

## No. XIV.

### AN ACT to regulate Grants of Patents for Inventions.

PATENTS.

[27th October, 1860.]

**W**HEREAS it is expedient to make provision for granting patents for inventions in the Colony: Preamble.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority thereof, as follows:—

1. The Short Title of this Act shall be "*The Patents Act, 1860.*" Short Title.

2. Any person being the originator or discoverer of any new invention or improvement for which no patent or instrument in the nature of letters patent has been issued or granted in New Zealand or any other country, and being desirous of obtaining letters patent under this Act, shall deposit with the Colonial Treasurer the sum of ten pounds, and shall leave at the office, or in the custody of such person as the Governor may from time to time or for any particular case appoint, a petition addressed to the Governor, stating clearly and succinctly the object to be attained by his invention or discovery, and praying that letters patent may be granted to him for the exclusive use thereof in the Colony. Mode of application for letters patent.

3. The inventor shall deliver a written description or specification in duplicate of his invention or improvement, and of the manner and process of compounding the same, in such full clear and exact terms as to distinguish the same from all other things before known, and to enable any person skilled in the art or science of which it is a branch or with which it is most nearly connected, to make compound and use the same. Inventor to deliver description or specification of his invention or improvement &c. in duplicate.

4. In the case of any machine he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions. Principle of machine &c. to be explained.

5. He shall accompany the whole with drawings and written references made in duplicate, where the nature of the case admits of drawings, or specimens of the ingredients or of the composition of matter sufficient in quantity for the purpose of experiment. Drawings and written references in case of drawings and specimens of ingredients &c. for purpose of experiment to be delivered.

6. The applicant for a patent shall furnish duplicate drawings, wherever the case admits of drawings, one of which shall be deposited in the office of the Colonial Secretary or other officer appointed in that behalf, and the other shall be annexed to the patent and considered a part of the specification thereof, and a copy of the specification shall be in all cases annexed to the patent. Duplicate drawings whenever case admits to be furnished, one to be deposited in Colonial Secretary's Office and the other annexed to patent.

7. Notice of the said application shall be inserted in the Government *Gazette* and in one newspaper published in the principal town Notice of application to be published in *Gazette*.

*Patents.*

of each Province of the Colony, and requiring any person who may wish to prefer any objection to the granting of such letters patent to send, within four months of the said publication, to the office or address of such person so appointed as aforesaid, a statement in writing setting forth the grounds of such objection, subscribed with his proper name and address.

Governor may refer objections to persons appointed who shall report.

8. It shall be lawful for the Governor, upon receipt within the time aforesaid of such objection, and on the deposit by the opponent of the sum of ten pounds, to refer the consideration thereof to one or more competent person or persons, to be appointed by him, and also to direct the applicant for such letters patent and the opponent thereof to attend before such person or persons so appointed, who shall investigate the said matter, and shall be at liberty to call to his or their aid such witnesses as he or they may think fit, and to cause to be paid to such witnesses by the applicant or opponent such remuneration as he or they may direct, and such person or persons so appointed shall report to the Governor whether in his or their opinion such letters patent should be issued; and if any objection shall be sustained, the specification drawings and models shall be returned to the applicant, and the balance of ten pounds, after payment of such costs and expenses as may be awarded by the said investigator or investigators, shall be returned to the applicant or opponent respectively.

Costs of inquiry to be given.

9. It shall be lawful for such investigator or investigators, if he or they see fit, by certificate under his or their hand, to determine the amount of the costs of any hearing or inquiry upon such objection, and to order by and to whom such costs shall be paid; and if any such costs so ordered to be paid be not paid within seven days after service of such order, either personally or upon his agent or by leaving the same at his last usual place of abode, every such order may be made a rule of the Supreme Court.

If no objection, letters patent may be issued.

10. In case no objection shall be made within the time aforesaid to the grant of the said letters patent, or in case such person or persons so appointed shall report that such letters patent should be granted, the Governor may grant such letters patent, and such specification drawings and other things so sent as aforesaid shall be deposited with the Colonial Secretary or other officer appointed in that behalf.

Letters patent and specifications &c. to be enrolled.

11. The Colonial Secretary shall cause the said letters patent and the said specification and other things to be kept in his office, and shall also cause a book to be kept in his office, containing an index to all such letters patent which may be issued or assigned as hereinafter mentioned, the object to be attained by the invention to be protected thereby, the date thereof, the name of the person to whom the same is issued or assigned, and such description of the enrolment thereof as may be necessary to facilitate reference: And all persons whosoever may have access to the said books letters patent and other things, and may inspect the same, and may have copies thereof or of such parts thereof as they may require, certified by the Colonial Secretary, upon payment of reasonable expenses of making the same, and such certified copies or extracts shall be received in evidence in all Courts or proceedings whatsoever.

Holder of letters patent issued under this Act entitled to same privileges in New Zealand as patentee under Great Seal entitled to in England.

12. Any person to whom the Governor shall, according to the provisions herein contained, grant letters patent, shall have within the Colony, for a term of fourteen years next after the granting of such letters patent, the exclusive enjoyment and advantage in the Colony of such invention or improvement, and such and the same protection and such and the same remedies at law and in equity against any person in the Colony infringing the said letters patent, and generally such and the same rights powers and privileges throughout the Colony with

*Patents.*

with respect to the invention for which such letters patent shall be granted, as any person to whom letters patent for a new invention have been granted under the Great Seal of England has by the law of England in and throughout the realm of England save so far as such protection remedies rights powers and privileges may be inconsistent with the provisions of this Act: Provided that the provisions contained in an Act of the United Parliament of Great Britain and Ireland, passed in the Session of the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "*An Act to amend the Law touching Letters Patent for Inventions*," and the several provisions contained in an Act of the United Parliament of Great Britain and Ireland, passed in the Session of the fifteenth and sixteenth years of the reign of Her present Majesty, intituled "*An Act for amending the Law for granting Patents for Inventions*," shall not be deemed applicable to the Colony of New Zealand.

13. It shall be lawful for a larger number than twelve persons to have a legal and beneficial interest in any letters patent issued under the provisions of this Act.

More than twelve persons may be interested in letters patent.

14. Every patent granted under this Act shall be assignable in law, either as to the whole interest or any undivided part thereof, by any instrument in writing, a memorial of which assignment, and also every grant and conveyance and license of the exclusive right under any patent to make and use and to grant to others to make and use the thing patented within the Colony, shall be recorded in the office of the Colonial Secretary within six months from the execution thereof, upon payment by the assignee or grantee to the Colonial Treasurer of the sum of ten shillings.

Assignment of a patent and record thereof.

15. In any action in the Supreme Court for the infringement of any letters patent granted under the provisions of this Act, it shall be lawful for the Court, as well in its common law as its equity jurisdiction, or, if the Court be not sitting, then for a Judge of such Court, 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 shall seem fit.

Injunction may be granted.

16. Any letters patent granted by virtue of this Act shall be liable to be repealed, by writ of *scire facias*, for the same causes and in the same manner as any grants of the Crown are liable to be repealed.

Letters patent may be repealed by *scire facias*.

17. Whenever any patent granted under the authority of this Act shall be inoperative or invalid by reason of a defective or insufficient description or specification, or by reason of the patentee claiming 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 and without any fraudulent or deceptive intention, it shall be lawful for the Governor, upon the surrender of such patent and the payment to the Colonial Treasurer of the sum of ten pounds, 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 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 description and specification, shall have the same effect and operation in law on the trial of all actions commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form before the issuing out of the

Specification may be corrected.

*Patents.*

the original patent. And whenever the original patentee or his assignee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery, which shall have been originated 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 application, and on the deposit of ten pounds, to be accounted for in manner hereinbefore provided,) have the same annexed to the original description and specification, and the Colonial Secretary shall certify on the margin of such 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.

Disclaimer may be entered.

18. Any person who shall obtain such letters patent, or his assignee, may, if he think fit, enter with the Colonial Secretary a disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer, or may enter a memorandum of any alteration in the said title or specification not being such disclaimer or such alteration as shall extend the exclusive right granted by the said letters patent, and such disclaimer or memorandum of alteration being deposited with the Colonial Secretary shall be deemed and taken as part of such letters patent or such specification, and subject to the several incidents thereof: Provided that no such disclaimer or alteration shall be receivable as evidence in any action (save and except in any proceeding by *scire facias*) pending at the time when such disclaimer or alteration was enrolled; but in every such action the original title and specification alone shall be deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted.

Punishment for false entries or false affirmations.

19. If any person shall wilfully make or cause to be made any false entry or alteration in any register or assignment of patents as aforesaid, or in any specification, or shall wilfully make or forge or cause to be made or forged any false writing purporting to be a copy of any entry in the said book or of any such patent or specification, 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, or shall wilfully make any false affirmation before any Justice of the Peace respecting any of the matters concerning which an affirmation is hereby required to be made as aforesaid, he shall be guilty of a misdemeanour, and on conviction thereof shall be punished by fine and imprisonment at the discretion of the Court.

Holders or assignee of patent obtained in other countries may obtain letters of registration.

20. No person shall receive a patent under this Act for an invention or discovery which has been previously patented in Great Britain or any other country, but it shall be lawful for the Governor, in his discretion, on the application of any person being the holder or assignee of any patent granted in Great Britain or any other country for any new discovery or invention, and upon such proof as the Governor may deem sufficient that such person is the *bonâ fide* holder or assignee of the said patent, and that the same is in full force, and upon payment to the Colonial Treasurer of the sum of ten pounds, to grant letters of registration, under the Seal of the Colony, to the holder of such patent as aforesaid or his assignee, and such letters of registration shall be deposited in the office of the Colonial Secretary, and shall be deemed to be letters patent granted under this Act for such invention or improvement, and shall have the same force and effect as letters patent granted thereunder, and shall, unless repealed by writ of *scire facias* or otherwise, enure to the benefit of the holder during the continuance of the original patent in the country in which it was granted

*Patents.*

granted and no longer; and all the provisions of this Act shall apply to such letters of registration in the same way, *mutatis mutandis*, and as fully as to letters patent granted under this Act.

21. That if any action at law or any suit in equity for an account shall be brought in respect of an alleged infringement of such letters patent heretofore or hereafter granted, or any *scire facias* to repeal such letters patent, and if a verdict shall pass for the patentee or his assigns, or if a final decree or decretal order shall be made for him or them upon the merits of the suit, it shall be lawful for the Judge before whom such action shall be tried to certify on the record, or the Judge who shall make such decree or order to give a certificate under his hand, that the validity of the patent came in question before him, which record or certificate being given in evidence in any other suit or action whatever touching such patent, if a verdict shall pass or decree or decretal order be made in favour of such patentee or his assigns, he or they shall receive treble costs in such suit or action, to be taxed at three times the taxed costs unless the Judge making such second or other decree or order, or trying such second or other action, shall certify that he ought not to have such treble costs.

22. In any action against any person for infringing any letters patent, the defendant on pleading thereto shall give to the plaintiff, and in any *scire facias* to repeal such letters patent the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made on behalf of such defendant or plaintiff respectively at such trial unless he proves the objections stated in such notice: Provided always that it shall be lawful for any Judge at Chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections on such terms as to such Judge shall seem fit.

23. In any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial which shall be certified by the Judge before whom the same shall be heard, the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections as well to the statements or counts in the declaration and without regard to the general result of the trial.

24. If any person shall write paint or print, or mould cast or carve, or engrave or stamp, upon anything 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 other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns, or if any person shall, upon such thing not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having the license or consent in writing of such patentee or his assigns, write paint print mould cast carve engrave stamp or otherwise mark the word "Patent," the words "Letters Patent," or the words "by the Queen's Patent," or any words of the like kind meaning or import, with a view of imitating or counterfeiting the stamp mark or other device of the patentee, or shall in any other manner imitate or counterfeit the stamp or mark or other device of the patentee, he shall for every such offence be liable to a penalty of fifty pounds, to be recovered by action in the Supreme Court by any person to whom letters patent shall be granted under the provisions

If in any action or suit a verdict or decree shall pass for the patentee, the Judge may grant a certificate which shall entitle the patentee upon a verdict in his favour to receive treble costs.

Plaintiff in any action shall file with declaration notice of objections on which he means to rely at trial.

Judge at Chambers on summons may allow other objections at his discretion.

Costs of action.

Penalty for counterfeiting &c.

---

*Real Estate Administration.*

---

provisions of this Act or by his assignee: Provided always that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "Patent" upon anything made for the sole making or vending of which a patent before obtained shall have expired.

Interpretation clause.

**25.** In the construction of this Act the word "Person" shall include bodies corporate and companies as well as individuals, unless the context be repugnant thereto.

Royal prerogative  
saved.

**26.** Nothing in this Act contained shall be deemed to interfere with Her Majesty's Royal prerogative in granting or issuing or withholding the grant or issue of any letters patent.

---