

## Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments / Commentaires supplémentaires: Cover title page is bound in as last page in book but filmed as first page on fiche.

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /  
Ce document est filmé au taux de réduction indiqué ci-dessous.

<b>10x</b>		<b>14x</b>		<b>18x</b>		<b>22x</b>		<b>26x</b>		<b>30x</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>12x</b>	<b>16x</b>	<b>20x</b>	<b>24x</b>	<b>28x</b>	<b>32x</b>						

No. 205.

---

---

2nd Session, 7th Parliament, 26th Victoria, 1863

---

---

**BILL.**

**An Act respecting Inventions, Trade Marks  
and Designs.**

---

Received and read, 1st time, Tuesday, 19th  
March, 1863.

Second reading, Friday, 10th April, 1863.

---

Hon. Mr. EVANTUREL.

---

**QUEBEC :**

PRINTED FOR THE CONTRACTORS BY HUNTER,  
ROSE & LEMIEUX, ST. URSULE STREET.

## An Act respecting Inventions, Trade Marks and Designs.

**WHEREAS** it is expedient to make new provisions relating to the granting of Letters Patent for Inventions and the registering of Trade Marks and Designs: Therefore, her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

## ORGANIZATION OF PATENT OFFICE.

1. There shall be established at the Seat of Government an office, to be called "*The Patent Office*." Patent Office:
2. The Governor may appoint, by Commission under the Great Seal, a "Commissioner of Patents," to whom the management of the Patent Office shall be confided, and also a Secretary to the Patent Office. Commissioner  
Secretary.
3. The Patent Office shall be attached to the Bureau of Agriculture, and unless otherwise provided, the Minister of Agriculture shall be the Commissioner of Patents. Attached to  
Bureau of  
Agriculture.
- 15 The salary of the Secretary shall not exceed        dollars. Salary of Sec-  
retary.
4. The said Commissioner shall, before he enters upon the duties of his office, make oath or affirmation truly and faithfully to execute the trust committed to him. Oath of office.
5. The said Commissioner shall cause a seal to be made for the purposes of this Act, may from time to time vary such seal, and he may cause any document to be sealed therewith. Seal of office.
6. There shall be kept in the said office a book or books, 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 respecting the validity of such Letters Patent. Certain books  
to be kept in  
the Patent  
Office.
- 25 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 respecting the validity of such Letters Patent. Certain books  
to be kept in  
the Patent  
Office.
- 30 matters and things respecting the validity of such Letters Patent.
7. Printed or manuscript copies or extracts, certified by the Commissioner, of Letters Patent, Specifications, Disclaimers, memoranda of alterations, and all other documents recorded and filed in the Patent Office, before or after the passing of this Act, shall be received in evidence, in all proceedings relating to letters patent for Inventions in all Courts of this Province. Certified  
copies of cer-  
tain docu-  
ments to be  
evidence.
- 35 Courts of this Province.

## PATENTS OF INVENTION.

8. Any person of any country whatever, who having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, or composition, who may obtain a Patent for an invention.

- manufacture, or composition of matter not known or used by others before his invention or discovery thereof, and not at the time of his application for a patent in public use in Canada, or on sale therein with his knowledge, consent or allowance, shall desire to obtain an exclusive property therein, may make application, in writing, by petition to the Governor expressing such desire; but scientific principles, or purely scientific theorems, cannot be patented, even if the principles or theorem admit of a direct application to industrial objects. 5
- Scientific principles not patentable.**
- Application--Declaration--Specification.** 9. Each applicant shall, at the time of making an application, furnish a solemn declaration, with a written description and specifications and drawings illustrative thereof. 10
- Specification, what to contain.** 10. The specification and description shall consist of—First, a short description of the Invention; second, the Specification; third, the Mode or Modes of operation; fourth, the Claim.
- Drawings—what to consist of and what to show.** 11. The drawings shall fully exhibit all parts of the Invention and shall consist of 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, with written references to correspond with the specification, and certificate that it is the drawing referred to in the accompanying specification and description; but the Commissioner may require any greater number of drawings, or dispense with any of those herein prescribed. 20
- More may be required.**
- Attestation in this Province;** 12. 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 in this Province;—but when the applicant is not for the time being residing in the Province, they shall be signed by any Minister Plenipotentiary, *chargé d'affaires*, Consul or Agent, holding Commission under the Government of Great Britain, or any Notary Public of the country in which such applicant happens to be at the time of the same: each Inventor shall, moreover, deliver to the Commissioner a neat working model of his invention, of a convenient size, to exhibit advantageously its several parts, provided such invention admits of a model; and when the invention is for a composition of matter, the inventor shall furnish the Commissioner with specimens of the ingredients, or of the composition of matter, sufficient in quantity for the purpose of experiment. 30
- Attestation in foreign countries.**
- Working Model to be furnished.**
- Specimens of ingredients, &c.**
- Fees to be paid on application.** 13. At the time of making every such application for a Patent, the applicant shall pay to the Commissioner the 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 issue Letters Patent to the applicant for his Invention. 40
- Examination of the case.**
- Issue of Patent if found right.**
- Notice to applicant if any defect be found.** 14. If, however, it appears 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. 50
- Attestation of Patent.** 15. All Patents issuing from the Patent Office, shall be issued in the name of Her Majesty, under the Great Seal of the Province, and shall

be signed by the Commissioner, and shall be recorded in the said Office, in the register hereinbefore provided.

16. All 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 heirs, 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.

Form of Patent, what to contain.

17. 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 Patent Office on payment of the fees hereinafter provided, within sixty days from the execution thereof.

Patents assignable and how.

18. Every Patent hereafter to be issued, may be made and issued to the assignee of the inventor or discoverer, or to both assignee and inventor conjointly, the assignment thereof being first recorded as aforesaid, and the application therefor being duly made by the said inventor.

Patents may issue to assignee, &c.

19. 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 Patent Office within sixty days from the date of the instrument executed to grant and convey such right.

Licenses to make, use and vend, &c., patented article.

To be recorded.

20. Whenever any Patent shall be inoperative or invalid by reason of a defective or insufficient description or specification, or by reason of the Patentee claiming in his specification as his own invention more than he had or shall have a right to claim as new, if the error has or shall have arisen by inadvertence, accident or mistake, without any fraudulent or deceptive intention, the Commissioner may, upon the surrender of such Patent, and the payment of the further fee hereinafter provided, 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 death or any assignment by him made of the original Patent, a similar right shall vest in his heirs, assigns or legal representatives; 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 thereafter commenced for causes subsequently accruing, as if the same had been originally filed in such corrected form before the issuing of the original Patent.

When a Patent is inoperative by defect, &c., it may be surrendered and new Patent issued on certain conditions.

Effect of new Patent.

21. 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 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 first inventor or discoverer of any material or substantial part of the thing patented, of

Disclaimer when the specification has been made too broad.

which he was not the first inventor, and shall have no legal or just right to claim the same, in every such case the said Patentee, his heirs, assigns or legal representatives, 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 shall not claim to hold by virtue of the Patent or assignment thereof, stating in the said disclaimer the extent of his interest in such Patent; and such disclaimer shall be in writing, attested by a Justice of the Peace, 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 action 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 heirs, assigns, or legal representatives, whether of the whole or a fractional interest 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 Patent Office, the said disclaimer of all that part of the thing patented so claimed without right.

**22.** 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.

**23.** 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 has entered a disclaimer in accordance with the revision and restriction thereon.

**24.** 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; but 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.

**25.** 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.

26. Every person established in this Province, who has or shall Rights of persons having used an invention before it was patented.  
 5 have purchased, constructed, invented or discovered any new machine, manufacture or composition of matter prior to the application for a Patent therefor, by any other 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  
 10 matter so made, purchased or introduced, without liability therefor to the Patentee or any other person interested in such invention.

27. All Patentees and assignees of Patents hereafter to be granted, All patented articles to be marked as such.  
 shall stamp, engrave, or cause to be stamped or engraved, on each article which will admit of stamping or engraving, and shall cause to be  
 15 written or printed upon each wrapper or vessel containing articles which will not admit of stamping or engraving, vended or offered for sale, the name of each Patentee and the date of the Patent thereof.

28. If any person shall write, paint, print, mould, cast, carve, engrave or stamp upon anything made, used or sold by him, or upon any  
 20 package or vessel containing the same, 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 heirs, assigns or legal representatives, or if any person, upon  
 25 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  
 30 "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 any 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 Gaol of  
 35 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; but no such fine shall exceed the sum of *two hundred dollars* in amount, and no such imprisonment shall exceed six months in duration. Punishment for counterfeiting such mark. Or fraudulently putting certain words on any article. Misdemeanor: Limitation of fine or imprisonment.

29. All Letters Patent for inventions granted under the provisions  
 40 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, from the date thereof, unless the Patentee shall have within that period, commenced and carried on the manufacture or caused to be manufactured within the Province the articles so patented; but the above delay may be extended  
 45 for a further term not exceeding six months, on sufficient reasons therefore being shewn to the Commissioner. Patents to be void unless the Patentee manufactures the article in Canada within a certain time.

30. If any person shall make, or manufacture for sale, any article or composition so invented, or shall make or manufacture, or make use  
 50 of, or sell or cause to be put in use any instrument or machinery so invented or specified, the exclusive right of which shall, as aforesaid, have been secured to any person by Patent, without the consent of the Patentee, his heirs, assigns or legal representatives, first obtained in writing, every person so infringing such Patent shall be liable to an action Action given against any party infringing a Patent.

**Trial by Jury.** in damages for the same; and in every 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 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.

**On action brought, Court or Judge may grant an order for injunction, inspection, account, &c.—Appeal from such order.** **31.** 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, 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; but from all judgments and decrees of 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 Queen's Bench in Lower Canada, and to the Court of Error and Appeal in Upper Canada, 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 other cases in which the Court shall deem it reasonable to allow the same.

**Proceedings when Patentee desires an extension of term of Patent.** **32.** 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 as aforesaid, 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 show cause why the application for an extension should not be granted; and the Commissioner of Patents shall hear and decide upon the said application and objection thereto, if such there be, at the time designated in the published notice thereof, as hereinbefore provided; and the said Patentee shall furnish to the said Commissioner of Patents 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 the said invention, and if upon a hearing of the matter it shall appear to the commissioner, having due regard to the public interest therein, that the said term should be extended, by reason of the Patentee, without fault on his part, having failed to 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 shall be the duty of the Commissioner of Patents to renew and extend the Patent by making a certificate thereon of such extension; and the 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 Commissioner of Patents: which certificate as aforesaid shall be entered on record in the

**Commissioner of Patents to hear and decide on application.**

**Account of profits to be produced.**

**Certificate of extension and its effect; term limited.**



Patent Office; and thereupon the said Patent shall have the same effect in law as though it had been so originally granted, but 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 granted.

**33.** And such inventor may assign or dispose of such extended right in the same manner and subject to the same provisions as are hereinbefore provided in cases of ordinary Patents.

Extended right may be disposed of.

**34.** If any person shall forge or alter, or shall in any way publish, 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 Letters Patent, or of any certificate thereof, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept confined at hard labor in the Provincial Penitentiary for any term not less than two years, nor more than four years, or to be imprisoned in any Common Gaol for any term less than two years.

Forging Patents, &c., to be felony.

Punishment.

**35.** The Commissioner shall cause Indexes to all specifications, disclaimers and memoranda of alterations hereinbefore or hereafter 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.

Indexes to documents to be made.

**36.** The Commissioner shall cause true copies of all specifications, disclaimers, and memoranda of alterations filed under or in pursuance of this or any other Act, to be open to the inspection of the public at the Patent Office, at all reasonable times, subject to such regulations as the Commissioner may direct.

Copies of certain documents to be open to the Public.

**37.** The Commissioner shall cause to be classified and arranged, in such rooms or galleries as may be provided for that purpose, 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 which have been patented; and the said rooms and galleries shall be kept open during suitable hours for public inspection.

Models, specimens, &c., to be classified and open to inspection.

**38.** The Governor in Council may allow from time to time the necessary sums for defraying the current and incidental expenses of the Patent Office, and the sums to be so allowed shall be paid out of such moneys 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 annually, within fourteen days after the meeting thereof, a detailed statement of all salaries, fees, allowances, sums and compensations allowed or granted under this Act, with a list of all applications for Patents, Copyrights and Trade Marks which shall have been granted or registered during the preceding year, designating under proper heads the subjects of such patents and copyrights, and furnishing an alphabetical list of all the patentees, and parties who have registered Designs or Trade Marks, with their places of residence; and a list of all Patents and Copyrights which will expire before the next meeting of Parliament, as well as a list of all Patents and Copyrights which shall have become public property during the period elapsed dur-

Expenses of Patent Office to be paid out of public moneys to be granted.

Report and accounts to be laid yearly before Parliament with certain particulars.

ing the previous year, together with other general information of the state and condition of the Patent Office.

Forms in schedule may be used.

**39.** 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; but any other forms may be used. 5

Patent void if Patentee brings the article from a foreign country.

**40.** The Patent right will cease, if the Patentee introduce into Canada articles manufactured in another country, similar to those protected by his Patent. 10

Inventions previously published, &c., not patentable.

**41.** No invention shall be considered new if it has been sufficiently published, either in Canada or in another country, so as to enable any person to reduce it to practice.

Patent to be at applicant's risk, date of his right.

**42.** The grant of the Patent shall be at the risk of the applicant, and without prejudice to the rights of other parties, and the right of the Patentee shall be reckoned from the date of the filing of his application in the Patent Office. 15

Pending applications.

**43.** All applications for Patents, pending at the time of the passing of this Act, shall be acted on in the same manner as if filed after the passing hereof. 20

#### DESIGNS.

Copy-right of new designs may be obtained.

**44.** The proprietor of 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, the same not being previously published or made known, may make application in writing by petition to the governor to have the sole right to apply the same to any article of manufacture, or to any such substances as aforesaid; provided that such right 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 "Copy-right." 25 30 35

For a certain term only.

Duration of copy right.

**45.** In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, sixth, eighth, eleventh or thirteenth of the classes following, the copy-right shall continue for the term of seven years: 40

Duration of copy-right.

In respect of the application of any such design to ornamenting any article of manufacture contained in the fifth, seventh, ninth, tenth, twelfth or fourteenth of the classes following, the copyright shall continue for the term of three years: 45

CLASS I. Articles of manufacture wholly or chiefly composed of metals or of mixed metals.

- 5 “ 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.
- “ IV. Articles of manufacture wholly or chiefly composed of earthenware.
- 10 “ V. Paperhangings.
- “ VI. Carpets, Floor or Oil Cloths.
- “ VII. Shawls, if solely by printing or colors upon tissue or textile fabrics.
- “ VIII. Shawls others than those in class VII.
- 15 “ IX. Yarn, Thread or Warp, if the design be applied by printing or other process by which colors are or may be hereafter produced.
- “ X. Woven fabrics, composed of Linen, Cotton, Wool, Silk, or Hair, or of any two or more such materials, if such 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.
- 20 “ XI. Woven fabrics, composed of Linen, Cotton, Wool, Silk or Hair, or of any two or more such materials, if such 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 “furniture,” and the repeat of the design whereof shall be more than 12 x 8 inches.
- 25 “ XII. Woven fabrics not included in any preceding class.
- 30 “ XIII. Lace, and any article of manufacture or substance not comprised in any preceding class.
- “ 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.
- 35

46. The Commissioner of Patents shall not register any designs 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 twenty-four inches by thirteen inches ; blank space six inches by four inches, for the Commissioner's certificate ; the print or drawings to be on a proper geometric scale, and the parts of the design which are not new shall be set forth.

Copy-right to be registered only on certain conditions.

47. On the copy returned to the person registering, the Commissioner shall certify under the seal of the Patent Office 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 regis-

Certificate of registration to be given on duplicate returned.

Its effect.

tration,<sup>7</sup> 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 Office.

5

Application  
be made be-  
fore publica-  
tion of design.

**48.** 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; the name of the person registering must be registered as the proprietor of the design.

10

How the re-  
gistered arti-  
cle shall be  
marked.

**49.** 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 Rd., with the number or 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.

Who shall be  
the proprietor  
of the design.

**50.** 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.

Register of  
designs to be  
kept.

**51.** The Commissioner of Patents shall keep at the Patent Office, a book to be called the "Register of Designs," to be kept in a manner similar to that provided for the "Register of Patents," in section six of this Act.

Designs as-  
signable.

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

No person to  
use a regis-  
tered design  
without li-  
cense.

**53.** During the existence of the right (whether it be of the entire or partial use of such design), no person shall, without the license 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 less than twenty dollars, and not exceeding one hundred and twenty dollars, to the proprietor of the design, and costs; The penalty may be recovered by a summary proceeding before two justices having jurisdiction in the district or county wherein the offender resides, or by an action of debt, at the instance of the proprietor of such copyright; and one half of such penalty shall belong to the party prosecuting and the other half to the crown.

Penalty for-  
contravention

Penalty for  
marking an  
unregistered  
design as "re-  
gistered."

**54.** Every person placing the word "registered," or the letters "Rd.," upon any unregistered article, or upon any article the copyright of which has run out, or advertising the same for sale as a registered article, or unlawfully selling, publishing, or exposing for sale such 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 *four dollars*, and not exceeding *thirty dollars*, 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

50

said last mentioned penalty, on the recovery of the amount which the offender may have been condemned to pay.

55. 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. Action for using without license.

56. 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, institute an action in the Superior Court, or if he reside in Upper Canada, institute proceedings in any County Court on the equity side thereof, and the Court having cognizance of such suit may, if it appear that the design has been registered in the name of a wrong person, either direct the registration to be cancelled, or that the name of the lawful proprietor shall be substituted for the name in the Register, with costs in its discretion, and on application by the Plaintiff, supported by affidavit, it shall be lawful for any such Court, pending such action or proceedings, at its discretion, to issue an order upon the defendant prohibiting the use of such design, pending such suit or proceedings, under pain of being held in contempt of such Court. How the true proprietor may proceed against a person having fraudulently registered a design as his own.

57. 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 the said order be directed. Alteration in Register

58. 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; and the same shall be open to the inspection of the public, at the Office of such Boards, during the usual office hours of each day, free of charge. Copies of certain documents to be forwarded to Boards of Arts &c.

59. 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. Expired designs may be inspected, but not others; but a certain certificate may be obtained.

60. The Commissioner shall cause to be published in the *Canada Gazette* the titles of the designs registered and the names and places of abode of the registered proprietor. Titles of designs to be published.

#### TRADE MARKS.

61. All marks, names, brands, labels, packages 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 offered 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 What shall be deemed trade marks.

They may be registered. Marks, and may be registered for the exclusive use of the party registering the same in the manner hereinafter provided; and thereafter he shall have the exclusive right to use the same to designate articles manufactured or sold by him.

Commissioner to keep a Trade Marks Register.

In what cases he may register marks.

**62.** The Commissioner of Patents shall keep at the Patent Office a book or books to be denominated the "Trade Marks Registrar," in which all proprietors of trade marks may cause the same to be registered, by depositing with the said Commissioner a drawing and description in duplicate of such trade mark, together with a declaration that such drawing and description correctly represent the same, 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, on application for registration; but if such trade mark will not admit of a drawing, the Commissioner may dispense therewith, and the declaration of the applicant may be varied accordingly; and the said 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 is not identical with or does not so closely resemble as to be confounded with 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 Trade Marks Registrar; and every such certificate shall be received in all Courts of Law or Equity in Canada, as evidence of the facts therein alleged, without proof of the signature of the said Commissioner or of the seal of the office.

Cancelling registration improperly made.

**63.** If any person shall make application to register, as his own, any trade mark which has been already registered, the Commissioner shall notify all parties interested therein to appear, in person or by attorney, before him with witnesses, for the purpose of establishing who is the rightful owner of the trade mark, and after having heard the parties and witnesses, he shall order such entry or cancellation, or both, to be made as he shall deem just.

Penalty for using another person's trade mark.

Or selling article fraudulently marked

Proviso.

**64.** If any person, other than the party who has registered the same, shall mark 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 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 so marked which has been used by the proprietor of such trade mark,—or shall knowingly sell or offer for sale any article marked with such trade mark, or with any part thereof, with intent to deceive and induce persons to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, he shall be guilty of a misdemeanor, and, on conviction thereof, shall forfeit, for each offence, the 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 costs incurred in enforcing and recovering the same; and every complaint under this section shall be made by the proprietor of such trade mark, or by some one duly authorized by him.

Punishment of persons registering ano-

**65.** If any person shall knowingly and wilfully register as his own any trade mark, the property of a person not resident in this Province, 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 Mark Register shall be cancelled by the said 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.

their trade mark as their own. Cancelling in such case:

**66.** If any person shall counterfeit or use the unregistered trade mark of any person, not resident within this Province, with intent to deceive the public and lead to the belief that the articles or package so marked was manufactured or put up by the owner of such trade mark, he 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 penalty shall be paid to the complainant and the other half to the Crown.

Penalty for using trade marks of persons not resident in Canada.

**67.** Complaints under either of the two next preceding sections may be brought by any 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 the sections of this Act respecting the registration and protection of designs.

Recovery of penalties.

**68.** The use of any trade mark either identical with that of any manufacturer, producer, packer or vender, or 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.

Close imitation of trade marks unlawful.

**69.** Notwithstanding anything in the preceding sections contained, a suit for damages may be maintained by any proprietor of a trade mark against any person using his registered trade mark, or any fraudulent imitation thereof, or selling articles bearing such trade mark, or any such imitation thereof, or contained in packages being or purporting to be his, contrary to the provisions of this Act.

Action in damages for using trade marks.

**70.** The following fees shall be payable under this Act, that is to say:

Table of fees.

**35** On an application for Letters Patent of Invention, *twenty-five dollars, (\$25.)*

On the issue of Letters Patent of Invention, *twenty-five dollars, (\$25.)*

On application for a re-issue of Letters Patent of Invention, *ten dollars, (\$10.)*

On filing a disclaimer, *five dollars, (\$5.)*

**40** On application to add an improvement to Letters Patent of Invention already issued, *twenty-five dollars, (\$25.)*

On application of extension of Letters Patent of Invention, *fifty dollars, (\$50.)*

**45** For the issue of fresh Letters Patent of extension, *twenty-five dollars, (\$25.)*

For recording a license, *twenty dollars, (\$20.)*

On application to enregister a design or trade mark, including certificate, *five dollars, (\$5.)*

For inspection of any design or trade mark, *fifty cents, (50 cts.)*

**50** For any certificate of registration not otherwise provided for, *one dollar, (\$1.)*

For a certified copy of any document or extract from the Registers, per hundred words, *ten cents, (10 cts.)*

For a copy of any drawing, the reasonable expenses of preparing the same.

For recording an assignment or other writing, not exceeding three hundred words, *two dollars, (\$2.)*

For recording an assignment or other writing, exceeding three hundred but not exceeding one thousand words, *three dollars and a half, (\$3 50.)*

For recording any assignment or other writing, exceeding one thousand words, *four dollars, (\$4.)*

All the above fees shall be paid to the Commissioner of Patents on application.

Commissioner to pay over to Receiver General.

71. All fees received by the Commissioner of Patents in the course of every month, shall be paid over by him to the Receiver General, within the first week of the following month, with a statement in detail of the items forming the amount so received.

Fees not to be refunded.

72. No fee received under this Act shall for any reason be refunded.

Limitation of suits.

73. No action, suit or plaint shall be instituted for the recovery of any penalty under this Act, after twelve months from the day of the commission of the act complained of.

74. This Act shall come into operation on the first day of July next, upon and after which day all Acts and parts of Acts relating to the subject matter of this Act shall be and remain repealed; provided that all actions and proceedings in law or equity commenced before this Act comes into operation, may be continued in the same manner as if this Act had not been passed.

Short title.

75. In citing this Act it shall be sufficient to designate it as "The Patent Act of 1863."

## SCHEDULE.

### (A) PETITION.

To His Excellency (A. B.,) Governor in Chief of the Province of Canada, &c., &c., &c.

The petition of (*name of inventor, of place of residence, trade or profession,*)

Humbly sheweth—

That your petitioner hath invented (*name of invention*), not known or used in the Province of Canada by others before his invention thereof, and not at the time of his application in public use or for sale therein with his consent or allowance. A specification and description thereof, and drawings illustrative thereof, (*if the invention admits of drawings*) in duplicate, have been deposited, as required by law.

Wherefore your petitioner humbly prays, that Your Excellency will be pleased to direct Her Majesty's letters patent for the said invention to be granted for the term allowed by law; and your petitioner, as in duty bound, will ever pray.

(*Signature of inventor.*)

(*Place and date.*)



## (B.) SOLEMN DECLARATION.

Province of Canada, } I, (*name of inventor*), of (*place of residence*  
 District or County } *and trade or profession*), hereby solemnly declare  
 of (*name*), } and say that I verily believe myself to be the  
 to wit: } true inventor of the (*name of invention*), for  
 which, by my petition to His Excellency the Governor of Canada, dated  
 (*insert date of petition*) I solicit a patent.

(*Signature of inventor.*)

Declared and signed before me this (*day and month*), 186 , at (*name of place.*)

(*Signature of a Justice of the Peace.*)

J. P. for District (*or County*) of

## (C.) SPECIFICATION AND DESCRIPTION.

In duplicate.

Be it known unto all men that the following is a full and exact description of (*name of invention*) invented by me the undersigned, (*here insert the requirements of sect. 10.*)

(*Signature of inventor.*)

• (*Place and date.*)

Signed in the presence of  
 J. P.  
 for District (*or County*) of