
QUEENSLAND.

*Act No. 13 of 13th October, 1884, so far as it relates to
patents for inventions.*

AN Act to amend and consolidate the law relating to Patents for Inventions, and the Registration of Designs and Trade Marks.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Patents, Designs, and Trade Marks Act, 1884."

Division of Act into parts.

2. This Act is divided into parts, as follows:—

- Part I.—PRELIMINARY;
- Part II.—PATENTS;
- Part III.—DESIGNS;
- Part IV.—TRADE MARKS;
- Part V.—INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS;
- Part VI.—GENERAL.

General Definitions.

3. (1.) In and for the purposes of this Act, unless the context otherwise requires,—

“Examiner” includes examiners if more than one;

“The Court” means the Supreme Court of Queensland;

“Law Officer” means Her Majesty’s Attorney-General for Queensland;

“The Minister” means the Colonial Secretary or other Minister charged with the execution of this Act;

“Registrar” means the Registrar of Patents, Designs, and Trade Marks;

“Prescribed” means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act;

“Patent” means Letters Patent for an invention;

“Patentee” means the person for the time being entitled to the benefit of a patent;

“Invention” means any manner of new manufacture the subject of Letters Patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled “*An Act concerning Monopolies and Dispensations with Penal Laws and the forfeiture thereof*”), and includes an alleged invention;

“British possession” means any territory or place situate within Her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act;

“Legislature” includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only;

“Summary conviction” means a conviction under the Summary Jurisdiction Acts, that is to say the Acts regulating the duties of justices of the peace and any Acts amending or in substitution for them.

Transitional Provisions. Repeal and saving for past operation of repealed enactments, &c.

4. The Acts mentioned in the First Schedule to this Act are hereby repealed to the extent in the said Schedule indicated. But this repeal shall not—

- (a.) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or
- (b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or
- (c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Patent Office.

5. (1.) There shall be an office called the Patent Office at a convenient place, with such officers and clerks as the Governor in Council shall appoint, at which the business of this Act required to be transacted at the Patent Office shall be transacted.

(2.) The Patent Office shall be under the immediate control of an officer called the Registrar of Patents, Designs, and Trade Marks, acting under the superintendence and direction of the Minister.

(3.) Any act or thing directed to be done by or to the registrar may, in his absence, be done, by or to any officer for the time being in that behalf authorized by the Minister.

(4.) Until other provision is made in that behalf, the Registrar-General shall be and act as Registrar of Patents, Designs, and Trade Marks.

Commencement of Act.

6. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-four.

PART II.

PATENTS.

APPLICATION FOR AND GRANT OF PATENT.

Persons entitled to apply for Patents.

7. (1.) Any person, whether a British subject or not, may make an application for a patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

Application and specification.

8. (1.) An application for a patent must be made in the form set forth in the Second Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification. (Note.—See § 2 of Act No. 5, of 1886.)

(3.) In the case of a joint application the declaration may be made by one of the applicants.

(4.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(5.) A complete specification, whether left on application or subsequently, must particularly describe and set forth the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(6.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

Reference of application to examiner.

9. The registrar shall refer every application to an examiner or examiners, who shall ascertain and report to the registrar whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject matter of the invention. (Note.—See § 7 of Act No. 5, of 1886.)

Power for Registrar to refuse application or require amendment.

10. (1.) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, the registrar may require that the application, specification, or drawings be amended before he proceeds with the application.

(2.) Where the registrar requires an amendment, the applicant may appeal from his decision to the law officer.

(3.) The law officer shall, if required, hear the applicant and the registrar, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.

(4.) The registrar shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the registrar whether the specification appears to him to comprise the same invention; and, if he reports in the affirmative, the registrar shall give notice to the applicant that he has so reported.

(6.) Where the examiner reports in the affirmative, the registrar may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to recommend that a patent be granted on the application of the second applicant.

Time for leaving complete specification.

11. (1.) If the applicant does not leave a complete specifica-

tion with his application, he may leave it at any subsequent time within nine months from the date of application.

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned. (Note.—See § 3 of Act No. 5, of 1886.)

Comparison of provisional and complete specification.

12. (1.) Where a complete specification is left after a provisional specification, the registrar shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification. (Note.—See Act No. 5, of 1886, § 7.)

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the registrar may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and the registrar, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void. (Note.—See § 3 of Act No. 5 of 1886.)

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act unless the court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice and ought to be allowed.

Advertisement on acceptance of complete specification.

13. On the acceptance of the complete specification the registrar shall advertise the acceptance in the *Gazette*; and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

Opposition to grant of patent.

14. (1.) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the patent office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this colony on an application of prior date, or on the ground of an examiner having reported to the registrar that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application, but on no other ground.

(2.) Where such notice is given the registrar shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and any person so giving notice and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer shall appoint.

Sealing of patent.

15. (1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the registrar shall report the facts to the Minister.

(2.) The Minister shall thereupon submit the application for the consideration of the Governor in Council, who may direct a patent to be sealed with the Great Seal of the Colony.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, (Note.—See § 3 of Act No. 5 of 1886) except in the cases hereinafter mentioned, that is to say:—

(a.) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the

patent may be sealed at such time as the law officer may direct ;

- (b.) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

Date of patent.

16. Every patent shall take effect and be expressed to take effect as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

Provisional protection.

17. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same ; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Protection by complete specification. Effect of acceptance of complete specification.

18. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Extent of patent.

19. Every patent when sealed shall have effect throughout the Colony and its dependencies.

Term of patent.

20. (1.) The term limited in every patent for the duration thereof shall be fourteen years from the date from which it takes effect.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3.) If, nevertheless, in any case, by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the registrar for an enlargement of the time for making that payment.

(4.) Thereupon the registrar shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions :

(a.) The time for making any payment shall not, in any case, be enlarged for more than three months ;

(b.) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Amendment of specification.

21. (1.) An applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3.) Where such notice is given the registrar shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5.) Where no notice of opposition is given or the person so giving notice does not appear, the registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the registrar, the person making the request may appeal from his decision to the law officer.

(7.) The law officer shall, if required, hear the person making the request and the registrar, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.

Power to disclaim part of invention during action, &c.

22. (1.) In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Restriction on recovery of damages.

23. Where an amendment by way of disclaimer, correction, or explanation has been allowed under this Act, no damages

shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

Advertisement of amendment.

24. Every amendment of a specification shall be advertised in the prescribed manner.

Compulsory licenses. Power for Governor in Council to order grant of licenses.

25. If on the petition of any person interested it is proved to the Governor in Council that by reason of the default of a patentee to grant licenses on reasonable terms—

- (a.) The patent is not being worked in the Colony; or
 - (b.) The reasonable requirements of the public with respect to the invention cannot be supplied; or
 - (c.) Any person is prevented from working or using to the best advantage an invention of which he is possessed,
- the Governor in Council may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Governor in Council, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

Register of Patents.

26. (1.) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

(2.) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any Letters Patent or in any

license thereunder, must be supplied to the registrar in the prescribed manner for filing in the Patent Office.

Fees in schedule.

27. (1.) There shall be paid in respect of the several instruments described in the Third Schedule to this Act, the fees in that Schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time prescribed by the Governor in Council; and such fees shall be paid into the Consolidated Revenue.

(2.) The Governor in Council may from time to time reduce any of those fees.

Extension of term of patent on petition to Governor in Council.

28. (1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to the Governor in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the Clerk of the Executive Council at the Council Office, against the extension.

(3.) If the Governor in Council shall be pleased to refer any such petition to the Court, the Court shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Court shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Court report that the patentee has been inadequately remunerated by his patent, it shall be lawful for the Governor in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases, fourteen years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Court may think fit.

(6.) It shall be lawful for the Judges of the Supreme Court, or any two of them, of whom the Chief Justice shall be one, to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in cases of petitions to the Court.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Court; and the orders of the Court respecting costs shall be enforceable in the same manner as other orders of the Court.

- *Revocation of Patent.*

29. (1.) The proceeding by *scire facias* to repeal a patent is hereby abolished.

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent may, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action of infringement and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(a.) The Attorney-General.

(b.) Any person authorized by the Attorney-General;

(c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims;

(d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee;

(e.) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within the Colony, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the Court or a judge.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the registrar may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and taking effect from the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

Patent to bind Crown.

30. (1.) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, and others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Minister, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Minister after hearing all parties interested.

LEGAL PROCEEDINGS.

Hearing with assessors.

31. (1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceedings, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct.

(2.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court, and be paid in the same manner as the other expenses of the execution of this Act.

Delivery of particulars.

32. (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the judge, at any subsequent time, particulars of the breaches complained of.

(2.) The defendant must deliver with his statement of defence, or by order of the Court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty, must state the time and place of the previous publication or use alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection, &c., in action.

33. In an action for infringement of a patent, the Court or a judge may on the application of either party make such order for an injunction, inspection, or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit.

Certificate if validity questioned and costs thereon.

34. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or judge so certifies, then in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and

client, unless the Court or judge trying the action certifies that he ought not to have the same.

Remedy in case of groundless threats of legal proceedings.

35. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

MISCELLANEOUS.

Patent for one invention only.

36. Every patent may be in the form in the Second Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

37. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to his legal representative.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to have been the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

38. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by pro-

visional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

Assignment for particular places.

39. A patentee may assign his patent for the whole Colony or any place in or part of the Colony.

Loss or destruction of patent.

40. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the registrar, the Governor in Council may at any time cause a duplicate thereof to be sealed.

Proceedings and costs before law officers.

41. The law officer may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officer and the practice and procedure before him under this part of this Act; and in any proceeding before the law officer under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court.

Exhibition at industrial or international exhibition not to prejudice patent rights.

42. The exhibition of an invention at an industrial or international exhibition, certified as such by the Minister, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or the consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,—

- (a.) The exhibitor must, before exhibiting the invention, give the registrar the prescribed notice of his intention to do so; and

- (b.) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

Publication of indexes, &c.

43. The Registrar shall from time to time prepare and publish such indexes, abridgments of specifications, catalogues, and other works relating to inventions, as the Minister may direct.

Power to require models on payment.

44. The Minister may at any time require a patentee to furnish him with a model of his invention on payment to the patentee of the cost of the manufacture of the model: the amount to be settled, in case of dispute, by the Auditor-General.

Foreign vessels in Queensland waters.

45. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of the Supreme Court of Queensland, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connexion with the manufacture or preparation of anything intended to be sold in or exported from Queensland:

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorize subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

EXISTING PATENTS.

46. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected

by the provisions of this Act relating to patents binding the Crown, and to compulsory licenses.

(3.) In all other respects (except with regard to fees payable in respect of granting a patent) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Supreme Court shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the Patent Office.

PART V.

INTERNATIONAL AND INTERCOLONIAL ARRANGEMENTS.

And whereas by the one hundred and third section of the Act of the Imperial Parliament called "The Patents, Designs, and Trade Marks Act, 1883," it is enacted as follows, that is to say :—

(1.) If Her Majesty is pleased to make any arrangement with the Government or Governments of any Foreign State or States for mutual protection of inventions, then any person who has applied for protection for any invention in any such State, shall be entitled to a patent for his invention under this Act, in priority to other applicants ; and such patent shall have the same date as the date of the protection obtained in such Foreign State :

Provided that his application is made within seven months from his applying for protection in the Foreign State with which the arrangement is in force :

Provided that nothing in this section contained shall entitle the patentee to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification in this country :

(2.) The publication in the United Kingdom, or the Isle of Man, during the respective periods aforesaid, of any

description of the invention, or the use therein during such periods of the invention, shall not invalidate the patent which may be granted for the invention :

- (3.) The application for the grant of a patent, under this section must be made in the same manner as an ordinary application under this Act :
- (4.) The provisions of this section shall apply only in the case of those Foreign States with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to that State :

And by the one hundred and fourth section of the said Act it is further enacted as follows, that is to say :—

- (1.) Where it is made to appear to Her Majesty that the Legislature of any British Possession has made satisfactory provision for the protection of inventions, patented in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions (if any) as to Her Majesty in Council may seem fit, to such British Possession :
- (2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act ; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act :

Be it enacted as follows :—

International arrangements for protection of inventions.

80. (1.) If Her Majesty is pleased by Order in Council to apply the provisions of the said one hundred and third section of the Imperial Act, called "The Patents, Designs, and Trade Marks Act, 1883," to the Colony of Queensland, then any person who has applied for protection for any invention in England or in any Foreign State, with the Government of which Her Majesty has made an arrangement under the said section for mutual protection of inventions, shall be entitled to a patent for his invention under this Act, in priority to other applicants ; and such patent shall take effect from the

same date as the date of the *application* [Note.—*This word was substituted for "protection obtained" by s. 8 of Act No. 5 of 1886*] in England or such Foreign State, as the case may be:

Provided that his application is made within twelve months, from his applying for protection in England or the Foreign State with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification in this colony.

(2.) The publication in Queensland, during the periods aforesaid of any description of the invention, or the use therein during such periods of the invention, shall not invalidate the patent which may be granted for the invention.

(3.) The application for the grant of a patent, under this section, must be made in the same manner as an ordinary application under this Act.

(4.) The provisions of this section shall in the case of Foreign States apply only in the case of those Foreign States with respect to which Her Majesty shall from time to time by Order in Council declare the provisions of the aforesaid section of the said Imperial Act to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to that State.

Provision for Colonies and India.

81. (1.) Where it is made to appear to the Governor in Council that the Legislature of any British Possession has made satisfactory provision for the protection of inventions patented in Queensland, the Governor in Council may from time to time, by Order in Council, apply all or any of the provisions of the last preceding section relating to the protection of inventions patented in England, with such variations or additions, if any, as to the Governor in Council may seem fit, to inventions patented in such British Possession.

(2.) An Order in Council under this section shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for the Governor in Council to revoke any such Order in Council.

PART VI.

GENERAL.

PROCEEDINGS AT PATENT OFFICE.

Seal of Patent Office.

82. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

83. There shall not be entered in any register kept under this Act, or be receivable by the registrar, any notice of any trust expressed, implied, or constructive.

Refusal to grant patent in certain cases.

84. The registrar may refuse to recommend that a patent be granted for an invention of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in register.

85. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, the registrar shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, in the register of patents. The person for the time being entered in the register of patents, as proprietor of a patent, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from registers.

86. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Sealed copies to be received in evidence.

87. Printed or written copies or extracts, purporting to be certified by the registrar and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts of justice, and in all proceedings, without further proof or production of the originals.

Rectification of registers by Court.

88. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the registrar.

Power for registrar to correct clerical errors.

89. The registrar may, on request in writing accompanied by the prescribed fee,—

(a.) Correct any clerical error in or in connection with an application for a patent; or,

(b.) Correct any clerical error in the name, style, or address of the registered proprietor of a patent.

Falsification of entries in registers.

91. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Exercise of discretionary power by registrar.

92. Where any discretionary power is by this Act given to the registrar, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Power of registrar to take directions of Minister.

93. The registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Minister for directions in the matter.

Certificate of registrar to be evidence.

94. A certificate purporting to be under the hand of the registrar as to an entry, matter, or thing which he is authorized by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post.

95. (1.) Any application, notice, or other document authorized or required to be left, made, or given at the Patent Office or to the registrar, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office.

96. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or Bank holiday, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days, if two or more of them occur consecutively.

Declaration by infant, lunatic, &c.

97. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purpose of this Act be as effectual as if done by the person for whom he is substituted.

Power for Governor in Council to make general rules for regulating business of Patent Office.

98. (1.) The Governor in Council may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(c.) For making or requiring duplicates of specifications, amendment, drawings, and other documents ;

(d.) For securing and regulating the publishing and selling

of copies, at such prices and in such manner as the Governor in Council think fit, of specifications, drawings, amendments, and other documents ;

- (e.) For securing and regulating the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office ; and providing for the inspection of indexes and abridgments and other documents ;
- (f.) For regulating the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad ;
- (g.) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the registrar or of the Minister.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Governor in Council as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be published in the *Gazette*, and shall forthwith be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such house, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Annual reports of registrar.

99. The registrar shall, in every year, make a report respecting the execution by or under him of this Act which shall be laid before both Houses of Parliament, and therein shall be included for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

OFFENCES.

Penalty on falsely representing articles to be patented.

100. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented, if he sells the article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article.

Penalty on unauthorized assumption of Royal arms.

101. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of the Governor, or of any Government Department, the proof whereof shall lie on him, assumes or uses in connection with any trade, business, calling or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Former registers to be deemed continued.

102. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

Saving of prerogative.

103. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

SCHEDULES.

THE FIRST SCHEDULE.

Year and Number of Act.	Title of Act.	Extent of Repeal.
21 James I. c. 3 . [1623.]	The Statute of Monopolies.	Sectionsten, eleven, and twelve.
16 Victoria No. 24 .	An Act to authorize the Governor, with the advice of the Executive Council, to grant Letters of Registration for all Inventions and Improvements in the Arts or Manufactures, to have the same effect as Letters Patent in England so far as regards the Colony.	The whole.
31 Victoria No. 26 .	An Act to Amend the Law relating to Letters of Registration for Inventions and Improvements in the Arts or Manufactures by granting Provisional Certificates of Registration for a Limited period.	The whole.

THE SECOND SCHEDULE.

NOTE.—*The forms now required by the rules have been substituted for those in the Act.*

FORMS OF APPLICATION, &c.

FORM A.

Patents, Designs, and Trade Marks Act, 1884.

(PATENTS.)

APPLICATION FOR A PATENT.

(By an Original Inventor or two or more Inventors when all the Applicants sign the Declaration.)

I [or we] [*insert name, address, and occupation of applicant or applicants*] hereby apply that a patent may be granted to me [or us] for an invention for [*insert title of invention in full*].

And I [or we] the said [*insert name of applicant or applicants*] do solemnly and sincerely declare that I am [or we are] in possession of the said invention, and that I am [or we are] the true and first inventor thereof, and that the same is not in use within the colony of Queensland by any other person or persons to the best of my [or our] knowledge and belief.

And I [or we] make the above solemn declaration, conscientiously believing the same to be true and by virtue of the provisions of "*The Oaths Act of 1867*" [*if made out of Queensland omit these words and recite Statute under which declaration is made*].

[Signature].

Declared at in this day of 18 .

Before me [*signature of person taking declaration*].

NOTE.—If declared by more than one person, and at different times and places, insert after the word "Declared" the words "by the above-named," and add a separate jurat for each declarant.

The above declaration can be made, if

- (1) In Queensland or elsewhere, before any Commissioner of the Supreme Court for taking affidavits, or any Justice of the Peace for Queensland:
- (2) In any place in the British dominions out of Queensland, before any Court, Judge, or Justice of the Peace, or any person authorized to administer oaths there in any Court:
- (3) In any place out of the British dominions before a British Minister, or person exercising the functions of a British Minister, or a British Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a Notary Public, or before a Judge or Magistrate.

FORM A.¹

Patents, Designs, and Trade Marks Act, 1884.

(PATENTS.)

APPLICATION FOR A PATENT.

(When one of the Applicants is not the Original Inventor.)

We [*insert names, residences and occupations of applicants*] hereby apply that a patent may be granted to us for an invention for [*state title of invention*].

(If all the applicants do not join in the declaration, the one who makes the declaration must sign here for himself and the other applicant or applicants.)

Witness.

And I [or we] the said do solemnly and sincerely declare that
we the said and are in possession of the said invention,
and that I the said am [or the said is] the true and first

inventor thereof, and that the same is not in use within the colony of Queensland by any other person or persons to the best of my [or our] knowledge and belief.

(Here recite Statute under which declaration is made.)

Declared at in this day of 18 .

Before me [*signature of person taking declaration.*]

FORM A.²

Patents, Designs, and Trade Marks Act, 1884.

(PATENTS.)

APPLICATION FOR A PATENT.

(By the Assignee of the Inventor alone.)

I [or we] [*insert name, address and occupation of applicant*] hereby apply that a patent may be granted to me [or us] for an invention for [*insert title of invention in full*], and I [or we] do solemnly and sincerely declare that I am [or we are] the assignee of the said invention from [*insert name, address and occupation of inventor*], by virtue of a deed of assignment made by the said [*name of inventor*] dated the day of one thousand eight hundred and eighty ; and I [or we] further solemnly and sincerely declare that I am [or we are] in possession of the said invention, and that the said [*name of inventor*] is [or are] the first and true inventor thereof; and that the same is not in use by any other person or persons in the Colony of Queensland to the best of my [or our] knowledge and belief.

(Here recite Statute under which declaration is made.)

Declared at in this day of 18 .

Before me [*signature of person taking declaration.*]

FORM A.³

Patents, Designs, and Trade Marks Act, 1884.

(PATENTS.)

APPLICATION FOR A PATENT.

(By the Assignee of the Inventor jointly with the Inventor.)

We [*names, addresses and occupations*] hereby apply that a patent may be granted to us for an invention for [*insert title of invention in full*].

[*Signature of assignee for himself and the inventor.*]

Witness:

And I [or we], the said [*name in full of assignee*], do solemnly and sincerely declare that I am [or we are] the assignee of an undivided share in the said invention from the said [*name in full of inventor*], by virtue of a deed of assignment made by the said [*name in full of inventor*], dated the day of one thousand eight hundred and eighty . And I [or we] further solemnly and sincerely declare that we the said

[*names in full of assignee and inventor*], are in possession of the said invention; and that the said [*name in full of inventor*], is [or are] the true and first inventor thereof, and that the same is not in use by any other person or persons in the Colony of Queensland to the best of my [or our] knowledge and belief.

(*Here recite Statute under which declaration is made.*)

Declared at in this day of 18 .

Before me [*signature of person taking declaration*].

FORM B.

Patents, Designs, and Trade Marks Act, 1884.

(PATENTS.)

PROVISIONAL SPECIFICATION.

(To be furnished in duplicate.)

[*Title of invention.*]

I [or we] [*name, address and occupation*] do hereby declare the nature of my [or our] invention for [*title of invention*] to be as follows:—

(*Description of invention.*)

Dated this day of 18 .

FORM C.

Patents, Designs, and Trade Marks Act, 1884.

(PATENTS.)

COMPLETE SPECIFICATION.

[*Here insert title as in declaration.*]

I [*here insert name, address, and calling of inventor, as in declaration*] do hereby declare the nature of my invention for [*here insert title of invention*], and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement [*here insert full description of invention*]:—

* * * * * *

Having now particularly described and explained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is,—

- 1.
- 2.
- 3., &c.

[*Signature of inventor.*]

Dated this day of , 18 .

FORM D.

FORM OF PATENT.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To all to whom these presents shall come greeting:

Whereas *John Smith, of 29, Brisbane Street, Ipswich, in the Colony of Queensland, Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief:

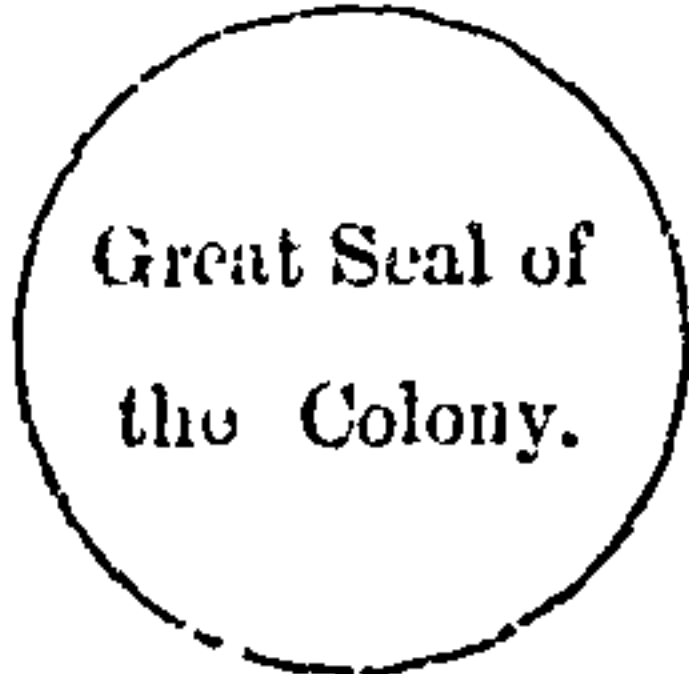
And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention:

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention:

And whereas we, being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion, do, by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our Colony of Queensland, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the [*date of application*]: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents, for us, our heirs and successors, strictly command all our subjects whatsoever within our said Colony that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, license, or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time

during the said term it be made to appear to our Supreme Court of Queensland that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our said Colony, or that the said patentee is not the first and true inventor thereof within the said Colony as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply, or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted, shall determine and become void, notwithstanding anything hereinbefore contained: Provided also that nothing herein contained shall prevent the granting of licenses in such manner and for such considerations as they may by law be granted: And lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this
, one thousand eight hundred and .



Great Seal of
the Colony.

THE THIRD SCHEDULE.

FEES ON INSTRUMENTS FOR OBTAINING PATENTS, AND RENEWAL.

(a.) *Up to sealing.*

	£	s.	d.	£	s.	d.
On application for provisional protection	2	0	0			
On filing complete specification	3	0	0			
				5	0	0
<i>or</i>						
On filing complete specification with first application				5	0	0
<i>(b.) Further before end of four years from date of patent.</i>						
On certificate of renewal				5	0	0

<i>(c.) Further before end of eight years from date of patent.</i>	£	s.	d.
On certificate of renewal	10	0	0

Or in lieu of the fees of £5 and £10 the following annual fees:—

Before the expiration of the fourth year from the date of the patent	.	1	0	0
” ” fifth ” ”	.	1	0	0
” ” sixth ” ”	.	1	0	0
” ” seventh ” ”	.	1	0	0
” ” eighth ” ”	.	1	10	0
” ” ninth ” ”	.	1	10	0
” ” tenth ” ”	.	2	0	0
” ” eleventh ” ”	.	2	0	0
” ” twelfth ” ”	.	2	0	0
” ” thirteenth ” ”	.	2	0	0

Act No. 5 of 4th of September, 1886.

An Act to amend the Patents, Designs, and Trade Marks Act, 1884.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows :—

Construction and Short Title.

1. This Act shall be construed as one with "*The Patents, Designs, and Trade Marks Act, 1884*" (in this Act referred to as the Principal Act).

This Act may be cited as "*The Patents, Designs, and Trade Marks (Amendment) Act, 1886,*" and this Act and the Principal Act may be cited together, as "*The Patents, Designs, and Trade Marks Acts, 1884 and 1886.*"

Amendment of s. 8 of 48 Vic. No. 13.

2. Whereas subsection two of section eight of the Principal Act requires a declaration to be made by an applicant for a patent to the effect in that subsection mentioned, and doubts have arisen as to the nature of that declaration, and it is expedient to remove such doubts: Be it therefore enacted that :—

The declaration mentioned in subsection two of section eight of the Principal Act may be either a statutory declaration under "*The Oaths Act of 1867,*" or not, as may be from time to time prescribed.

Amendment of ss. 11, 12, and 15 of 48 Vic. No. 13.

3. Whereas under the Principal Act, a complete specification is required by section eleven to be left within nine months, and by section twelve to be accepted within twelve months from the date of application, and a patent is required by section fifteen to be sealed within fifteen months from the date of application, and it is expedient to empower the Registrar to extend in certain cases the said times: Be it therefore enacted as follows:—

A complete specification may be left and accepted within such extended times, not exceeding three months and six months respectively, after the said nine and twelve months respectively, as the Registrar may on payment of the prescribed fee allow, and where such extension of time has been allowed, a further extension of six months after the said fifteen months shall be allowed for the sealing of the patent, and the Principal Act shall have effect as if any time so allowed were added to the said periods specified in the Principal Act.

Specifications, &c. not to be published unless application accepted.

4. Where an application for a patent has been abandoned, or become void, the specification or specifications and drawings (if any) accompanying or left in connection with such application shall not at any time be open to public inspection or be published by the Registrar.

Power to grant Patents to several Persons jointly.

5. Whereas doubts have arisen whether under the Principal Act, a patent may lawfully be granted to several persons jointly, some or one of whom only are or is the true and first inventors or inventor: Be it therefore enacted and declared that it has been and is lawful under the Principal Act to grant such a patent.

Application for patent by assignee of inventor.

6. When an inventor is out of the Colony, an application for a patent may be made by an assignee of the inventor, either alone or, if the whole right to the invention is not assigned, jointly with the inventor.

In any such case the following rules shall be observed:—

- (1.) The application must be accompanied by the instrument by which the invention is assigned by the inventor to the sole applicant, or the applicant who is not the inventor as the case may be.
- (2.) The provisional specification or complete specification may be signed either by the first inventor, or by the assignee, or by both.
- (3.) The form prescribed in the Second Schedule to the Principal Act for making applications for patents shall be modified, so far as may be necessary, so as to set forth that the applicant, or one of the applicants, is the assignee of the inventor, and also, if the assignee is the sole applicant, that the assignee is in possession of the invention, and that the inventor is the first and true inventor thereof.

Refusal of patent when it appears that the invention is not new.

7. Whereas doubts have arisen whether under the Principal Act an examiner may report that an invention in respect of which application is made for a patent is not novel, or is in use, or has been published, or has been already patented in Queensland, or whether the Registrar may refuse to accept the application, or to accept the complete specification, or to recommend the grant of a patent on the ground that the invention is not novel, or is in use, or has been published, or has been already patented in Queensland: Be it therefore enacted as follows:—

(1.) It shall be the duty of every examiner to whom an application for a patent is referred under the ninth section of the Principal Act, or to whom a complete specification is referred under the twelfth section of that Act, to report in addition to the matters in those sections mentioned whether, to the best of his knowledge, any of the following conditions exists with respect to the invention, that is to say:—

- (a.) That it is not novel;
- (b.) That the invention is already in the possession of the public, with the consent or allowance of the inventor;
- (c.) That the invention has been described in a book or other printed publication, published in Queensland before the date of the application, or is otherwise in the possession of the public;
- (d.) That the invention has already been patented in Queensland.

(2.) When an examiner reports that any of such conditions exists with respect to the invention, the Registrar may refuse to accept the application, or to accept the complete specification, or to recommend the grant of a patent in respect of the invention, unless the case is one which falls within the provisions of the forty-second or the eightieth section of the Principal Act, or unless, in the case of a prior patent having been granted, the Registrar has doubts whether the patentee or the applicant is the first inventor.

(3.) When the Registrar refuses to accept an application, or to accept a complete specification, or to recommend the grant of a patent, for any of the reasons aforesaid, he shall give notice of his refusal to the applicant, and the applicant may appeal to the law officer.

(4.) The law officer shall, if required, hear the applicant, and shall determine whether the application or the complete specification ought to be accepted, or whether the patent ought to be granted, as the case may be.

(5.) The law officer may, if he thinks fit, obtain the assistance of an expert, to whom the applicant shall pay such remuneration as the law officer shall appoint.

Amendment of s. 80 of Principal Act.

8. And whereas by the sixth section of the Act of the Imperial Parliament, called "*The Patents, Designs, and Trade Marks (Amendment) Act, 1885*," it is enacted that in subsection one of the one hundred and third section of the Act of the Imperial Parliament called "*The Patents, Designs, and Trade Marks Act, 1883*," recited in Part V. of the Principal Act, the words "date of the application" shall be substituted for the words "date of the protection obtained": Be it therefore enacted as follows:—

In subsection one of section eighty of the Principal Act the words "date of the application" shall be substituted for the words "date of the protection obtained."

SOUTH AFRICAN REPUBLIC.

Law of June 1st, 1887.

(From *The Observer*, Pretoria.)

WHEREAS it is desirable to encourage new and lawful inventions, by granting to inventors for a certain time the exclusive right of deriving the full benefit of their inventions.

It is hereby enacted as follows:—

Art. 1.

Every person, who makes a new industrial invention, capable of being made use of, as an object of trade or industry, shall have the exclusive right of the benefits derived therefrom, for such a term, and under such conditions as herein directed. This right will be granted by Letters Patent, to be issued by the Government in the form and manner as prescribed by this law.

Art. 2.

Every person, be he a citizen of the South African Republic or not, can apply for and obtain a patent right. Corporations and companies have the same right; the inventor, however, must be one of the members and as such be pointed out in the application.

Two or more persons can conjointly apply for and obtain a patent right.

Art. 3.

An application for a patent right shall be, as near as possible, in the form given in Schedule A, and must be accompanied by a description of the invention. The description may be in outlines or detailed. A description in general terms must give

the nature of the invention, and, if necessary, a drawing be attached. A description in detail must give particulars of the nature of the invention and the manner of working the same, and, if necessary, a drawing be attached.

Both descriptions must first give the name of the invention. As much as possible, the description must be in the form of Schedules B and C.

The use of the official language is compulsory.

Art. 4.

In the case of a description in general terms, the applicant has to deposit in the office of the Attorney-General his application and the necessary description.

Of the date on which this is done, an entry shall be made in this office and noted on the application and description. A delivery receipt shall be given to the applicant or his agent, on payment of the sum of money named in Schedule K. The applicant's invention will in this case be protected for the time of six months from the date of his receipt, which means that he may without prejudice to his right of obtaining at a later period a patent, make use of and make known his invention.

No one but the Attorney-General or any one on his behalf, shall become cognizant of such a preliminary description.

In case the name, or the description of the invention is not explicit enough or too prolix, the Attorney-General shall have the right to allow or demand the name or description to be made more explicit, altered, or amended during the said term of six months, and before a patent right is issued. Such a description in detail shall, from the time of the date of receipt of delivery from the Attorney-General, be considered, to be a description in detail, in terms of this law, and be subject to all regulations of this law, concerning descriptions in detail. The protection obtained for which will, however, cease at the expiration of six months from the date of receipt for the delivery of the preliminary description.

Art. 5.

In case of a description in detail, the applicant shall deposit his application at the office of the Attorney-General and along with it the description in detail belonging to it.

Of the date on which this is done an entry shall be made in this office and noted on the application and description. A

delivery receipt shall be given to the applicant or his agent, on payment of the sum of money named in Schedule K.

The applicant in this case enjoys the same right and privileges for the term of six months, as if a patent right for his invention had been granted him on the said date.

He is, however, not entitled to make a claim in respect thereof, unless and until he has obtained a patent right.

Art. 6.

In case the applicant of a patent right desires to go on with his application, he is to give notice thereof to the Attorney-General.

Along with this notice, he must state the name of his invention, and the date of the deposit of his application, and the accompanying description.

The Attorney-General shall then hand the applicant or his agent a notice as near as possible in the form as given in Schedule D.

The applicant shall see that this notice is published, as soon as possible, once in the *Government Gazette*, and in one other newspaper, printed in Pretoria, and twice in a newspaper published in or near the place where the applicant uses his invention, in case he does not use it where he lives; in case no newspaper is published there, then in such newspaper as is in circulation there.

Thereafter, every one who may be interested, shall be at liberty, on payment of the sum of money named in Schedule K, to oppose the granting of the patent right, by sending in to the Attorney-General in writing a statement, setting forth his objections, within such a time as the Attorney-General shall fix in above-named notice, not to be, however, shorter than one month.

Art. 7.

At the time and place in the notice named, the applicant shall produce the newspapers in which the notice has been published. The Attorney-General shall thereafter hear the application, as also all objections lodged with him in writing, in terms of Art. 6.

The applicant, the objectors, and their respective witnesses shall be heard separately, and not in the presence of the others.

The Attorney-General may call in the assistance of qualified

and other persons, and has the right to fix the amount to be paid to them by either the applicant or objector.

The Attorney-General has also the right to fix the costs for the hearing of an application, objection, or any other proceeding in connection with the granting of a patent right, or protection under this law, and by and to whom to be paid. The form in Schedule E shall be adhered to as much as possible. Such an order by the Attorney-General is recoverable at law.

Art. 8.

No objections having been lodged, or, if so, having been decided in favour of the applicant, the Attorney-General shall grant a certificate (as near as possible according to the form in Schedule F) for the granting of a patent right, on payment of the sum of money named in Schedule K. In his certificate he shall state all the conditions and regulations which it will be desirable or necessary to embody in the patent right.

Art. 9.

The Attorney-General having been requested by the party to do so, shall as soon as possible, prepare a patent right deed, in terms of his certificate. *Vide* Art. 8.

This draft deed, with the amount named in Schedule K, shall be sent to the office of the State Secretary, for the purpose of being signed by the State President, and countersigned by the State Secretary, and the affixing of the State seal. The signing and sealing will be done as soon as possible.

Art. 10.

The granting of a patent right for an invention, of which the application is contrary to law, good morals, or order, in the judgment of the Government may be refused.

Art. 11.

The signing and sealing of a draft patent right as referred to in Art. 9 will be refused:

1st. In case the application for it is sent in later than three months after the date of the granting of the certificate by the Attorney-General. *Vide* Art. 8.

2nd. In case the term of six months for protection, obtained by the sending in and depositing of the application

for protection, has already expired. Whenever the application for the signing and sealing has been made, however, before the expiration of the six months, and the signing and the sealing is delayed through no fault of the applicant, the signing and sealing may be done after the expiration of six months, but not later than one month thereafter.

In case the applicant dies within the aforementioned term of six months, the patent right deed will be granted to his representative up to the time of three months after his decease, even should the term of six months have expired already.

Art. 12.

Every patent right deed shall, as near as possible, be drawn up in the form as given in Schedule G, and shall bear the date of the day on which the application with the description having reference thereto, was deposited in the office of the Attorney-General.

Art. 13.

Every patent right deed shall be for fourteen years from the date of the deed ; but with this proviso, that all rights and privileges under it will lapse after the terms of three and seven years respectively, unless within the said terms the respective sums of money, named in Schedule K, be paid to the Treasurer-General, a receipt for the payment by this official be given, and the payment by him be noted on the deed.

In case the holder of the patent right, through any accident, error or negligence, does not make the prescribed payment within the prescribed terms, he can apply to the Government for grace of time. Whenever the Government comes to the conclusion that the neglect is occasioned by any of the above causes, the Government can extend the time of payment, provided the holder of the patent right makes the payment named in Schedule K. In all cases under the following conditions:—

- (a.) The time for a payment shall never be extended longer than three months.
- (b.) A lawsuit being commenced for infringement of a patent right, after a payment has become due, and before having obtained extension of time for such payment, the Court may refuse to give damages for such an infringement of the patent right.

Art. 14.

A patent right deed once having been granted, it will not be any longer lawful to inquire whether the regulations in Art. 6, about the giving and publishing of the notice named in said article, have been duly observed.

Art. 15.

In case a patent right deed has been lost or destroyed, or it is proved to the satisfaction of the Government that the document cannot be produced, a duplicate may be issued.

Art. 16.

When by virtue of this law a patent right for an invention has been granted, for which also a patent right has been granted in any other country, prior to the one in this State, then all the rights and privileges appertaining thereto shall cease, and the patent right deed shall lapse at the same time the term of the foreign patent right expires, and in case more than one foreign patent right exists, it will lapse at the expiration of the first one of them.

In case the term of a foreign patent right has expired already at the time of the granting of a patent right in this State, it will be of no value and force whatsoever.

Art. 17.

All descriptions with the explanatory drawings (if any) deposited at the office of the Attorney-General, shall immediately after the granting of a patent right deed, or if not granted, after the expiration of six months from the date of having deposited same, be removed for safe custody to any office, as the State President, with the advice and consent of the Executive Council, may direct.

Art. 18.

Every applicant or patent right holder may at any time apply in writing to the Attorney-General, to alter his description and the drawing in connection therewith, by way of effacing, improving, or adding to; stating in such application the nature of, and his reason for such alteration.

The State Attorney will thereafter hand him a notice, as near

as possible in the form as prescribed in Schedule II. This notice must be published in the manner as directed by Art. 6. The same way of proceeding shall be observed as is in Art. 6 directed for the application for a patent right deed.

All regulations thereanent apply in this case.

The Attorney-General shall decide whether, and under which conditions the application for alteration may be granted. This order must be registered in the office to be fixed upon by the Attorney-General.

No alteration shall be granted, of which the consequence would be, that the altered description would make it more comprehensive or differ from the unaltered description.

The permission to alter gives the party the right to make such alteration, except in cases of fraud, and such alteration shall be considered in all courts of law and for all other purposes as part of the description.

Art. 19.

In a law case for infringement of a patent right, or for having a patent right declared of no value, the Court can at any time make an order, that the holder of a patent right may, by way of effacing some parts of it, alter his description. The Court, for the above purpose, may also make an order for the postponement of the case.

Art. 20.

In case an alteration in terms of this law has been made, no damages for the use of the invention before such alteration was made, shall be given in a court of law, unless the patent right holder proves to the satisfaction of the Court, that his original application was made in good faith and with all necessary care.

Art. 21.

In case it is proved to the satisfaction of the Government, that in consequence of the refusal of the patent right holder to grant rights on reasonable terms :

- (a.) That the patent right is not made use of in this State ;
- (b.) That the ordinary demand of the patented article cannot be supplied ;
- (c.) That any one is prevented from making use of and deriving the full benefit of an invention in his possession ;

Then, the Government, by advice and consent of the Executive Council, can order the patent right holder to grant rights under such conditions as the case may require.

Art. 22.

Every patent right holder may apply to the State President to have the term of his patent right extended. Such an application must, however, be sent in six months previous to the expiration of the term.

The Government has the right to refer such applications for consideration to the High Court.

At least two months before the day appointed for the hearing of the application, the applicant shall publish in the same manner as described in Art. 6 a notice of the nature of his application, and as near as possible in the form as in Schedule I prescribed.

Every one having an interest to come in opposition to the application may lodge his objections with the Attorney-General, provided such is done at least one week before the day appointed for the hearing of the application.

The applicant, as also every one who has lodged any objections in the prescribed manner, may appear in person, or by counsel, to state his case. The applicant will open his case by proving that the aforementioned notice has been published in due form.

The Court in its report will note the nature of the invention and the value thereof to the public, the profit derived by the patent right holder, and any other circumstance connected therewith. The report shall further state, whether in the opinion of the Court it is advisable to grant a further term, and if so, for how long, and under what conditions and restrictions.

Art. 23.

The State President, by and with the advice and consent of the Executive Council, shall have the right, after hearing of the application for a renewal of a term, to issue a new patent right deed under such conditions, restrictions, and for such a length of time (never to be longer than fourteen years), as he may think advisable.

The new deed will date from the day of the expiration of the old one.

Art. 24.

The State President is authorised, by and with the advice and consent of the Executive, to have an inventory made of all descriptions, applications, and all other writings received, and deposited in connection with this law. This inventory will lie for inspection by the public, under such regulations as will, by virtue of this law, thereanent be made.

Art. 25.

In such an office as in terms of this law shall be fixed upon, shall be kept "A Register of Patent Right Deeds," in which shall be entered in chronological order, the deposits of applications for patent rights and the drawings belonging thereto, all alterations in patent right deeds and descriptions, all renewals of patent rights, the expiration and cancellation of patent rights, and all such other Acts and deeds concerning patent rights, as the President, by and with the advice and consent of the Executive, may direct.

This register, or a copy thereof, will lie for inspection to the public under such regulations as, in terms of this law, will be made.

Art. 26.

In the same office shall be kept "A Register of Patent Right Holders," in which shall be entered in the form and manner as the State President, by and with the advice and consent of the Executive Council, shall direct, all transfers of patent rights, or shares and interests therein, all concessions, with the names of the parties and the respective dates and all circumstances, which are of interest to an owner of a patent right. Every one may, on payment of the sum of money named in Schedule K, get a certified copy or extract from this register. Such a copy or extract is *primâ facie* proof of the contents thereof.

This register, or a copy thereof, will lie for inspection to the public under such regulations as, in terms of this law, may be made.

Art. 27.

He who intentionally makes, or causes to be made, a false entry in a register to be kept for the purpose of this law, or he who makes, or causes to be made, a false copy or extract from such a register, or he who uses, or causes to be used, a false entry,

copy, or extract, knowing the same to be false, as a proof, may be punished with five years' imprisonment with or without hard labour.

Art. 28.

The High Court can on application by any one, who complains about a wrong entry or wrongful omission in such a register, make an order to have such wrongful entry erased, or wrongful omission entered, or make any other order which the Court may deem necessary. The Court may also dismiss the application, and make an order as to costs in both cases.

The Court may at the hearing of such case make an order in respect to any question arising, on which a decision may be necessary for the correcting of aforementioned register.

Art. 29.

An application may be made to the High Court for the cancellation of a patent right deed on one or more of the following grounds:—

- (a.) That the patent right has been obtained by the violation of another's rights.
- (b.) That the person named as the first and real inventor was not such.
- (c.) That the invention was not new, *i.e.* published and made use of in this State, before the granting of the patent right.
- (d.) That the invention cannot be patented in terms of Art. 1.
- (e.) That the description refers to theoretical principles, systems, methods, inventions and conceptions, the practical application of which is not given.
- (f.) That the description in detail is not sufficient, *i.e.* that it has been omitted to make known the whole, or insufficiently explained.
- (g.) That the invention or the application of the same is contrary to law, order, and good morals.
- (h.) That the title of the invention fraudulently points to another matter instead of the true one.
- (i.) That the payments have not been made at the prescribed time.
- (k.) That the patent right has lapsed in terms of Art. 15 of this law.

Art. 30.

The cancellation of a patent right can only be asked by the following persons :—

- (a.) The Attorney-General.
- (b.) Every person expressly authorized thereto by the Attorney-General.
- (c.) Every person who avers that the patent right has been obtained in opposition to his rights, or the rights of another person, from whom he derives his rights.
- (d.) Every one who avers that he, or another person from whom he derives his right, is the inventor of the article in question.
- (e.) Every one who avers that he, or his partner, or another person from whom he derives his rights, has publicly made, used, or sold before the time of the granting of the patent right, that which the patent right holder claims as his invention.

Art. 31.

In respect to a lawsuit for the cancellation of a patent right the following regulations have to be observed :—

1. The plaintiff has to state in his application the facts on which he bases his action. No proof will be allowed, not so stated, unless by sanction of the Court.
2. This statement of facts can at a later date, with the sanction of the Court, be amended.
3. The defendant has the right to begin with the proofs in support of his patent right, and if the complainant produces proof against the validity of the patent right, the defendant is allowed to bring further proof.

Art. 32.

In case a patent right is cancelled on the grounds of fraud, the Government may, on the application of the true inventor (made in terms of this law), issue to him a new patent right deed (in place of the cancelled one), the date of which shall be the date of the cancellation of the first one. This new patent right will cease to have force at the time of the expiration of the term of the cancelled one.

Art. 33.

He who sells an article as being patented, for which no patent right has been granted, shall be punished with a fine not exceeding £25.

Art. 34.

He who sells any article as having a patent right for it, and for which another person has a patent right, shall for every contravention be fined £50, of which the half will go to the State, and the other half, with costs of the law case, to the patent right holder, who can recover such amount by process of ordinary debts.

Art. 35.

In the meaning of this law any one is reckoned to have sold an article as patented, if the word patent, patented, or other words which express or could lead to the impression that it was patented, are impressed, engraved, printed upon, or affixed to it in any other way.

Art. 36.

An action in the High Court for infringement of a patent right can be brought against any one, who, during the term of the patent right, without the sanction of the patent right holder, makes use of, sells, or imitates his invention.

All grounds on which the cancellation of a patent right may be asked, are a good defence in a lawsuit for the infringement of a patent right.

Art. 37.

In a suit for infringement of a patent right, the plaintiff will have to make, along with his summons, or within the time fixed by the Court, a statement of the acts of the infringement.

The defendant must in his answer, or by order of the Court within a certain time, state his objections.

In case the defendant denies the validity of the patent right, then his answer must state on what grounds; and in case one of his assertions is that the invention in question is not a new one, he must make known the time and place of the previous publication or application of said invention.

At the hearing of the case for infringement, no proof shall be admitted which has not been stated as above directed, unless by consent of the Court.

The plaint and answer thereto may, by consent of the Court, be altered at a later stage.

In taxing costs the nature of the plaint and answer respectively made by plaintiff and defendant shall be borne in mind. No party shall have costs in respect of any statement the Court does not consider proved and material to the case, irrespective of the general costs of the case.

Art. 38.

In a lawsuit for cancellation or infringement of a patent right, the Court can of its own motion, or at the request of one or other of the parties, call in the services of an expert with whose assistance the whole case, or partly, may be gone into and settled.

The eventual payment of such an expert shall be fixed by the Court.

Art. 39.

In a suit for infringement of a patent right, the Court may, on application of one of the parties, order the suspension of work, the producing of accounts, the making of an inspection, and such other measures as may appear necessary and desirable.

Art. 40.

In a suit for infringement of a patent right, the Court may declare that the validity of the patent right was a point for decision. Whenever this is the decision of the Court, the plaintiff will have in every other suit for infringement of his patent right, whenever judgment is in his favour, a claim for his full costs, and costs between attorney and client, unless the Court expressly decrees otherwise.

Art. 41.

Patent rights will not be granted for more than one invention. It is not lawful to object to a patent right on the grounds that it embraces more than one invention.

Art. 42.

Whenever any one in possession of an invention dies, before having applied for a patent right, his lawful representative may do so, to obtain a patent right for such invention.

Such application must be made within six months of the

death of such person, and must contain a declaration by the lawful representative, that the deceased was the true inventor.

Art. 43.

A patent right granted to the first rightful inventor shall not become null and void by reason of an application infringing on his right, nor through the obtaining of preliminary protection, nor through the making use of and publishing of such invention after the depositing of the application.

Art. 44.

A patent right holder can make over his right for a certain place in or for a certain part of this State, as if the patent right was only granted for such a place in or such part of the State.

Art. 45.

The showing of an invention at an international or industrial exhibition or the working of an invention at such exhibition or the making known of an invention during the time of such exhibition at some other locality by some one not authorised thereto by the inventor, does not prejudice or prevent the inventor or his lawful representative from getting protection, or a patent right for his invention, nor does it invalidate a patent right already obtained, provided always that the following conditions have been observed:—

- (a.) The exhibitor must, previous to exhibiting his invention, inform the Attorney-General in writing of his intention to do so.
- (b.) His application for a patent right must be made within six months from the opening of such exhibition.

Art. 46.

The Government has the right to demand from the patent right holder at any time a model of his invention on paying the cost of the making of the same. In case of disagreement about the price, the same to be fixed by arbitrators.

The object of such models will be determined on by the Government.

Art. 47.

In case any one is prevented through being a minor, or mentally incapacitated, or some other cause, to make a declaration,

or perform some other act, required by this law, or regulations made by virtue of it, his guardian or curator, or these failing, a person appointed by the High Court on the application of any one on behalf of such person or of any one interested in the matter, may make a declaration, or do such act, in the name and on behalf of such aforementioned person as may be required. All acts done by such a representative for the purposes of this law shall have the same force as if done by the person himself so represented.

Art. 48.

All sums of money named in Schedule K, and paid for the therein objects, shall be part of, and be included in, the general revenue of the State.

Art. 49.

The State President is hereby empowered, by and with the advice and consent of the Executive Council, to take such measures and publish such regulations as may be required and appear advisable for the carrying out of this law.

Art. 50.

The short title of this law is to be the "Patent Right Law."

Art. 51.

This law comes in force on the 1st of October, 1887.

SCHEDULE A.

Form of application for a patent right.

I, 1
 occupation 2
 declare hereby that I am in possession of an invention for 3
 that I am the first and true inventor thereof; that as far as I know and
 believe, this invention is not made use of by any other person or persons;
 and I respectfully make application, for a patent right for said invention
 the day of in the year of our Lord. 4

1. Fill in: Name and residence of inventor.
2. „ Occupation of inventor.
3. „ Title or name of invention. (For example: "Improvement of Sewing Machines.")
4. „ Signature of the inventor.

SCHEDULE B.

Form of a preliminary description.

I, 1
 by occupation 2
 declare hereby, that the nature of my invention for 3
 is as follows : 4

Declared this day of 18

1. Fill in : Name and residence of inventor.
2. „ Occupation of inventor.
3. „ Title or name of invention.
4. „ Preliminary description of invention.

SCHEDULE C.

Form of a full and complete description.

I, 1
 by occupation 2
 declare hereby, that the nature of my invention for 3
 and the way and manner of making use of the same is fully explained by 4
 the following description : 5

1. Fill in : Title or name of invention.
2. „ Name and residence of inventor.
3. „ Occupation of inventor.
4. „ Title or name of invention.
5. „ Full and complete description of invention.

SCHEDULE D.

Application for a patent right for 1

Be it hereby made known for general information that 2
 by occupation 3
 on the day of the month 18
 deposited at my office, an application for a patent right for above-
 mentioned invention with accompanying description.

Whereas now the said 2
 has given me written notice that he is desirous to proceed with his appli-
 cation, I have determined that this application, and all objections against
 it, will be considered at my office on the day of the month
 18 at o'clock at noon.

I therefore call up all persons, who are interested in opposing the
 issuing of a patent right, to deposit at my office before the day of inves-

tigation, a document, in which they explain their objections, as they will otherwise be excluded from bringing this forward.

Thus done the _____ day of the month _____ 18

Attorney-General.

1. Fill in: Title of invention.
2. „ Name and residence of the applicant.
3. „ Occupation of the applicant.

SCHEDULE E.

After having heard the objection of _____ 1
against the granting of a patent right for _____ 2
to _____ 3

I hereby order that the said _____ 1

will pay to the said _____ of _____
for costs of investigation of this case, the sum of _____
(or; to _____ 4

for attending the investigation of the case.)

Thus done the _____ day of the month _____ 18

Attorney-General.

1. Fill in: Name of the objector.
2. „ Title of the invention.
3. „ Name of the applicant for patent right.
4. „ Name of witness or expert.

SCHEDULE F.

Having heard and considered the application of _____
for a patent right for _____ and all objections filed against
it, and having seen the description and the necessary and usual publica-
tions, I am of opinion (it being entirely for account of the applicant
whether the said invention is new, and whether it will have the desired
effect) that a patent right for the same can be issued in the form as
prescribed in Schedule _____, of the Law on Patents, with addition to the
following clauses;

Thus done the _____ day of the month _____ 18

Attorney-General.

SCHEDULE C.

Whereas J. S., residing at _____
by occupation _____
possession of an invention for _____

made a declaration, that he is in _____
that he is the first _____

and lawful inventor of the same, and that this invention to the best of his knowledge and belief is not employed by another;

Whereas the said inventor with due respect has applied for himself, his executors, administrators, and successors (hereinafter to be called the patentee), that a patent right for the exclusive development of this invention may be issued.

Whereas the said inventor did by and in his complete description amply describe the nature of his invention.

Therefore the exclusive right is hereby granted to the said patentee, during the period of fourteen years, to develop, use, employ, or sell, the said invention, and to have all the benefit thereof;

This patent right is issued by virtue of Law No. 6, 1887, entitled "Patent Right Law," and will be void if any of the conditions to which a patent right, according to said law, is subject, are not fulfilled, and by which non-fulfilment, according to said law, nullity may follow.

Further be it stipulated that the right granted by the patent right does not exclude the probability to grant permission to others.

In proof whereof the official seal of the State has been hereunto attached.

Pretoria,

State Secretary,

State President.

SCHEDULE H.

Patent right for 1

Be it hereby made known for general information that 2
addressed an application to me to be allowed to alter the description of
the above-mentioned invention by means of
the particulars of which are mentioned below.

I have determined that this application, with all objections against it,
will be heard at my office, on the day of the
month 18 at o'clock noon, and I there-
fore call on all persons, who have an interest to oppose the granting of
this application, to deposit at my office before said date of investigation a
document in which they explain their objections, as they will otherwise
be excluded from advancing it.

Thus done the day of the month 18
Attorney-General.

1. Fill in: Title of invention.

2. „ Signature of the applicant.

The alteration I wish to make in
is as follows: (The applicant must herein distinctly mention his desire
and his reasons, and sign at foot.)

SCHEDULE I.

Patent right for

1

Be it hereby made known for general information that I forwarded an application to His Hon. the State President, requesting an extension of the term of above-mentioned patent right, and that this application is referred to the High Court for hearing.

The hearing of this application is fixed for the day of the month 18 at o'clock noon, or as soon as possible thereafter as the case can be heard.

All persons who have an interest in opposing the application must file a document at the office of the Attorney-General at Pretoria, before the date of the trial, in which they explain the objections, otherwise they will be excluded from advancing the same.

, the day of the month 18

2

1. Fill in: Title of the invention.
2. „ Signature of the applicant.

SCHEDULE K.

Fees.

	£	s.	d.
At the deposit of application and description	1	1	0
At the deposit of an objection	1	1	0
Issuing of certificate in terms of Art. 8	1	1	0
For signing and sealing the patent right	1	10	0
Before or at the expiration of the term of three years	5	0	0
Before or at the expiration of the term of seven years	10	0	0
For extending the term of payment according to Art. 13.	5	0	0
For copy or extract per page	0	2	0
At giving notice of intention to proceed with application according to Art. 6	0	5	0
Alteration of description	0	10	6
For the issuing of a notice	1	1	0
Every examination	0	1	0
Entry of cession or permission	0	5	0
Certificate thereof	0	5	0

SOUTH AUSTRALIA.

Act No. , 1887.

An Act to amend the Law relating to Patents.

Preamble.

WHEREAS it is desirable to amend the law relating to patents—
Be it therefore enacted by the Governor of the province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows :—

Short Title.

1. This Act may be cited as “The Patents Amendment Act, 1887.”

Incorporation.

2. This Act and “The Patent Act, 1877,” and “The Patent Act Amendment Act, 1881,” except so far as the same are altered by this Act, shall be incorporated and read and construed together.

Certificate of provisional protection may be obtained.

3. Any person entitled to obtain a patent may obtain a certificate entitling him to provisional protection for any such invention, or improvement, upon payment of the fee mentioned in the schedule to this Act, and on depositing with the Commissioner a petition and specification in the prescribed form.

Duration of certificates.

4. A certificate of provisional protection shall continue in force for twelve months and no longer, and shall be null and void if before the date of the expiration thereof the lawful holder of such certificate shall fail to make application for letters patent in terms of "The Patent Act of 1877" and "The Patent Act Amendment Act, 1881."

Provisional protection.

5. When a petition for provisional protection has been accepted, the invention may, during the period of twelve months, be used and published without prejudice to the patent to be granted for the same, and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Schedule of fees.

6. The fees mentioned in the Schedule of this Act shall be paid in respect to the several matters and things therein respectively referred to, in lieu of the fees mentioned in Schedule of "The Patent Act Amendment Act, 1881."

The Commissioner of Patents.

7. The Governor may appoint any officer in the Civil Service to be Commissioner of Patents, and, on any such appointment, any person theretofore Commissioner of Patents shall thereupon cease to be Commissioner of Patents.

THE SCHEDULE.

Fees to be paid in respect of the several matters hereunder specified:—

	£	s.	d.
For every provisional protection	1	0	0
For every patent	2	0	0
Examiner's fee on reference when necessary, not exceeding	3	3	0
On every patent before the expiration of three years from its date	2	10	0
And before the expiration of seven years	2	10	0

	£	s.	d.
On filing every amended or substituted specification	1	0	0
On notice of opposition to grant of patent	0	10	6
On every summons to witnesses	0	5	0
On hearing of every opposed application	1	0	0
On extension of patent	20	0	0
For every office copy (including the seal) per folio of seventy-two words	0	0	6
On deposit of any assignment, deed, licence, or other document affecting proprietorship of patent	1	0	0
On every search, including inspection	0	2	6
Annual fee for licence to patent agent	5	0	0

SWITZERLAND.

I.—General Provisions.

Art. 1.

The Swiss Confederation grants, in the form of patents of invention, to the authors of new inventions applicable to industry and represented by models, or to their assigns, the rights specified in the present law.

Art. 2.

Inventions which at the time of the application for the patent are sufficiently known in Switzerland to enable them to be carried out by a man in the trade shall not be considered as new.

Art. 3.

No one shall, without the authorization of the proprietor of the patent, make the patented article or trade in it.

If the patented article is a tool, a machine or other means of production, the use of this article for an industrial purpose shall likewise require the authorization of the proprietor of the patent. This authorization shall be considered as granted if the patented article is put on sale without any restrictive condition.

Art. 4.

The provisions of the preceding article shall not be applicable to persons who, at the time of the application for the patent, shall have already worked the invention or taken the necessary measures for its working.

Art. 5.

The patent is transmissible by succession. It can also form the subject of a total or partial assignment, of a mortgage or of a licence authorizing a third party to work the invention.

To be operative against third parties. Transmissions of patents and licences must be registered according to the provisions of Article 19.

Art. 6.

The term of patents shall be fifteen years, to commence from the date of the application.

There shall be paid for each patent an application fee of 20 francs and an annual and progressive tax fixed as follows:—

1st year, 20 francs.

2nd „ 30 „

3rd „ 40 „

and so on up to the 15th year, for which the tax shall be 160 francs.

These taxes shall be payable in advance on the first day of each year of the patent. The proprietor may pay in anticipation the tax for several years; if he renounces his patent before the expiration of the term for which the taxes have been paid, the latter shall be repaid to him *pro rata* for the annuities not then due.

Art. 7.

The proprietor of a patent who makes an improvement in the patented invention may obtain, upon payment of a single tax of 20 francs, an additional patent expiring with the principal patent.

Art. 8.

If an inventor domiciled in Switzerland shows that he is without resources, there may be granted to him, for the payment of the first three annuities, a delay which shall extend up to the commencement of the fourth year; and if he then allows his invention to become public property, the taxes due shall be remitted.

Art. 9.

The patent shall be forfeited:—

(1.) If the proprietor of the patent renounces it by a decla-

ration in writing addressed to the Federal Office of Industrial Property.

- (2.) If he has not paid the annual tax at the latest within three months after it was due (Art. 6).

The Federal Office of Industrial Property will immediately give, without however being obliged to do so, notice to the proprietor that the tax is overdue:—

- (3.) If the invention has not been in any way carried out in practice at the expiration of the 3rd year from the date of the application.

- (4.) If the patented article is imported from abroad and at the same time the proprietor of the patent has refused applications offered on equitable terms for Swiss licences.

The forfeiture referred to in §§ 3 and 4 shall be pronounced, on the application of any interested person, by the tribunals having jurisdiction in patent cases (Art. 30).

Art. 10.

Patents granted in any of the following cases shall be declared null and of no effect:—

- (1.) If the invention is not new or is not applicable to industry.
- (2.) If the proprietor of the patent is not the author of the invention or his assign; until the contrary is proved, the person to whom the patent has been granted shall be considered as the author of the invention to which it relates.
- (3.) If the title under which the patent was applied for indicates, with the intention of leading others into error, an object other than the true object of the invention.
- (4.) If the specification (description and drawings) of the invention lodged with the application is not sufficient for the carrying out of the invention by a man in the trade or does not correspond with the model (Art. 1, § 3).

The action for annulment can be brought before the competent tribunal by any interested person.

Art. 11.

A person not domiciled in Switzerland shall not be able to claim the delivery of a patent and the enjoyment of the

rights resulting therefrom until he has nominated an attorney domiciled in Switzerland.

The latter is authorized to represent him in all steps to be taken according to the tenor of the present law, as well as in proceedings concerning the patent.

The tribunal in whose jurisdiction the representative is domiciled shall be competent to try actions brought against the proprietor of the patent, or in default, that in the jurisdiction of which the Federal Office is situated.

Art. 12.

The proprietor of a patent who finds it impossible to work his invention without using an invention previously patented, may exact of the proprietor of the latter the grant of a licence if three years have elapsed since the lodging of the application for the first patent, and if the new invention has a real industrial importance.

If the licence is granted, the proprietor of the first patent shall reciprocally have the right of requiring also a licence authorizing him to work the new invention, provided that it has in its turn a real connection with the first.

All litigation which may arise out of the application of the above provisions shall be settled by the Federal Tribunal, which shall determine at the same time the amount of the indemnity and the nature of the guarantees to be furnished.

Art. 13.

When the public interest requires it, the Federal Assembly may, at the demand of the Federal Council, or of the Cantonal Government, decree the appropriation of a patent at the expense of the Confederation or of a canton.

The Federal decree shall determine whether the invention shall become the exclusive property of the Confederation or shall become public property.

The Federal Tribunal shall fix the amount of the indemnity which should be paid to the proprietor of the patent.

II.—Application for and delivery of Patents.

Art. 14.

Whoever shall desire to obtain a patent for an invention must make the application, in the prescribed form, to the Federal Office of Industrial Property.

This application must be limited to a single principal invention with matters of detail which relate thereto.

It shall indicate the title of the invention, which must point out in a clear and precise manner the nature of the article invented.

To this application there shall be annexed:—

- (1.) A description of the invention, comprising, in a special clause, the concise enumeration of the constituent characteristics of the invention.
- (2.) The drawings necessary to the understanding of the description.
- (3.) Proof that a model of the invented article exists, or that the article itself exists; a carrying out of the invention or a plastic representation making clearly known the nature and object of this latter shall be considered as a model.
- (4.) The sum of 40 francs, being the tax on application, and the first annuity on the patent (Art. 6).
- (5.) A list of the papers and articles lodged.

The application and the papers annexed thereto must be drawn up in one of the three national languages.

In case of the refusal of the patent, the annuity of 20 francs, as well as the papers and articles lodged, shall be restored to the depositor.

Art. 15.

The Federal Council may declare the lodging of models to be obligatory in cases which relate to certain categories of inventions.

Rules of the Federal Council will regulate the carrying out of the present and the preceding articles, and in particular will determine the nature of the proof required by Art. 14, § 3.

Art. 16.

A provisional patent shall be delivered to every person who lodges with an application for a patent, the matters specified in §§ 1, 2, 4, and 5 of Art. 14.

The sole effect of a provisional patent is to assure to its proprietor during a period of two years, dating from the day of application, the right of obtaining an absolute patent notwithstanding any publication of the invention which may take place in the interval. The proprietor of a provisional patent

shall have no right of action against persons who imitate or who utilise his invention.

Before the expiration of the above-mentioned period of two years, the proprietor of a provisional patent should, by fulfilling the formality prescribed by Art. 14, § 3, obtain a complete patent, in default of which the patent shall lapse.

A complete patent has no retro-active force, but its term is calculated from the date of the provisional patent.

Art. 17.

Every application in which the formalities prescribed by Arts. 14, 15 and 16 have not been fulfilled shall be rejected by the Federal Office of Industrial Property subject to an appeal to the superior administrative authority within a peremptory period of four weeks.

If the Office thinks that the invention appears not to be patentable for any of the reasons enumerated in Art. 10, it shall give a preliminary and private notice to the applicant of the fact, so that he may, at his option, support, modify or abandon his application.

Art. 18.

Patents (provisional or complete) for which application has been duly made shall be delivered without delay at the risk and peril of the applicants and without guarantee of the reality, novelty or merit of the invention.

A certificate from the Federal Office verifying the fulfilment of the prescribed formalities, and to which shall be annexed duplicates of the description and drawings mentioned in Art. 14, shall be delivered to the applicant and shall constitute the patent of invention (provisional or complete).

Art. 19.

The Federal Office of Industrial Property shall keep a register containing the following information:—

The subjects of the patents granted, the name and domicile of the proprietors of the patents and of their attorneys, the date of application and that on which the proof of the existence of the model was supplied, as well as all changes relating to the existence, to the ownership and to the enjoyment of the patent.

A note shall be made in the register of the lapsing, the nullity, or of the appropriation of a patent, pronounced by judicial decision, as well as of the licences granted by the Courts on the notification by the winning party of the judgment come into force.

Art. 20.

Every proprietor of a complete patent must mark in a visible place articles manufactured under the said patent with the Federal Cross (☞) followed by the number of the patent.

If the nature of the articles does not allow of this indication being placed upon them, it may be put upon their packages.

No action can be commenced for the imitation of the patented article if the owner of the patent has neglected to mark his products in the manner indicated above.

Art. 21.

The proprietor of a patent may require that the persons mentioned in Art. 4 shall also mark articles made by them with the Federal Cross and the number of the patent.

Art. 22.

Any person may obtain from the Federal Office oral or written information respecting the contents of the register of patents.

The Federal Council shall fix a moderate tariff for this information.

Art. 23.

Immediately after the delivery of patents (provisional or complete) the Federal Office shall publish the titles of the patents, with their serial numbers, as well as the names and domiciles of the proprietors of the patents and of their attorneys.

It shall publish in the same way every annulment or lapsing, as well as every change occurring in the ownership of a patent.

The Federal Office shall publish besides the descriptions and drawings annexed to applications for patents and shall sell them at a moderate price. These publications shall be forwarded gratuitously to the Departments of the Federal Council, to the Federal Tribunal, to the Cantonal Governments, especially for the tribunals appointed to adjudicate in actions for infringe-

ment, as well as to the public establishments of higher education and to the Industrial Museums of Switzerland. It shall also exchange them for similar publications appearing in other countries.

Upon the demand of the inventor, the publication of the description of the invention may be postponed for six months, so as to allow of the taking of patents abroad. In this case the patentee shall have no right of action against infringers until the actual publication which shall take place at the expiration of the above-mentioned delay.

III.—Infringement.

Art. 24.

Shall be prosecuted civilly or criminally according to the provisions hereinafter contained :—

- (1.) Those who have imitated the patented articles or have illicitly used them.
- (2.) Those who have sold, put on sale or in circulation infringing articles, or who have introduced them on to Swiss territory.
- (3.) Those who have knowingly assisted in these acts, or who have countenanced or facilitated their commission.
- (4.) Those who have refused to disclose the origin of infringing articles found in their possession.

Art. 25.

Those who have wilfully committed the acts referred to in the preceding article shall be condemned in civil damages and punished by a fine of from 30 to 2000 francs or by imprisonment for from three days to a year, or by these two penalties together.

The penalty may be increased up to double in case of repetition of the offence.

The penalties shall not be applicable when there has been merely error, imprudence or negligence. The civil damages shall nevertheless remain applicable in the case referred to in § 1 of Art. 24.

Art. 26.

A civil action may be commenced by any interested person.

Criminal prosecutions shall only take place upon the complaint of the injured party, and according to the criminal

procedure of the Canton where the action is commenced. This may be done either in that of the domicile of the offender or that of the place where the offence was committed. In neither case shall there be more than one criminal prosecution for the same offence.

Proceedings shall be barred when more than two years have elapsed since the last acts of infringement.

Art. 27.

Upon application, either civil or criminal, the tribunals may order the necessary conservative measures. They may, particularly upon the production of the patent, cause to be drawn up an exact inventory of the articles alleged to infringe and also of the instruments and tools employed exclusively for the infringement, and they may order, in case of need, the seizure of the said articles, instruments and tools.

Before a seizure is effected the tribunal may require the plaintiff to deposit security.

Art. 28.

The tribunal may order the confiscation of the articles seized on account of or up to the amount of the damages and fines.

It shall prescribe, even in cases of acquittal, if it is necessary, the destruction of the instruments and tools exclusively intended for infringement.

It may order the publication of the judgment in one or several journals at the cost of the person convicted.

Art. 29.

Any persons who shall have wrongfully put upon their commercial papers, notices or products any indication tending to cause belief in the existence of a patent shall be punished, upon complaint or otherwise, by a fine of from 30 to 500 francs or imprisonment for from three days to three months, or by these two penalties together.

The penalty may be increased up to double in case of repetition of the offence.

Art. 30.

Civil proceedings for infringement shall be heard without intermediate appeal by the Court upon which each Canton will confer jurisdiction in that behalf.

An appeal shall lie to the Federal Tribunal whatever may be the importance of the suit.

Art. 31.

The amount of the fines shall be paid into the Treasury of the Cantons. Unpaid fines shall be commuted by the Judge for an equivalent term of imprisonment.

IV.—Miscellaneous and Concluding Provisions.

Art. 32.

The citizens of countries which have concluded with Switzerland a convention to that effect may, within the period of seven months from the date of application for a patent in one of the said countries, and reserving the rights of third parties, lodge their application in Switzerland, without circumstances which have taken place in the interval, such as another application for a patent, or the fact of publication, being brought against the validity of their application for a patent.

The same advantage shall be granted to Swiss citizens who have lodged their first application for a patent in one of the countries indicated in the preceding paragraph.

Art. 33. **YALE LAW LIBRARY.**

There shall be granted to every inventor of a patentable product exhibited in a National or International Exhibition in Switzerland, upon the fulfilment of the formalities to be prescribed by the Federal Council, temporary protection for six months, commencing on the day of the admission of the product into the exhibition; during which term applications for patents which may be made or acts of publication which may take place shall not prevent the inventor from validly making within the said period the application for the patent necessary for obtaining complete protection.

When an International Exhibition shall take place in a country which has concluded with Switzerland a convention to this effect, the temporary protection granted by the foreign country to patentable products exhibited in the said exhibition, shall extend to Switzerland during a period not exceeding six months from the day of the admission of the product into the exhibition, and shall have the same effect as that mentioned in the preceding paragraph.

Art. 34.

The surplus receipts of the Federal Office of Industrial Property shall be employed primarily for creating at the principal industrial centres of Switzerland libraries specially relating to the local industry, and for distributing the publications of the Federal Office. They shall also be employed for carrying out the investigations contemplated by Art. 17, paragraph 2 of the present law.

Art. 35.

The Federal Council is empowered to prescribe the rules and orders necessary for the carrying out of the present law.

Art. 36.

The present law repeals the enactments for the protection of inventions in force in the Cantons.

Inventions which at the time of the coming into force of the present law may be still enjoying protection by virtue of the cantonal laws, shall still remain protected in the respective Cantons until the expiration of the legal term of protection.

Art. 37.

The Federal Council is empowered, in accordance with the provisions of the law of the 17th June, 1874, concerning the public voting of federal laws and decrees, to publish the present law and to fix the time when it shall come into force.

[NOTE.—On the 5th of October, 1888, the Federal Council fixed the 15th of November, 1888, as the date of the commencement of the law.]

TASMANIA.

Law No. 2, of October 20, 1884.

AN Act to make provision for the mutual protection of patents for inventions and trade marks granted or registered in Tasmania or the United Kingdom.

Whereas, by section 104 of the Act of the Imperial Parliament to amend and consolidate the law relating to patents for inventions, registrations of designs and of trade marks, known as the "Patents, Designs, and Trade Marks Act, 1883," provision is made whereby it is rendered lawful for Her Majesty, where it is made to appear that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks patented or registered in England, by Order in Council, to apply the provisions of section 103 of said Act, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

And whereas it is expedient that the legislature of Tasmania should make such provision as aforesaid—

Be it therefore enacted, &c., &c.

1. In this Act "the said Acts" mean "The Patent Law Act" and "The Merchandise Marks Act, 1864."

2. (1.) Any person who has applied for protection for any invention or trade mark in the United Kingdom shall be entitled to a patent for his invention, or to registration of his trade mark (as the case may be) under the said Acts, in priority to other applicants, and such patent or registration shall have the same date as the date of the protection obtained in the United Kingdom, provided that his application is made, in the case of a patent, within seven months, and in the case of a trade mark,

within four months from his applying for protection in the United Kingdom: provided that nothing in this section contained, shall entitle the patentee or proprietor of a trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification or the actual registration of his trade mark in Tasmania, as the case may be.

(2.) The publication in Tasmania during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention or the registration of the trade mark.

(3.) The application for the grant of a patent or the registration of a trade mark under this Act must be made in the same manner as an ordinary application under the said Acts, and shall be subject to the payment of the same fees: Provided that in the case of trade marks, any trade mark the registration of which has been duly applied for in the United Kingdom, may be registered under the Merchandise Marks Act, 1864.

This Act shall not come into operation until Her Majesty shall, by Order in Council, apply the provisions of section 103 of the Patents, Designs, and Trade Marks Act, 1883, to Tasmania, with such variations or additions, if any, as to Her Majesty in Council may seem fit, but this Act shall thereafter come into operation as soon as such Order in Council shall have been publicly made known in the Colony.

URUGUAY.

Law of November 12th, 1885.

CHAPTER I.*General Provisions.***Art. 1.**

The Executive is authorized to grant patents of exclusive privilege for inventions or improvements on inventions.

Art. 2.

The same power is given to it with regard to persons who, having a patent abroad, apply for a privilege to establish their industry in the country, provided that it be within the first year of the privileged working and that they be the inventors or their attorneys or assigns.

Art. 3.

New discoveries or inventions in all industries confer on their authors the exclusive right of working the same for the time and under the conditions set forth in this law.

Art. 4.

New industrial products, new means and the new application of known means for obtaining an industrial result or product, will be deemed discoveries or new inventions.

Art. 5.

Patents of privilege shall not be granted for financial schemes; for discoveries or inventions which are well known in the country or out of it in printed works, pamphlets or periodicals; for inventions which are purely theoretical and the useful application of which is not practically demonstrated; for pharmaceutical preparations; or for inventions which are contrary to morality or to the laws of the Republic.

Art. 6.

The Nation does not guarantee either the merit or the novelty of the discoveries or inventions.

Art. 7.

Patents will be granted for three, six and nine years at the option of the applicant.

Art. 8.

For the grant of every patent, there shall be paid a tax of twenty-five dollars annually so long as the privilege lasts.

Art. 9.

The payment of the said annuities shall be effected at the office of Public Credit within the first ten days of each year on pain of the loss or annulment of the privilege, and the patent shall not be issued until the first of these annuities has been paid by the applicant or applicants for the privilege.

Art. 10.

After the expiration of the term of ten days referred to in the preceding article without payment having been made, the Executive shall entertain, and if advisable give preference to, applications for privileges of the same nature which may be presented by other interested parties.

Art. 11.

In all cases in which a privilege is granted, the Executive (after report from the Council of Public Health in cases of privileges relating to unhealthy or inconvenient industries)

shall fix a prudential period within which the industries to which the privilege refers must be established.

Art. 12.

The industry being established within the time fixed by the Executive, the patentee by means of an application presented to the Patent Office shall give notice of his establishment, indicating the place where it is situated; which application shall be placed on the file to be passed on to the Department of Public Works and to the Council of Health, so that these offices may ascertain whether all the stipulations of the privilege for the establishment of the industry have been complied with.

Art. 13.

If circumstances of the nature of "vis major" or fortuitous circumstances should arise, which might justify delay in establishing the industry within the period of time prescribed by the Executive under Art. 11, the patentee may apply to the Legislature for an extension of time for establishing the same. This petition for extension must be made at least three months before the expiration of such period.

CHAPTER II.

Patent Office.

Art. 14.

The patents referred in the preceding articles shall be issued on the stamped paper prescribed by law, and by the Department of Trade Marks and Commerce, which after publication of this law shall be called "The Office of Patents for Inventions, Trade Marks and Commerce."

The patents shall be signed and sealed by the Minister of the Interior and countersigned by the chief of the above-named office.

Art. 15.

The staff of the office shall consist of a chief and a secretary with the salaries assigned to them by the Budget law.

Art. 16.

No person employed in this office may directly or indirectly have any interest in the privileges passing through it on pain of immediate dismissal, upon proof of the fact.

Art. 17.

The chief of the office is responsible to the Government for all papers or articles deposited in it, which he shall keep with the greatest care and completeness.

Art. 18.

This office will be directly attached to the Ministry of the Interior.

CHAPTER III.

Formalities for the grant of Patents.

Art. 19.

Every person desirous of obtaining a patent of invention shall present a petition, on paper stamped with one dollar on each sheet, addressed to the Minister of the Interior, and shall deliver the same to the Chief of the "Office of Patents for Inventions, Trade Marks and Commerce," who shall immediately on receipt thereof place it on the file in order that it may be duly transmitted.

On the said petition the aforesaid office shall note the day and hour when the presentation thereof took place.

Art. 20.

The petition shall be accompanied, in duplicate, by a clear and succinct specification of the invention and the specimens, drawings or models which the nature of the case admits of, swearing that the ownership appertains to the petitioner and praying for a patent to certify his title.

The documents presented with the petition must be on durable material and be without abbreviation.

Art. 21.

The petition must be limited to the prayer for the privilege, stating the term for which it is desired; it must

contain no restrictions, conditions or reservations; it shall indicate the title by which the inventor intends shortly and accurately to call the invention and shall be written in Spanish, confirming any alterations or additions which appear in the text thereof.

The drawings which accompany it shall be made in ink and drawn to scale, in all cases where possible, on the metric system established in the Republic.

Art. 22.

The patent will be issued in the name of the nation and will consist of the decree granting the same, accompanied by the duplicates of the specification and drawings.

Art. 23.

The grant of the patent shall not prevent the application of the exceptions mentioned in Art. 55.

Art. 24.

Every three months the Chief of the Patent Office shall hand the Government for publication a succinct and detailed statement of the patents issued.

Art. 25.

He shall every year hand the General Direction of Statistics a statement of the privileges granted, their time of duration and the sum paid by the patentees.

Art. 26.

Every two years the Patent Office shall publish in a volume all the privileges granted with the specifications, models and drawings thereof.

CHAPTER IV.

Certificates of improvements on Inventions.

Art. 27.

Every person who improves a patented discovery or invention shall have the right of applying for a certificate of addition, which shall never be granted for a longer term than to the expiration of the principal patent.

The certificate of addition shall be issued on the stamped paper prescribed by the law on the subject, signed and sealed by the Ministry of the Interior and countersigned by the chief of the Patent Office.

Art. 28.

To obtain a certificate of addition the same formalities shall be required as for a patent, with the exception of the tax, which shall only be one third part of that required for the patent, if the applicant is the proprietor of the patent, and two thirds if he is a stranger.

Art. 29.

If it is a stranger who obtains the certificate of addition he shall only enjoy the right to work his invention absolutely upon condition of paying to the first inventor a premium the amount of which shall be fixed by two experts appointed by the parties interested, with a third in case of disagreement, taking into account the importance of the improvement and the part of the original invention still retained.

Art. 30.

The patentee inventor may elect either to take the premium mentioned in the preceding article or to work the improvement concurrently with the improver.

If he chooses the latter course then there shall be granted to the inventor a patent of addition with the same rights and obligations as the one granted to the improver.

Art. 31.

In no case will the improver acquire the right to work the original invention exclusively.

Neither can the original inventor work the improvement unless it be in the second case provided for in the preceding article.

Art. 32.

If two or more individuals apply at the same time for a patent to establish the same industry or for a certificate of addition for the same improvement, neither of these documents shall be issued unless the applicants agree between themselves.

CHAPTER V.

Transfer of Patents.

Art. 33.

Every person who has obtained a patent or certificate of addition may transfer his rights upon such conditions as he thinks fit; the transfer must always be by public deed after notice to the Patent Office, without which requisites such transfer shall have no effect against a third party.

Art. 34.

All rights granted to the patentee are deemed to attach to the patent and are transferred with it unless an express clause be contained in the deed of assignment stipulating to the contrary.

CHAPTER VI.

Nullity and forfeiture of Patents.

Art. 35.

Patents or certificates obtained in contravention to the terms of Art. 5 shall be null: as shall also be those obtained by false evidence or statements:—or when the drawing or the specification is inaccurate or incomplete, and when the invention though a foreign one is made to appear to have its origin in the country, in which case the person making the false statement shall be punished with a fine of five hundred dollars or six months' imprisonment.

Art. 36.

Patents validly granted will lapse:—If the industry is not established in the country within the time prescribed for that purpose and under the conditions laid down in the grant of privilege:—At the expiration of the term for which they were granted:—If the working of the industry ceases for one year, save in case of "vis major" or fortuitous circumstances, which exception the interested party must prove with clear evidence within the inextensible time of one month, after the expiration

of which if such proof is not produced the Chief of the Patent Office shall through the medium of the press declare the privilege to be forfeited.

Art. 37.

If the requirement stipulated in Art. 12 is not complied with by the patentee the competent office shall summon him by notices giving him one month's time, after the expiration of which, if he has not made the presentation, the patent of privilege granted shall be declared entirely forfeited and shall be dealt with as is laid down in the last part of the preceding article.

Art. 38.

Actions for nullity or forfeiture can only be brought by an interested party before the Judge of the Civil Court.

Art. 39.

A judicial declaration is not indispensable in order that the nullity or forfeiture may have the effect of making public property the patented discovery or invention; it is sufficient for nullity or forfeiture to have supervened for all to be freely entitled to use the patented objects.

Art. 40.

In the event of the proprietor of a forfeited or annulled patent opposing the free use of the discovery or invention to which the patent refers, either by demands or by any other means, any person may apply to the Judge of the Civil Court for the proper declaration proving the forfeiture or nullity.

Art. 41.

The judgment shall be summary, lawful means of proof being admitted, but the patentee cannot adduce proofs, in contradiction to the evidence of the documents issued by the Patent Office, showing his privilege; the time for proof shall never exceed twenty days, and ten days after the expiration of the time for proof, the Judge shall give judgment, with express condemnation in costs against the defeated party.

From this judgment an appeal shall lie to the Superior Court

of Appeal which has jurisdiction, which after report from the Patent Office shall give final judgment without further proceedings.

Art. 42.

When a patent is declared forfeited or annulled and the judgment has acquired the authority of "res judicata" the Judge shall communicate the same to the chief of the Patent Office who shall give it immediate publicity.

CHAPTER VII.

Falsification, its prosecution and penalties.

Art. 43.

Infringement of the rights of the patentee shall be deemed an offence of falsification and punished with a penalty of one hundred to five hundred dollars or imprisonment for one to six months; the loss of the falsified objects and compensation for damages and prejudice.

Art. 44.

Any person who, knowing of the falsification, co-operates in it by any means shall suffer the same penalties as in the preceding article.

Art. 45.

The penalties above prescribed shall be doubled in case of repetition of the falsification within five years after a conviction.

Art. 46.

Having worked for or been in the employ of the patentee or having obtained from him by underhand means the knowledge of the invention will be aggravating circumstances.

Art. 47.

The action for the application of the said penalties is private and is to be before the competent Criminal Judge, the patent being put in, and the demand shall not be entertained until the said patent is produced.

Art. 48.

The only pleas which can be raised by the accused are nullity, forfeiture, participation in the patent or the exclusive ownership thereof.

Art. 49.

The plaintiff may claim security from the accused if the latter wishes to continue to use the invention so that his work may not be interrupted.

In default of security the plaintiff shall be entitled to apply for the suspension of the working of the industry and also for an attachment of the effects which constitute the same, giving in that case if required suitable security.

Art. 50.

Any person who without being a patentee or possessing the privileges of such, invokes those privileges as if he legally enjoyed them shall be considered guilty of falsification and shall suffer the penalties imposed for the same.

CHAPTER VIII.*Final Provisions.*

Art. 51.

Copies of letters patent, models, &c., may be applied for in writing at the Office of Patents by their owners or those who represent them in person or in rights so long as the privilege lasts; after that period by any person who wants them.

Art. 52.

The Ministry of the Interior shall arrange for them to be issued on stamped paper of the second class at the cost of the applicant, who shall also pay as copying fee two dollars per page of writing; and the cost of the plans, models, designs, &c., upon the assessment which the Direction of Public Works will make at the request of the Ministry of the Interior.

Art. 53.

The amount of the taxes and of the penalties fixed by this law shall go to the general expenses of the nation.

Art. 54.

The Chief of the Patent Office shall keep the indispensable and necessary books all initialed on their pages by the chief clerk of the Ministry of the Interior.

In these books respectively shall be entered :—

- (1.) The privileges which are granted, their class, the date and duration of the patent and all those remarks which may be deemed suitable for the better service of that department.
- (2.) The date of receipt, name of applicant, and nature of the privilege applied for, in every case of the presentation of a document for that purpose. This entry shall be signed in the book by the applicant for the privilege.

Art. 55.

The law of the 20th June, 1853, and all other enactments contrary to these presents are repealed.

Art. 56.

The Executive shall have the carrying out of the present law.

VENEZUELA.

Law of May 25th, 1882.

Art. 1.

Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter; or any new and useful improvement thereof, may obtain a patent therefor on paying the tax fixed by this law and complying with the other provisions enacted by it, on condition that the invention, discovery or improvement shall not have been already known or used by others in the country, been patented or described in a printed publication in the Republic or abroad, or been in public use or on sale for more than two years prior to the application unless the same is proved to have been abandoned.

Art. 2.

Patents are granted by the Federal Executive in the name of the United States of Venezuela and are countersigned by the Minister of the Interior.

Art. 3.

The Government neither guarantees the exactitude, nor the utility nor the novelty of the patented invention or discovery.

Art. 4.

Any person who wishes to obtain a patent, shall lodge with his application a description of the invention or discovery, of the machine, manufacture, composition or improvement to which it relates, indicating with clearness its nature and object. He shall also lodge the necessary drawings or specimens.

Art. 5.

The applicant for the patent shall in his petition declare under oath that he is really the person who has invented or discovered the art, machine, manufacture, composition or improvement for which he desires the patent; and any dispute to which the truth of this declaration may give rise shall be tried by the interested parties in the ordinary manner before the federal tribunals.

Art. 6.

Patents are granted for five, ten or fifteen years and shall be declared void six months, one year and two years after their grant, if during that time, the invention or discovery for which they were obtained has not been put into practice. The patent shall set forth the term for which it is granted and the period within which it must be worked; it shall commence to run from the day of its issue.

Art. 7.

Applications for patents shall be addressed to the Federal Executive Power through the Minister of the Interior.

Art. 8.

The necessary conditions, laid down by this law, having been fulfilled, there shall be sent to the applicant a patent authorizing him to work his invention, his discovery or his improvement throughout the whole extent of the United States of Venezuela and its dependencics. This patent shall be issued by the Federal Executive through the Minister of the Interior in accordance with the form set out at the end of this article; it must contain a title or short description of the invention or discovery, indicating exactly its nature and object and also a grant to the patentee, his heirs and assigns of the exclusive right to make, use or sell the object of the invention or discovery.

“The President of the Republic with the affirmative vote of the Federal Council :—

“Whereas _____ has applied to the Federal Executive requesting a patent for the exercise of (*recite the industry*), having fulfilled the conditions established by the law

of the 25th of May 1882 relating to the matter:—Grants to him in accordance with Art. 8 of the said law and in the name of the United States of Venezuela the present patent for the exclusive exercise of the industry described below for the term of _____ years to his benefit or to that of his heirs or assigns without the Federal Executive guaranteeing the utility, the accuracy or the novelty of the patented discovery or invention.

“This patent to lose effect after _____ dating from the present date if during that lapse of time the industry to which it relates has not been put in operation.

“Signed, sealed and countersealed at the Federal Palace of Caracas this _____.”

Art. 9.

A patent is liable to the payment of a tax of 80 bolivars (francs) a year if it is for an invention or discovery and of 60 bolivars a year if it relates to an improved process.

Art. 10.

The tax to which the preceding article refers shall be paid to the National Treasury of the Public Service and when any one who wishes to obtain a patent makes application to the Federal Executive for the grant in accordance with Art. 7, he must annex to his petition proof that he has paid the tax corresponding to half the number of years for which the patent is asked for.

If, according to the provisions of this law, the patent cannot be granted, the petitioner shall lose the sum paid for the tax which shall be for the benefit of popular education; if the patent is granted to him, the tax shall count towards the sum which in this case the petitioner should pay for the total number of years of the duration of the patent.

§ The Federal Executive may exempt from the tax fixed by Art. 9 of this law, inventors of discoveries or industrial products who in their opinion are worthy of this favour.

Art. 11.

Any person who has obtained a patent may announce the fact in advertisements and in his trade mark without such publication implying on the part of the Government any guarantee

either as to the quality of the product or of the novelty of the invention or discovery or that it has any value to the prejudice of a better right of a third party.

Art. 12.

Any person who has obtained a patent in a foreign country for an invention or discovery can obtain one in this, if, it must be understood, no one else has already obtained one for it.

§. In this case the patent shall only be granted for the number of years there are to run before the expiration of that obtained in the other country.

Art. 13.

The term of a patent having expired, publication shall be made in the Official Gazette of the description of the discovery or invention to which it relates, and from that time the working of the discovery or invention shall be free as well as the manufacture or sale of the industrial products protected by the patent.

Art. 14.

The same publication shall take place in a case where a patent having been granted it is annulled before the working of the invention in accordance with Art. 6 of the law or where it is declared null and non-existent, before the expiration of its term or its lapse except in the first case provided for by Art. 18.

Art. 15.

The descriptions, drawings and specimens accompanying applications for patents shall remain deposited at the Ministry of the Interior.

Art. 16.

When an application for a patent is received by the Federal Executive it shall be notified in the Official Gazette and the patent, if granted, shall not be issued until thirty days after this publication.

Art. 17.

Inventions, improvements, or new industries prejudicial to health or public order, to morals or prior rights shall not be patented.

§. Pharmaceutical compositions or remedies of any sort or kind cannot be patented but remain subject to the special laws and regulations on the subject.

Art. 18.

Besides the cases provided for by Art. 6, patents shall be without effect when by judgment of the Federal Tribunals they are declared to have been granted to the prejudice of the rights of third parties and when the patented industry has not been worked for a whole year except in case of fortuitous circumstances or force majeure.

Art. 19.

Infringements committed against the rights secured by a patent shall be tried by the Federal Tribunals conformably to the respective codes.

Art. 20.

The law of the 20th May, 1878, on this matter is repealed.

Art. 21.

The exemption from duties granted in favour of a given enterprise shall be revoked if it is proved that it relates to the sale of primary matters or imported articles.

Art. 22.

In the case provided for in the preceding article besides the loss of the concession, the enterprise shall be liable for the duties corresponding to all the importations which have been realised besides forty per cent. of the gross total.

Art. 23.

Concessions shall equally become void in the following cases :—

- (1.) When the period during which the contract has undertaken to establish the industry or improvement or to commence the works to put it in operation shall have expired without this condition having been fulfilled.
- (2.) When the industry after its establishment shall have been abandoned for more than a year.

VICTORIA.

Act No. 808 of 12th December, 1884.

An Act to amend the Laws concerning Letters Patent for
Inventions.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title and construction.

1. This Act may for all purposes be cited as "*The Patents Act 1884*" and shall be read and construed as one with "*The Patents Statute 1865*" (hereinafter referred to as the "*Principal Act*") as amended by the Act No. CCCCXXXII., except so far as such construction would be inconsistent with or repugnant to the provisions of this Act.

Definition.

2. In this Act and the Principal Act the word "patentee" shall mean the person for the time being entitled to the benefit of any letters patent in Victoria, and the words "the true and first inventor" shall mean the person who is the actual inventor or his nominee or assignee and shall not include the unauthorized importer of an invention from elsewhere.

Repeal. First Schedule.

3. The Acts specified in the First Schedule hereto shall be and the same are hereby repealed to the extent specified in the

third column of the said Schedule: Nothing herein contained shall affect any proceedings or things lawfully taken done or commenced or any letters patent granted or any protection or right conferred or any register or appointment made or any notice or particulars given or published or any warrant issued or caveat entered under any of the repealed portions of the said Acts before the passing of this Act, and all such proceedings and things shall be as valid and may be continued, and all such letters patent protections rights registers appointments notices particulars warrants and caveats shall have the same force and efficacy as if this Act had not been passed. When letters patent have been granted to any person before the passing of this Act or shall in respect of any application made before the passing of this Act be hereafter granted to any person for any invention, such person shall with respect to all matters and things which might lawfully have been done and with respect to all fees which might lawfully have been paid after the passing of this Act be entitled to avail himself of the provisions of this Act as if this Act had been passed before the grant of such letters patent.

MODE OF OBTAINING LETTERS PATENT.

Period of protection on deposit of specification extended to twelve months.

4. In section six of the Principal Act the words "twelve months" shall be substituted for the words "six months" wherever the same occur in the said section.

Law officers may summon witnesses.

5. For the purposes of the hearing and consideration of any application in accordance with the provisions of section ten of the Principal Act, the law officer may by summons under his hand require the attendance of all such persons as he thinks fit to call before him for examination, and may under his hand order to be paid by the applicant or objector to such persons such remuneration for their attendance as to him may seem reasonable. In opposed cases where applicants and objectors consent the law officer may hear all the parties in the presence of one another.

Penalty for non-attendance or refusing to give evidence.

6. If any person whose attendance has been so required and on whom any such summons has been served by the delivery thereof to him or by the leaving thereof at his usual place of abode neglect or fail to appear or refuse to make answer to such questions as are put to him touching such application as aforesaid, such person shall forfeit and pay a penalty not exceeding twenty pounds, to be recovered by any person authorized so to do by the law officer in a summary way before a justice of the peace.

When letters patent refused, applicant may appeal to Supreme Court.

7. If any applicant for a grant of letters patent be dissatisfied with the refusal of the law officer to issue his warrant for the granting of letters patent, such applicant may appeal to the Supreme Court and the mode of such appeal and all matters relating to pleading practice and procedure therein shall be in accordance with rules of court for the time being in force. For the purpose of regulating such appeals, the Supreme Court may at any time with a concurrence of a majority of the judges thereof present at any meeting for that purpose held make rules of court, and may from time to time annul any such rules and make further or additional rules; and the Supreme Court may direct a warrant for the granting of letters patent, and such warrant shall be to all intents and purposes as valid and effectual as though it were a warrant for the granting of letters patent for an invention under the hand and seal of the law officer.

Patents for foreign inventions may be granted within one year of date of foreign patent, notwithstanding prior use in Victoria.

8. Notwithstanding anything in any Act of Parliament contained, where any patent or like privilege for the monopoly or exclusive use or exercise in any parts out of Victoria and its dependencies has been obtained for or in respect of any invention first invented in parts out of Victoria and its dependencies, letters patent may be granted for or in respect of such invention at any time within one year from the date of the granting of the first of any such patents or privileges for such monopoly exclusive use or exercise as aforesaid notwithstanding that such invention has been used or published in Victoria within such period of one year, and such letters patent when granted shall

have the same force and effect as if such prior publication or use had not taken place.

Provided however that if such use or publication have been made in Victoria with the consent of the inventor, such inventor shall not be entitled to a grant of letters patent under the authority of this section.

Intercolonial arrangements for protection of inventions.

9. (1.) If the Governor in Council is pleased to make any arrangement with the Government or Governments of any Australian colony or with the Government of the colony of New Zealand or of the colony of Fiji for the mutual protection of inventions, then any person who has applied for the protection of any invention in any such colony shall be entitled to a patent for his invention under this Act in priority to other applicants, and such patent shall have the same date as the date of the protection obtained in such colony. Provided that his application is made within six months from his applying for protection in the colony with which the arrangement is in force. Provided that nothing in this section contained shall entitle such person to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification in Victoria.

(2.) The publication in Victoria during the period aforesaid of any description of such invention or the use therein during such period of the invention (whether with or without the consent of such person as aforesaid) shall not invalidate the patent which may be granted for the invention.

(3.) The application for the grant of a patent under this section must be made in the same manner as an ordinary application under this Act.

(4.) The provisions of this section shall apply only to such of the colonies aforesaid with respect to which the Governor shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each colony as the Order in Council shall continue in force with respect to that state.

Provisions for United Kingdom.

10. Where Her Majesty has by Order in Council applied the provisions of section one hundred and three of an Act of the Imperial Parliament called "*The Patents Designs and Trade*

Marks Act 1883” or any portion thereof to Victoria, the provisions of the last preceding section may by order of the Governor in Council be applied for the protection of inventions patented in the United Kingdom or Isle of Man. Provided that such Order in Council may be at any time revoked.

EXTENSION OF TERM AND CONTINUATION OF INVALID PATENTS.

Commissioners under section 26 No. 240 may recommend that petitioner should pay costs.

11. Where any Commissioners have been appointed by the Governor in Council under Part III. of the Principal Act to consider the petition of any person for the confirmation of letters patent or for the grant of new letters patent or for an extension of the term in any letters patent mentioned, such Commissioners may, if in their report to Her Majesty her heirs and successors they recommend that such confirmation grant or extension should not be made, also recommend that all the costs and expenses of or relating to the consideration of such petition by the Commissioners and of and relating to the appearance of the law officers of the Crown and the Crown Solicitor to oppose the prayer of such petition shall be borne by such petitioner; and the Governor in Council may thereupon make an order that such costs and expenses or any part thereof as he thinks fit shall be borne by such petitioner.

MISCELLANEOUS PROVISIONS.

Penalty for unauthorized use of the word “Patent.”

12. Any person who writes paints prints moulds casts carves engraves stamps or otherwise marks upon anything made used or sold by him and for the sole making or selling of which he has not obtained letters patent, the name or any imitation of the name of any other person who has as patentee obtained letters patent for the sole making and selling of such thing without leave in writing of such patentee or his assigns, or who upon such thing not having been purchased from the patentee or some person who purchased it from or under such patentee or not having had the licence or consent in writing of such patentee or his assigns writes paints prints moulds casts carves engraves stamps or otherwise marks the word “Patent” or “Patented” or the words “Letters Patent” “Royal Letters Patent” or “Queen’s Patent” or any word or words of like

import with the intent of counterfeiting or imitating the stamp mark or device of the patentee or of deceiving the public and inducing them to believe that the thing in question was made or sold by or with the consent of the patentee, or who puts to sale as patented any article not patented in Victoria for the purpose of deceiving the public, shall be guilty of a misdemeanor, and on conviction thereof be liable to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding three months.

Actions for infringement prior to disclaimer.

13. Whenever through inadvertence accident or mistake and without any wilful default or intent to defraud or mislead the public any person who has as patentee obtained letters patent for the sole making and selling of anything has (in his specification) claimed to be the true and first inventor or discoverer of any material or substantial part of the thing patented of which he was not the true and first inventor as aforesaid, every such patentee his executors administrators and assigns whether of the whole or any interest in such letters patent may maintain a suit at law or in equity for the infringement of any part thereof which was *bonâ fide* his own provided it be a material and substantial part of the invention in respect of which the letters patent were rightfully granted and that it be definitely distinguishable from the parts so claimed without right as aforesaid notwithstanding the specifications may embrace more than that of which such patentee was the true or first inventor or discoverer. But in every such case in which judgment is given or a decree is made for the plaintiff no costs shall be recovered unless the proper disclaimer has been entered at the chambers of the law officer before the commencement of the action or suit, nor shall he be entitled to the benefit of this section if he have unreasonably neglected or delayed to enter said disclaimer.

Patent rights good against Crown but may be used for public service on terms agreed on.

14. A patent shall have to all intents the like effect as against Her Majesty the Queen her heirs and successors as it has as against a subject, but the Minister at the head of any department of the public service may use for the public service any

patented article or any patented manufacturing process on such terms as may be agreed on with the patentee of such article or process, or in default of such agreement on such terms as may be settled by arbitration conducted under regulations to be made by the Governor in Council.

REVOCATION.

Revocation of Patent.

15. (1.) The proceeding by *scire facias* to repeal a patent is hereby abolished.

(2.) Revocation of a patent may be obtained on petition to the Supreme Court.

(3.) Every ground on which a patent might at the commencement of this Act be repealed by *scire facias* shall be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(a.) The law officer:

(b.) Any person authorized by the law officer:

(c.) Any person alleging that the patent was obtained in fraud of his rights or of any person under or through whom he claims:

(d.) Any person alleging that he or any person under or through whom he claims was the true inventor of any invention included in the claim of the patentee:

(e.) Any person alleging that he or any person under or through whom he claims an interest in any trade business or manufacture had publicly manufactured used or sold within *Victoria* (Note.—*This word was substituted for "this realm" by Act No. 30¹ of 1886*) before the date of the patent anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall except by leave of a judge of the court be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the court in which such action is pending or a judge thereof.

(7.) The defendant shall be entitled to begin and give evidence in support of the patent; and if the plaintiff gives evidence impeaching the validity of the patent, the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the law officer may on the application of the true and first inventor made in accordance with the provisions of this Act grant to him a patent in lieu of and bearing the same date as the patent so revoked; but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

LEGAL PROCEEDINGS.

Hearing with assessor.

16. (1.) In an action for infringement of a patent, the judge who is trying the action may if he thinks fit and shall on the request of either of the parties to the proceeding call in the aid of an assessor specially qualified and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the court shall otherwise direct.

(2.) A judge of any court having jurisdiction to deal with matters and things relating to letters patent may if he sees fit in any proceeding before him call in the aid of an assessor as aforesaid.

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the judge or judges who have called such assessor to his or their aid and be costs in the cause.

Delivery of particulars.

17. (1.) In an action for infringement of a patent, the plaintiff shall deliver with his statement of claim, or by order of a judge of the court in which such action is brought at any subsequent time, particulars of the breaches complained of.

(2.) The defendant on pleading thereto shall deliver with his statement of defence or by order of the Supreme Court or a judge thereof at any subsequent time particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall except by leave of the

judge be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended by leave of the court in which the action is then pending or a judge thereof.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the court in which the action was tried or a judge thereof to have been proven or to have been reasonable and proper without regard to the general costs of the case.

Order for inspection, &c. in action.

18. In an action for infringement of a patent, the court in which such action is pending or a judge thereof may on the application of either party make such order for an injunction inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the said court or such judge may see fit.

Certificate of validity questioned and costs thereon.

19. In an action for infringement of a patent, the court in which the action was tried or a judge thereof may certify that the validity of the patent came in question; and if such court or judge so certifies, then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client unless such court or judge before whom the action was tried certifies that he ought not to have the same.

Patent for one invention only.

20. Every patent may be in the form in the Second Schedule to this Act and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

21. If a person possessed of an invention dies without making application for a patent for the invention, application may be made by and a patent for the invention granted to his legal

representative. Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Exhibition at industrial or international exhibition not to prejudice patent rights.

22. The exhibition of an invention at an industrial or international exhibition, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with (namely)—

- (a.) The exhibitor must before exhibiting the invention give the law officer one month's notice of his intention to do so; and
- (b.) The application for a patent must be made before or within twelve months from the date of the opening of the exhibition.

Regulations with regard to issue of licences to patent agents.

23. The Governor in Council may subject to the provisions of this Act from time to time make alter and repeal rules and regulations to regulate the issue of licences to persons to practise as agents for the procuring and taking out of letters patent for inventions and fixing the amount or fee to be charged for each such licence per annum.

Second and Third Schedules.

24. The Second and Third Schedules to this Act shall be respectively substituted for the Sixth and Third Schedules to the Principal Act.

Fees on obtaining patents. Fourth Schedule. Certain fees may be paid when overdue on payment of penalty.

25. The fees set out in the Fourth Schedule to this Act shall be payable for and in respect of the matters and things therein

mentioned in lieu of the fees prescribed by the Ninth Schedule to the Principal Act, and the said Fourth Schedule hereto shall be substituted for the said Ninth Schedule to the Principal Act.

Notwithstanding anything in the Principal Act contained, a fee due in respect of letters patent for any invention at the expiration of the third or seventh year from the date therefrom, may be paid at any time within six months of such due date on payment of an additional fee by way of penalty of two pounds and ten shillings, and may be paid at any time within twelve months of such due date on payment of an additional fee by way of penalty of ten pounds; and on payment of such fee and penalty the powers and privileges granted by such letters patent shall be as good and effectual to all intents and purposes as though such fee had been paid on such due date as aforesaid.

SCHEDULES.

FIRST SCHEDULE (SECTION 3).

No. of Act.	Short Title.	Extent of Repeal.
240	"The Patents Statute 1865"	<p>In section 12 the words "the writ of <i>scire facias</i> shall lie for the repeal of any letters patent granted under this Act, and may be issued into the circuit district in which the grantee resided when the said letters patent were granted; and in case such grantee does not reside in Victoria it shall be sufficient to file such writ in the proper office of the Supreme Court, and serve notice thereof in writing at the last known place of residence or business of such grantee;" and</p> <p>In section 22 the words "save and except in any proceeding by way of <i>scire facias</i>."</p> <p>Sections 17, 35, 36 and 37.</p> <p>Third Schedule. Sixth Schedule. Ninth Schedule.</p>
422	"Exhibitors' Protection Act 1872"	Section 3.

SECOND SCHEDULE (SECTIONS 20 & 24).

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to all to whom these presents shall come greeting Whereas *A.B.* of in the county of engineer hath represented that he is desirous of obtaining our Royal Letters Patent for securing unto him our special licence that he his executors administrators and assigns and such others as he or they should agree with and no others should and lawfully might make use exercise and vend within our colony of Victoria and its dependencies an invention for [*insert the title of the invention*], And We being willing to give encouragement to all arts and inventions which may be for the public good are graciously pleased to confer upon the said *A.B.* his executors administrators and assigns sole privilege and authority that he the said *A.B.* his executors administrators and assigns and no others during the term herein expressed shall and lawfully may make use exercise and vend his said invention within our said colony and its dependencies To HAVE HOLD EXERCISE AND ENJOY the said privileges and advantages unto and by the said *A.B.* his executors administrators and assigns for and during and unto the full end and term of fourteen years now next ensuing Provided always and these our letters patent are and shall be upon this condition that if at any time during the said term hereby granted it shall appear that this our grant is contrary to law or prejudicial or inconvenient to our subjects in general or that the said invention is not a new invention as to the public use and exercise thereof or that the said *A.B.* is not the true and first inventor thereof within this colony or its dependencies these our letters patent shall forthwith cease determine and be utterly void to all intents and purposes anything hereinbefore contained to the contrary thereof in anywise notwithstanding Provided likewise nevertheless and these our letters patents are upon this express condition that if the said instrument in writing does not particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed and also if the said *A.B.* his executors administrators or assigns shall not pay at the patent office of our said colony the sum of two pounds ten shillings within three years next after the date of these presents and the sum of two pounds ten shillings within seven years next after such date that then and in any of the said cases these our letters patent and all liberties and advantages whatsoever hereby granted shall utterly cease determine and become void anything hereinbefore contained to the contrary thereof in anywise notwithstanding Provided that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted And lastly we do by these presents for us our heirs and successors grant unto the said *A.B.* his executors administrators and assigns that these our letters patent shall be in and by all things good firm valid and sufficient and effectual in the law according to the true intent and meaning thereof and shall be taken construed and adjudged in the most favourable and beneficial sense for the best advantage

of the said *A.B.* his executors administrators and assigns. In witness whereof we have caused these our letters to be made patent and to be sealed and bear date as of the day of

Governor of Victoria.

THIRD SCHEDULE (SECTION 24).

Patent for invention entitled
 This is to notify that of has applied for letters patent for the said invention and that I have appointed the day of 188 at at the Patent Office, Melbourne, to hear the said application and all objections thereto. All persons objecting to the grant of such application must leave notice thereof in writing to the said office on or before or they will not be heard.

Dated this day of 18

-General.

FOURTH SCHEDULE (SECTION 25).

	£	s.	d.
On depositing specification	1	0	0
To the law officer for any appointment or on the hearing of objections	2	2	0
On obtaining letters patent	1	0	0
At or before the expiration of the third year	2	10	0
At or before the expiration of the seventh year	2	10	0
On presenting petition for extension or confirmation	1	0	0
Every search and inspection	0	1	0
Entry of assignment or licence	0	10	0
Filing memorandum of alteration or disclaimer	1	0	0
Entering any caveat	2	10	0
Copy or extract of any writing per common law folio	0	0	6
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