number and class in respect of which the registration is made; he must register all such drawings in the order in which they are received, and on every such drawing affix a number corresponding to such succession. He shall retain and file one drawing, and return the other to him from whom he received it; he shall also class such drawings and keep an index of them. The size of the sheet on which such drawings shall be made shall not exceed 24 inches by 13 inches; and on the side of the sheet where the drawing is, there shall be left a blank space 6 inches by 4 inches, for the Commissioner's certificate; and the prints or drawings shall be on a proper geometric scale, and the parts of the design which are not new shall be set forth. Formalities before registration:

LXXXIX. On the copy returned to the person registering, the Commissioner shall certify under the Seal of the Patent Bureau that the design has been registered, the date of registration, the name of the registered proprietor, his address, the number of such design, and the number or letter employed to denote or correspond with the registration, which said certificate, in the absence of proof to the contrary shall be sufficient proof of the design, of the name of the proprietor, of the registration, of the commencement and period of registry of the person named as proprietor being proprietor, of the originality of the design, and of compliance with the provisions of the Act; and the writing shall be received as evidence without proof of the signature of the Commissioner, or of the seal of the Bureau. Certificate on copy returned.

XC. Copies of the index of the titles of the designs and copies of expired copyrights, shall be forwarded with the least possible delay from time to time to the Boards of Arts, and Manufactures of the Province respectively. Copies of Indexes.

XCI. Any person may, on payment of the appointed fee, inspect any design whereof the copyright shall have expired, but no inspection of any unexpired copyright shall be allowed unless by the proprietor of the design. The Commissioner shall, however, on receipt of the fee hereinafter provided, give a certificate to any person producing a design having thereon the registration mark, or producing the registration mark only, stating in such certificate whether any copyright of such design exists, to what particular manufacture such copyright applies, the term of the copyright, the date of the registration, and the name and address of the registered proprietor. Inspector of Designs.

XCI. The Commissioner shall have power to refuse to register such designs as do not appear to him to be within the provision of this act, as of a thing not intended to be applied to an article of manufacture, but only as a wrapper, label or covering, in which an article might be Commissioner may refuse Designs.

exposed for sale, or when the design is contrary to public morality or order, subject however to the same appeal as is provided for decisions on applications for Patents of Inventions.

Titles of designs to be published,

XCIII. The Commissioner shall, from time to time, cause to be published in the *Canada Gazette* the titles of the designs registered and the names and places of abode of the registered proprietors. 5

No fees to be refunded.

XCIV. No money paid as a fee under any of the provisions of this Act, shall be withdrawn or refunded, nor shall any fee paid on any preliminary proceeding be considered as part of the sum required to be paid on filing a complete application for Letters Patent. 10

Provision as regards trade marks.

XCIV. And whereas it is also necessary to make provision for the registration and protection of trade marks; Be it enacted, that for all and every the purposes of this Act, all marks, names, brands, labels, or other business devices which may be adopted for use, by any person, in his trade, business, occupation, or calling, for the purpose of distinguishing any manufacture, product, or article of any description by him manufactured, produced, compounded, packed, or for sale, no matter how applied, whether to such manufacture, product, or article, or to any package, parcel, case, box, or other vessel, or receptacle of any description whatever, containing the same, shall be considered and known as trade marks, and shall be subject to examination, registration, and protection as is hereinafter provided. 15 20

Trade marks Register.

XCVI. The Commissioner of Patents shall keep, at the Patent Bureau, a Book or Books, to be denominated the "Trade Marks Register," which shall be kept in a manner similar to that hereinbefore provided for the Register of Patents, in which all proprietors of trade marks shall cause the same to be registered, by depositing with the said Commissioner of Patents a drawing and description in duplicate of such trade mark, and a solemn declaration or affirmation taken before a Justice of the Peace that such drawing and description are correct, and that such trade mark is not in use to his knowledge by any other person than himself at the time of his adoption thereof, or application for registration. And the Commissioner on receipt of the fee hereinafter provided shall examine the said trade mark, to ascertain whether it resembles any other trade mark already registered, and if he find that such trade mark does not infringe upon any other trade mark already registered, he shall register the same, and shall return to the proprietor thereof one copy of the drawing and description, with his certificate thereto, that the said trade mark has been duly registered in accordance with the provisions of this Act; And he shall further state in such certificate, the day, month and year of the entry thereof in the said Register of Patents, and every such certificate shall be received in all Courts of Law or Equity in Canada, without proof of the Signature of the Commissioner, or of the Seal of the Bureau. 25 30 35 40

Proceedings on application to register.

XCVII. If any person shall make application to register, as his own, any trade mark already registered, the Commissioner shall notify all parties interested therein to appear before him with their witnesses for the purpose of establishing which is the rightful owner of such trade mark, and after having heard the parties and their witnesses, he shall make such entry or cancellation, or both, as shall be in accordance with the circumstances of the case. 45 50

Penalty on
wrongfully
using trade
marks.

XCVIII. Any person marking any goods, or any article of any description whatever, with any trade mark registered under the provisions of this Act, or with any part of such trade mark, whether such marking be by applying such trade mark or any part thereof to the article itself, or to any package or thing containing such article, or by using any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark, or knowingly to sell or offer for sale any article marked with such trade mark, or with any part thereof, with intent to deceive, and to induce persons to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, shall be guilty of a misdemeanor and on conviction thereof shall forfeit for each offence a sum of not less than twenty dollars, and not exceeding one hundred dollars, which amount shall be paid to the proprietor of such trade mark together with the costs incurred in enforcing and recovering the same: Provided that the said trade mark shall have been registered according to the provisions of the ninety-sixth section of this Act, within one year of the passing after this Act, or if the said trade mark be adopted after the passing hereof, then within twelve months after the adoption of the same: Provided further, that every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf, and duly authorized thereto.

Wrongfully
registering
trade marks.

XCIX. If any person shall register, as his own, any trade mark, the property of another, or in use by any other person acting in good faith, knowing such to be the case, he shall be guilty of a misdemeanor, and shall be subject and liable to the penalty mentioned in the preceding section; and the entry of every such trade mark in the Trade Marks Register shall be cancelled by the Commissioner on receipt of a certificate signed by the Clerk of the Court, or the Justices of the Peace before whom the conviction was had, of any such conviction, and one half of every such penalty shall be paid to the party prosecuting, and the other half to the Crown: And it is further provided, that any declaration fraudulently made for the purpose of obtaining the registration of any trade mark shall be and the same is hereby declared to be perjury, for which the offender may be tried and convicted in addition to the penalty hereinbefore provided.

Counterfeit-
ing trade
marks.

C. Any person using or counterfeiting the trade mark of any other person, with intent to deceive the public and lead to the belief that the articles or packages so marked were manufactured or put up by the owner of such trade mark when the same is not registered in this Province, shall on conviction thereof forfeit a sum of not less than ten dollars nor more than fifty dollars for each offence, with costs, one half of which shall be paid to the complainant, and the other half to the Crown.

Complaints.

CI. Complaints under either of the two next preceding sections may be brought by any party or person whatever, and the penalties mentioned in the three next preceding sections shall be enforced and recovered in the same manner and subject to the same provisions as are provided in sections 80, 81 and 82 of the Act respecting copyrights.

CII. The use of any trade mark, either identical with that of any manufacturer, producer, packer or vendor, so closely resembling it as to be calculated to be taken for it by ordinary purchasers, shall be held to be a use of such trade mark.

Use of trade
mark defined.

Remedies of owners of trade marks.

CIII. Nothing in this Act contained shall be held to deprive any proprietor of any trade mark of the right to institute a suit against any person using his registered trade mark, or any imitation thereof, or contained in packages being or purporting to be his, contrary to the provisions of this Act, and in such suit any special damages sustained by the proprietor thereof, by reason of any such Act as aforesaid, may be recovered, and if no special damages be proved the plaintiff shall recover nominal damages and full costs of suit. 5

Fees,

CIV. The following fees shall be payable by every applicant for protection, or for Letters Patent, or for a copyright, to wit:— 10

On each application for provisional protection.....	\$6 00	
On each do. do. temporary do.	20 00	
On each complete application for Letters Patent.....	20 00	
On the issue of Letters Patent.....	10 00	
On every appeal in addition to security for costs	5 00	15
On every application for a re-issue.....	10 00	
On fying each disclaimer,	5 00	
On every application to add an improvement to Letters Patent already issued.....	10 00	
On every application for an extension of a Patent.....	20 00	20
On the issue of such extension	20 00	
On every application to register a design or trade mark, including certificate	5 00	
On each inspection of any design or trade mark.....	0 50	
For each certificate of registration not already provided for....	1 00	25
For each certified copy of any document, seven cents per hundred words		
For each copy of any drawing, the reasonable expense of preparing the same		
For recording any assignment or other writing, of 300 words or under	1 00	30
For recording any assignment or other writing, of 300 words, but not exceeding 1000 words	1 50	
For recording any assignment or other writing, above 1000 words.....	2 50	35
For every extract from any of the registry books, fifty cents, if such extract do not exceed 800 words, and seven cents per hundred words above 800.....		

CV. All Acts and parts of Acts heretofore passed on these subjects are hereby repealed: Provided, however, that all Letters Patent granted previous to the passing of this Act, shall remain in full force, subject to the provisions hereinbefore contained, as if they had been granted under the provisions of this Act: Provided also, that all actions and process in law and equity sued out prior to the passage of this Act may be prosecuted, to final judgment and execution, in the same manner as though this Act had not been passed. 40 45

Interpretation.

CVI. Nothing herein contained shall be construed as a declaration that any Act hereby made a misdemeanour, was or was not a misdemeanour before its passing, or that any such suit as aforesaid could or could not heretofore be maintained in either section of the Province, nor shall any thing herein prevent any offence being dealt with as forgery, or as a fraud or other offence, if without this Act it could be so dealt with. 50

CVII. In the construction of this Act, the following expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context; that is to say:

5 The expression "the President of the Council," shall mean the President of the Council for the time being.

The expression "the Commissioner," shall mean the Commissioner or the time being, acting in execution of this Act.

The expression "the Patent Board," shall mean a quorum of the Board, acting in execution of this Act.

10 The expression "Law Officer," shall refer to and mean Her Majesty's Attorney General or Solicitor General for either section of this Province.

The term "discovery" shall mean the finding out an industrial process that may have been used in former times, but which has since been lost sight of and remained unknown and unused for at least 50 years.

15 The term "invention," shall mean the producing a new object by new means, or a new object by means known before, or a known object by means different from those used hitherto for the same object.

20 The term "improvement," or "alteration," is applied to every apparatus, arrangement or process added to an object known or patented before, and purporting to attain a better result, or a greater saving in the end of the object, or the manner of its manufacture.

The term "new" is applied to and shall mean any discovery, invention or improvement that, up to the time of the application for a Patent, has neither been worked nor become known through publication.

25 The expressions "petition," "declaration," "provisional specification," "complete specification," "certificate," "disclaimer," and "Letters Patent," respectively, shall mean instruments in the form and to the effect in the schedule hereto annexed, subject to such alterations as may from time to time be made therein under the powers and provisions of this Act.

30 The expression "resident" shall mean permanently settled or domiciled in any part of the Province of Canada; and the expression "non-resident" shall apply to and mean all persons, whether subjects of Great Britain or otherwise, who are not actually and permanently residing in the Province of Canada.

35 CVIII. In citing this Act in other Acts of Parliament, instruments and proceedings, it shall be sufficient to use the expression "the Patent Law Act, 1860." Short Title.

40 CIX. This Act shall commence and take effect from the first day of May, 1861. Commencement.