
 ACT OF 1836, CHAP. 357, § 12.

or portion of the United States, shall be recorded in the Patent Office within three months from the execution thereof, (a) for which the assignee or grantee shall pay to the Commissioner the sum of three dollars.

SECTION 12. *And be it further enacted,* That any citizen of the United States, or alien, who shall have been a resident of the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same, may, on paying to the credit of the treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, (b) file in the Patent Office a caveat, setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right till he shall have matured his invention; (c) which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made

patented, as the other tenant in common has; and neither can restrain the other from such use or sale. *Ibid.*, 524.

A paper purporting to be an assignment of an expired patent is void. *Bell v. McCulloch*, MS.—LEAVITT, J.; Ohio, 1858.

(a) The provision as to recording assignments within three months is merely directory, and except as to intermediate *bona fide* purchasers, without notice, any subsequent recording is sufficient. *Brooks v. Byam*, 2 Story, 542.—STORY, J.; Mass., 1843. *Pitts v. Whitman*, 2 Story, 615.—STORY, J.; Mass., 1843. *Blanch. Gun-Stock Fac. v. Warner*, 1 Blatchf., 271.—NELSON, J.; Ct., 1846. *Holden v. Curtis*, 2 N. Hamp., 63.—WOODBURY, J.; N. H., 1819.

A mere license need not be recorded—it is not an exclusive right. *Brooks v. Byam*, 2 Story, 542, 543.—STORY, J.; Mass., 1843. *Stevens v. Head*, 9 Verm., 177.—WILLIAMS, Ch. J.; Vt., 1837.

Under this section an assignment must be recorded within three months to defeat the right of a subsequent purchaser without notice, and for a valuable consideration. In order to guard against an outstanding title of over three months' duration, the purchaser need only look to the records of the Patent Office. Within that period he must protect himself in the best way he can, as an unrecorded assignment would prevail; but it must be one in writing, that may be recorded. *Gibson v. Cook*, 2 Blatchf., 148.—NELSON, J.; N. Y., 1850.

See also DIGEST, titles ASSIGNMENT, B. 2; LICENSE, B.

(b) The fee required on filing a caveat is now reduced to ten dollars, and such sum is no longer to be considered as a part of the sum required to be paid on filing a subsequent application for a patent for the same invention. Act of 1861, §§ 9, 10.

(c) This section is for the benefit of the inventor, but is not necessary for the preservation of his right, nor does the omission to file a caveat impair his title. *Hildreath v. Heath*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

It only enables him to have notice of any interfering application. It, however, gives no notice to the world, nor even to the interfering applicant, and is notice to the Commissioner only. *Ibid.*

The caveat is to set forth the "design and purpose" of the invention, and "its principal and distinguishing characteristics;" but it is not necessary that it should explain the principle involved, or the modes in which it can be applied, nor how it is distin-

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by any other person within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the Commissioner to deposit the description, specifications, drawings, and model, in the confidential archives of the office, and to give notice, by mail, to the person filing the caveat, of such application, (a) who shall, within three months after receiving the notice, if he would avail himself of the benefit of his caveat, file his description, specifications, drawings, and model; and if, in the opinion of the Commissioner, the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this act provided in the case of interfering applications: *Provided, however,* That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person interested in favor of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court in any action in which its validity may come in question.

SECTION 13. *And be it further enacted,* That whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative, or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention, more than he had or shall have a right to claim as new; if the error has, or shall have arisen by inadvertency, accident, or mistake, and without any fraudu-

guished from other inventions. Nor is it necessary to accompany it with specimens of ingredients or compounds, or models or drawings, or with an oath of invention or discovery. *Anon., MS., Opin.—BLACK, Atty. Gen.; 1857.*

The Commissioner can perform no act upon it, but filing it, nor in consequence of it, except to give the caveator notice of a conflicting application. *Ibid.*

A caveat answers a double purpose: 1st, to give notice of the claim of the inventor; and 2d, to prevent a patent issuing to another for the same thing. *Allen v. Hunter, 6 McLean, 304.—McLEAN, J.; Ohio, 1855.*

A caveat is evidence as to an invention, so far as it extends to the *description* of the invention and the machinery which was then constructed. *Jones v. Wetherell, MS. (App. Cas.)—MORSELL, J.; D. C., 1855.*

A caveat is not conclusive evidence that an invention is not perfected. *Johnson v. Root, MS.—SPRAGUE, J.; Mass., 1858.*

A caveat will directly protect only one of several distinct patentable subjects falling within its general scope, at the election of the party inventing them. *Woodruff & Cobb, Ex parte, MS. (App. Cas.)—MERRICK, J.; D. C., 1860.*

(a) The fact that a patent is granted to one person, while another has a caveat pending and in force, will not of itself vacate the patent granted, nor authorize the Commissioner to grant a patent to the caveator. *Cochrane v. Waterman, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1844.*

The purpose of a caveat is to save the discoverer of an invention from the effect of the rule of law that gives to the inventor who first adapts his invention to practical use the right to the grant of a patent; and if the Commissioner gives the caveator notice of any interfering application, it secures him against the effect of the rule. *Phelps, Dodge & Co. v. Brown Bros., 18 How. Pr., 7.—NELSON, J.; N. Y., 1859.*

But if the Commissioner accidentally omits to give the caveator the notice required, his rights will not be prejudiced thereby. *Ibid.*

See also DIGEST, title CAVEAT.

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lent or deceptive intention, it shall be lawful for the Commissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. (a) And in case of his death, or any assignment by him made

(a) This section contemplates two classes of cases, where a patent is *invalid or inoperative*; 1st, by reason of a defective or insufficient specification; and 2d, where the same objection arises because the patentee has claimed more than he had a right to claim. *Goodyear v. Day*, MS.—DICKERSON, J.; N. J., 1852.

This section may be regarded as affirming the propriety of the usage which had obtained under the former laws, and under which a second reissue was allowed as well as the first. *French v. Rogers*, MS.—KANE, J.; Pa., 1851.

There may be more than one reissue of the same patent. The surrender and reissue should be allowed to follow each other as often as the inventor is content to be more specific or more modest in his claims. *Ibid.* Also *Ball, Ex parte*, MS. (App. Cas.)—MORSELL, J.; D. C., 1860.

The power to correct mistakes in a patent is confided to the Commissioner of Patents under this section, and does not belong to the courts. The courts can only construe the specification and claim as it stands. *Kittle v. Merriam*, 2 Curt., 478.—CURTIS, J.; Mass., 1855.

This section gives to the patentee the right to correct his description or specification, when its imperfection has arisen from inadvertency, accident, or mistake. But the only condition on which this can be done, is that the original patent is *inoperative* or invalid by reason of a failure to comply with the requirements of the statutes. The proceeding is therefore equivalent to a distinct admission, made in the most solemn form, that the patent has no validity in the sense of entitling a patentee to an action for its infringement. *Morfit v. Gaab*, MS.—LEAVITT, J.; Ohio, 1860.

The words in this section, "it shall be lawful for the Commissioner, &c., to cause a new patent to be issued," are to be construed as *mandatory*, and to be of the same import as if the words had been, "it shall be the duty of the Commissioner," &c. The true meaning is, the Commissioner is to have no discretion in the case provided for in the section. *Dyson, Ex parte*, MS. (App. Cas.)—DUNLOP, J.; D. C., 1860.

When the case provided for arises, he is *commanded* to exercise the power, whether he thinks it just and right to exercise it or not; he has no discretion. *Ibid.*

The surrender and reissue of a patent extended by act of Congress, after an extension, under § 18 of the act of 1836, stands on the same footing as if such surrender and reissue were made under the extension by virtue of said § 18. *Gibson v. Harris*, 1 Blatchf., 169, 170.—NELSON, J.; N. Y., 1846.

It is not the meaning of this section that the patentee, in his reissue, must describe and claim in his new specification, either in words or idea, just what he described and claimed in his old one; but his specification must be of the same invention, and he cannot embrace a different subject matter than that he sought to patent originally. *French v. Rogers*, MS.—KANE, J.; Pa., 1851. *Battin v. Taggart*, 17 How., 83.—MCLEAN, J.; Sup. Ct., 1854.

Upon an application for a reissue, the applicant is not necessarily confined to the original record, *i. e.*, the patent and specification, but the original model may be referred to as evidence of the then invention. *Ball, Ex parte*, MS. (App. Cas.) *Wilson v. Singer*, MS. (App. Cas.)—DUNLOP, J.; D. C., 1860. *Dietz, Ex parte*, MS. (App. Cas.)—MORSELL, J.; D. C., 1860.

of the original patent, a similar right shall vest in his executors, administrators, or assignees. (a) And the patent, so reissued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing out of the original patent. (b) And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings

This section does not point to the specification and model as the *sole* means of proof, or to any means of proof. All that it requires is, that the reissue should be for the *same invention* originally intended to be patented. *Dyson, Ex parte*, MS. (App. Cas.)—DUNLOP, J.; D. C., 1860.

What the legislature designed to secure to patentees by this section was to enable them to cure *honest mistakes*, and to get *substantial protection for the same invention* they had made and *intended* to be patented when the original patent was granted. The only limitation in the statute is, that the invention shall be the same. *Ibid.*

Any legal proof to show it to be the same invention, whether found in the record or *aliunde*, ought to be received. No authority is given to the Patent Office to limit the range of proof. It is open to the patentee to offer any *sufficient legal* proof, record or otherwise. *Ibid.*

Fee on reissue now thirty dollars. Act of 1861, § 10.

See also DIGEST, title REISSUE OF PATENT, B., C.

(a) Under this section the power to surrender a patent and take out a renewal thereof, is vested exclusively in the patentee, his executors, administrators, or assigns and there is nothing restricting such right because of special or limited grants or licenses previously made. *Smith v. Mercer*, 4 West. Law Jour., 52.—KANE, J.; Pa., 1846.

By this section the sole right to surrender is given, 1st, to the patentee, if he is alive and has made no assignment of the original patent; 2d, to the executors and administrators of the patentee, after his decease, where there has been no such assignment; and 3d, to the assignee, where there has been an assignment of the original patent. The right to surrender is given to no one else. *Potter v. Holland*, MS.—INGERSOLL, J.; Ct., 1858.

Where, however, there has been an assignment of an undivided part of the whole patent, in such case the assignee and patentee become joint owners, and should join in the surrender; and if they do not it will be invalid, unless the part owner not joining shall ratify it. *Ibid.*

A licensee has no authority to make a surrender, and one made without his consent is valid. But such a licensee may hold under the original or the reissued patent, as he prefers. *Ibid.*

There may be a claim of right in an invention, under one or the old patent, for one section of the country, and a different claim of right, under the reissued patent, for the same invention, for another section of country. *Ibid.*

See also DIGEST, title REISSUE OF PATENT, A.

(b) Under this section the second patent, with corrected specifications, has relation back to the emanation of the first patent, as fully for every legal purpose as to causes subsequently accruing, as if the second patent had been issued at the date of the first one. *Stanley v. Whipple*, 2 McLean, 37.—McLEAN, J.; Ohio, 1839.

being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the Commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall hereafter have the same effect in law, to all intents and purposes, as though it had been embraced in the original description and specification. (a)

SECTION 14. *And be it further enacted*, That whenever, in any action for damages for making, using, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; (b) and such damages may be recovered by action on the case, in any

A reissued patent is only a continuation of the original one. *Ames v. Howard*, 1 Sumn., 488.—STORY, J.; Mass., 1833. *Stanley v. Whipple*, 2 McLean, 37.—MCLEAN, J.; Ohio, 1839. *Woodworth v. Hall*, 1 Wood. & Min., 257.—WOODBURY, J.; Mass., 1846.

The rights of the patentee are to be ascertained by the law under which the original application was made. *Shaw v. Cooper*, 7 Pct., 315.—MCLEAN, J.; Sup. Ct., 1833.

A patentee cannot by a surrender affect the rights of third persons to whom he had previously conveyed an interest. *Woodworth v. Stone*, 3 Story, 750.—STORY, J.; Mass., 1845. *McBurney v. Goodyear*, 11 Cush., 370.—MERRICK, J.; Mass., 1853.

The grant of an amended patent is conclusive as to the existence of the facts necessary for a reissue; unless it is patent there is a clear excess of authority, or there has been fraud. *Allen v. Blunt*, 3 Story, 745.—STORY, J.; Mass., 1845. *S. C.*, 2 Wood. & Min., 139.—WOODBURY, J.; Mass., 1846. *Battin v. Taggart*, 17 How., 84.—MCLEAN, J.; Sup. Ct., 1854.

(a) Under this section an improvement may be annexed to the specification of the original patent, so as to make it form a part of the original patent; but there is nothing that forbids an inventor taking out a new patent for the improvement, if he prefers it. *O'Reilly v. Morse*, 15 How., 122.—TANEY, Ch. J.; Sup. Ct., 1853.

Nor is he bound in his new patent to refer specially to his former one. *Ibid.*, 122.

The provision of this section authorizing additions to patents for improvements, is now repealed, and patents of additions are no more granted. Act of 1861, § 9.

(b) The patent act of 1790, § 4, made the infringer liable to pay such damages as the jury should find, and also forfeit the machine. The act of 1793, § 5, declared that an infringer should pay a sum equal to three times the price for which the patentee had sold licenses. The act of 1800 provided that an infringer should pay three times the actual damages sustained. *Seymour v. McCormick*, 16 How., 488.—GRIER, J.; Sup. Ct., 1853.

This section confines the jury to the actual damages sustained by the patentee. The power to increase them as punitive damages is committed to the discretion and judgment of the court. *Ibid.*, 488.

Actual damages, according to this section, are the amount fixed by the verdict. *Stephens v. Felt*, 2 Blatchf., 38.—BERTS, J.; N. Y., 1846.

But such term cannot be construed to mean exemplary, vindictive, or punitive

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court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentees, assignees, or as grantees of the exclusive right within and throughout a specified part of the United States. (a)

SECTION 15. *And be it further enacted*, That the defendant in any such action shall be permitted to plead the general issue, and to give this act and any special matter in evidence, (b) of which notice in writing may have been given to the

damages, inflicted by way of smart money. *Stimpson v. Railroads*, 1 Wall., Jr., 169.—GRIER, J.; Pa., 1847. *Luck v. Hermance*, 1 Blatchf., 406.—NELSON, J.; N. Y., 1849. *Pitts v. Hall*, 2 Blatchf., 238.—NELSON, J.; N. Y., 1851.

Damages are only to be compensatory: the criterion is indemnity. *Parker v. Hulme*, 7 West. Law Jour., 428.—KANE, J.; Pa., 1849.

Damages cannot include counsel fees, in addition to the taxable costs. *Stimpson v. Railroads*, 1 Wall., Jr., 166, 169.—GRIER, J.; Pa., 1847. *Blanch. Gun-Stock Fac. v. Warner*, 1 Blatchf., 272.—NELSON, J.; Ct., 1846. *Parker v. Hulme*, 7 West. Law Jour., 429.—KANE, J.; Pa., 1849. *Teese v. Huntington*, 23 How., 8.—CLIFFORD, J.; Sup. Ct., 1859.

It rests with the discretion of the court whether the damages shall be trebled. Previous to 1836, the court was compelled to treble them. *Guyon v. Serrell*, 1 Blatchf., 245.—NELSON, J.; N. Y., 1847. *Stimpson v. Railroads*, 1 Wall., Jr., 166.—GRIER, J.; Pa., 1847.

The court may increase the damages though the plaintiff is not entitled to costs, for neglect of filing a disclaimer, as required by § 9 of the act of 1837. *Guyon v. Serrell*, 1 Blatchf., 246.—NELSON, J.; N. Y., 1847.

The object of this section, as to trebling damages, is to remunerate patentees, who were compelled to sustain their patents against wanton and persistent infringers. *Seymour v. McCormick*, 16 How., 488.—GRIER, J.; Sup. Ct., 1853. *Bell v. McCulloch*, MS.—LEAVITT, J.; Ohio, 1858.

See also DIGEST, titles DAMAGES; INFRINGEMENT.

(a) The word "assignees" in this section, is to be construed by reference to § 11, of the same act, as meaning the assignees of a whole interest, or an undivided one, or an exclusive local right. *Blanchard v. Eldridge*, 1 Wall., Jr., 340.—GRIER, J.; Pa., 1849. *Suydam v. Day*, 2 Blatchf., 23.—NELSON, BETTS, JJ.; N. Y., 1846.

To enable an assignee to sue in his own name, he must have the exclusive right, or entire, or unqualified monopoly, which the patentee had, excluding the patentee himself as well as others. *Gayler v. Wilder*, 10 How., 493.—TANEY, Ch. J.; Sup. Ct., 1850.

The assignees of an exclusive right in a patent, are the proper persons to maintain an action for a violation of it. *Washburn v. Gould*, 3 Story, 131, 167.—STORY, J.; Mass., 1846.

The grantee of an exclusive right under a patent, even though such right is limited to a particular number of machines, may maintain an action for infringement. *Wilson v. Rossau*, 4 How., 686, 688.—NELSON, J.; Sup. Ct., 1845.

Under this section, in connection with § 11, an action is given only to such party—composed of one or more persons—as possesses the whole interest in the patent. *Suydam v. Day*, 2 Blatchf., 23.—NELSON, BETTS, JJ.; N. Y., 1846.

Where a party has an interest in only a part of a patent, as a license to use the invention, he cannot maintain an action for an infringement. *Ibid.*, 23.

Under this section, an action is properly brought in the name of a patentee, in behalf of a licensee who is damaged by an infringement. *Goodyear v. McBurney*, 3 or 4 Blatchf.—NELSON, J.; N. Y., 1853.

(b) The defendant need not plead the general issue, and give notice of the special

plaintiff or his attorney, thirty days before trial, (a) tending to prove that the description and specification filed by the plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect; which concealment or addition shall fully appear to have been made for the purpose of deceiving the public, (b) or that the patentee was not the original and first inventor or discoverer of the thing patented, or of a substantial and material part thereof claimed as new, (c) or that it had been described in some public work anterior to the supposed discovery thereof by the patentee, (d) or had been in public use or on sale with the con

matter. He may plead specially, and then the plea is the only notice. *Evans v. Eaton*, 3 Wheat., 504.—MARSHALL, Ch. J.; Sup. Ct., 1818. *Grant v. Raymond*, 6 Pet., 247.—MARSHALL, Ch. J.; Sup. Ct., 1832. *Phillips v. Combstock*, 4 McLean, 525.—MCLEAN, J.; Ind., 1849. *Smith v. Ely*, 15 How., 141.—TANEY, Ch. J.; Sup. Ct., 1853. *Day v. N. E. Car-Spring Co.*, 3 or 4 Blatchf.—BETTS, J.; N. Y., 1854. CONTRA, *Wilder v. Gayler*, 1 Blatchf., 598.—NELSON, J.; N. Y., 1850; but this case overruled by the last.

But where notice of special matter is given under the general issue, special pleas containing the same matters cannot be filed. *Wilder v. Gayler*, 1 Blatchf., 597.—NELSON, J.; N. Y., 1850. *Brunswick v. Holzalb*, MS.—LEAVITT, J.; Ohio, 1858.

The right to plead the general issue and give notice, is an enlargement of the defendant's mode of defence, but does not take away his right to plead specially. *Phillips v. Combstock*, 4 McLean, 525.—MCLEAN, J.; Ind., 1849.

(a) No order of court is necessary to entitle a defendant to file and serve notice of special matter. It is only necessary that it be in writing and be served thirty days before the trial. *Teese v. Huntington*, 23 How., 10.—CLIFFORD, J.; Sup. Ct., 1859.

If a first notice is defective or not sufficiently comprehensive, other notices may be given to remedy the defect or supply the deficiency. *Ibid.*, 10.

Under such notice, depositions taken before it was served, as well as those taken afterward, are admissible. *Ibid.*, 10.

Notices may be served in term time, but must be thirty days before trial. *Latta v. Hawk*, MS.—LEAVITT, J.; Ohio, 1859.

(b) A defect or concealment is not fatal, unless made with an intention to deceive. *Whittemore v. Cutter*, 1 Gall., 437.—STORY, J.; Mass., 1813. *Gray v. James*, Pet., C. C., 409.—WASHINGTON, J.; Pa., 1817. *Lowell v. Lewis*, 1 Mas., 188, 189.—STORY, J.; Mass., 1817.

The question as to the materiality of the thing concealed is, could an artist, after the expiration of the patent, construct a machine by looking at the specification. *Reutgen v. Kanows*, 1 Wash., 171.—WASHINGTON, J.; Pa., 1804.

(c) The defence "that the patentee was not the original and first inventor or discoverer of the thing patented," is complete without showing that the first inventor had put his invention in practice. *Hildreath v. Heath*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

No person who is not at once the first and original inventor, is entitled to a patent. A subsequent inventor, though an original one, is not. *Reed v. Cutter*, 1 Story, 596.—STORY, J.; Mass., 1841.

See also DIGEST, title INVENTOR, B.

(d) The description in a public work must be sufficiently full and precise to enable a mechanic to construct the machine, and must be in all material respects like that covered by the plaintiff's patent. *Parker v. Stiles*, 5 McLean, 61.—MCLEAN, J.; Ohio, 1849.

sent and allowance of the patentee before his application for a patent, (a) or that he had surreptitiously or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; (b) or that the patentee, if an alien at the time the patent was granted, had failed and neglected for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reason-

The publication may be proved as to its contents, and the fact of publication by the production of the book, or by parol testimony. *Allen v. Hunter*, 6 McLean, 314.—McLEAN, J.; Ohio, 1855.

The publication must have been prior to the *time of invention*. It is not sufficient that it was prior to the time of *application* for a patent. *Bartholomew v. Sawyer*, MS.—INGERSOLL, J.; N. Y., 1859. *Allen v. Hunter*, 6 McLean, 314.—McLEAN, J.; Ohio, 1855.

To render admissible in evidence a printed publication it is not necessary to make proof of the date of its publication. A book purporting on its title-page to be published in : in year will be received without proof that it was then published. *Judson v. Cop.*, MS.—LEAVITT, J.; Ohio, 1860.

A book of plates without any letter press cannot be admitted in evidence. *Sem-ble*, that it is not a "printed publication." *Ibid.*

Where reference is made to a public work, it should be to the particular part of the work intended to be relied upon. A reference merely to the title of the work is not sufficient. *Foote v. Silsby*, 1 Blatchf., 454, 462.—CONKLING, NELSON, JJ.; N. Y., 1849. *Silsby v. Foote*, 14 How., 222.—CURTIS, J.; Sup. Ct.; 1852.

See also DIGEST, title PUBLIC WORK.

(a) The public use or sale, to defeat the inventor of a right to a patent, must be a public use or sale by others with his knowledge and consent before his application for a patent. *Ryan v. Goodwin*, 3 Sumn., 518.—STORY, J.; Mass., 1839. *Wyeth v. Stone*, 1 Story, 281.—STORY, J.; Mass., 1840. *Gayler v. Wilder*, 10 How., 496, 498.—TANEY, Ch. J.; Sup. Ct., 1850. *Pitts v. Hall*, 2 Blatchf., 235, 236.—NELSON, J.; N. Y., 1851. *Hunt v. Howe*, MS. (App. Cas.)—MORSELL, J.; D. C., 1855.

A use with the inventor's knowledge or consent, or experimental to ascertain its value, utility, or success, or a use intermediate the application and grant, will not be sufficient. *Ryan v. Goodwin*, 3 Sumn., 518.—STORY, J.; Mass., 1839. *Wyeth v. Stone*, 1 Story, 281.—STORY, J.; Mass., 1840. *Pierson v. Eagle Screw Co.*, 3 Story, 407.—STORY, J.; R. I., 1844. *Winans v. N. Y. & Har. R. R.*, 31 Jour. Fr. Inst., 3d Ser., 322.—NELSON, J.; N. Y., 1855.

The right to use an invention for two years before application for a patent, is conferred by the act of 1839, § 7.

See also DIGEST, titles ABANDONMENT, A.; PUBLIC USE.

(b) An inventor who has first actually perfected his invention will not be deemed to have surreptitiously or unjustly obtained a patent for that which was in fact first invented by another, unless the latter was at the time using due diligence in adapting and perfecting his invention. *Reed v. Cutter*, 1 Story, 599.—STORY, J.; Mass., 1841.

But the first inventor has the prior right if he is using due diligence, even though another may have first perfected the invention. *Ibid.*, 600.

The clause using "reasonable diligence in adapting and perfecting" an invention is applicable only to the case of a defence that the plaintiff's patent had been surreptitiously or unjustly obtained; and if pleaded, it may be necessary for the defendant to show, in order to vacate the patent, that he was using due diligence when the patent was obtained. *Perry v. Cornell*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1847.

The words "unless such person was using reasonable diligence in adapting and perfecting the same," constitute a *qualification* of the preceding language of the section, so

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able terms, the invention or discovery for which the patent issued; (a) in either of which cases judgment shall be rendered for the defendant with costs. And whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, he shall state, in his notice of special matter the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing, and where the same had been used. (b) *Provided, however,* That whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery or any part thereof having been before known or used in any foreign country, it not appearing that

that an inventor who has actually perfected his invention will not be deemed to have surreptitiously or unjustly obtained a patent for that which was *in fact invented* by another, *unless, the latter* was at the time *using reasonable diligence* in adapting and perfecting the same. *Marshall v. Mee*, MS. (App. Cas.)—DUNLOP, J.; D. C., 1853.

The defence that the patentee had “surreptitiously and unjustly obtained a patent for that which was in fact invented or discovered by another, who was using reasonable diligence in perfecting and adapting the same,” does not necessarily imply bad faith on the part of the patentee against whose patent this defence is set up. The words were intended to be used, and are used, in their broadest sense. *Phelps, Dodge & Co. v. Brown Bros.*, 18 How. Pr.—NELSON, J.; N. Y., 1859.

If a person does not use due diligence in perfecting his invention after he has conceived the idea, and another conceives the idea and perfects it, and applies it to use, the latter will be considered the first inventor, and a patent granted the former will be void. *Ransom v. Mayor, &c., of New York*, MS.—HALL, J.; N. Y., 1856.

(a) An alien patentee must put and continue on sale his invention within eighteen months from the date of his patent. *Hildreath v. Heath*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

The assignees of an alien patentee take only the right of their assignors; and such assignees, under this section, must put the invention on sale within eighteen months from the time of issuing the patent. *Tatham v. Loring*, 5 N. Y. Leg. Obs., 208.—STORY, J.; Mass., 1845.

CONTRA, That such assignees take their patent with all the privileges of American citizens. The alien clause in this section does not apply to such assignees. *Tatham v. Lowber*, 2 Blatchf., 50, 51.—NELSON, J.; N. Y., 1847.

But it is not necessary that an alien patentee, or his assignee, should take active measures for putting his patented invention in the market, and forcing a sale, but only that he should at all times be ready to sell at a fair price when a reasonable offer is made. *Tatham v. Le Roy*, MS., NELSON, J.; N. Y., 1849.

(b) The provision in this section, requiring notice of prior knowledge and use, was intended to guard against surprise from such evidence as was given in Whitney's case. Though his invention was one of undoubted originality, two persons were brought forward, one of whom testified that he had seen such an invention in England seventeen years before, and the other that he had seen one in Ireland. *Wilton v. Railroads*, 1 Wall., Jr., 195.—GRIER, J.; Pa., 1847.

The provision of the statute requiring notice of the previous use, is designed to give the patentee the benefit of examining into the facts of the supposed prior use. *Coleman v. Liesor*, MS.—LEAVITT, J.; Ohio, 1859.

This section requires only the names and residences of the persons who possessed the prior knowledge, and of the places where the invention had been used. The

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the same or any substantial part thereof had before been patented or described in any printed publication. (a) *And provided, also*, That whenever the plaintiff shall fail to sustain his action on the ground that in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear

names and residences of the witnesses need not be given. *Wilton v. Railroads*, 1 Wall., Jr., 195.—GRIER, J.; Pa., 1847. *Many v. Jagger*, 1 Blatchf., 376.—NELSON, J.; N. Y., 1848.

Notice of the *time* of the prior knowledge or use is not required. *Phillips v. Page*, 24 How., 168.—NELSON, J.; Sup. Ct., 1860.

In the seventh circuit, the notice must specify the street or factory where the prior structure was used, or the name of the person or owner using it. The name of the city, or town, or county, is not sufficiently definite as to place. *Latta v. Shawk*, MS.—LEAVITT, J.; Ohio, 1859. *Coleman v. Liesor*, MS.—LEAVITT, J.; Ohio, 1859.

And also, the name of the person by whom the prior knowledge is to be proved. *Judson v. Cope*, MS.—LEAVITT, J.; Ohio, 1860.

See also DIGEST, title GENERAL ISSUE, B.

(a) The provision of § 7 and of this section introduced an important modification into the laws of patents, designed to protect the American inventor against the injustice of being thrown out of the fruits of his ingenuity by the existence of a secret invention or discovery abroad, that is a discovery not patented, and not described in any printed publication. *Anon.*, 5 Opin., 21.—TOUCEY, Atty. Gen., 1848.

The only exception to the rule that a patentee must be the original and first inventor, exists in the case of a party obtaining a patent, believing himself to be the original inventor, and his invention is shown to have been *known in a foreign country*, but not patented there, or described in a printed publication. *Parker v. Stiles*, 5 McLean, 61.—MCLEAN, J.; Ohio, 1849.

In determining whether the patentee *believed* himself to be the first inventor, the defendant may give evidence that the patentee knew of the existence of the thing abroad; and in considering the fact whether he so *believed* himself to be the first inventor, it is material to determine whether he was in fact the original inventor. *Forbush v. Cook*, 10 Mo. Law Rep., 664.—CURTIS, J.; Mass., 1857.

A prior use of a thing in a foreign country will not invalidate a patent subsequently taken out here, where the inventor believed himself to be the first inventor, unless the prior invention had been patented, or described in some printed publication. *Coleman v. Liesor*, MS.—LEAVITT, J.; Ohio, 1859.

Evidence cannot be received of an actual use and knowledge of an invention in a foreign country, prior to the time of the invention here, but the defendants must be confined to the description of the invention as found in printed publications or patents: they cannot go beyond such publications or patents. *Judson v. Cope*, MS.—LEAVITT, J.; Ohio, 1860.

The time referred to in this section by the terms "having been before known and used in any foreign country," or "had been patented or described in any printed publication," is the time when the original discovery or invention of a patentee was made, and not the time when he presented his application for a patent. *Bartholomew v. Sawyer*, MS.—INGERSOLL, J.; N. Y., 1859.

A foreign patent, in order to defeat an American patent for the same invention, must have been before the discovery or invention here: it is not sufficient that it is before the application. *Howe v. Morton*, MS.—SPRAGUE, J.; Mass., 1860.

An invention is not "patented" in England within the meaning of this section, until the complete specification has been enrolled—until the invention shall have been made patent to the world, which is usually six months from after the date of the patent. *Ibid.*

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that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court, to adjudge and award as to costs as may appear to be just and equitable. (a)

SECTION 16. *And be it further enacted*, That whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an adverse decision of a board of examiners, (b) on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent, either by assignment or otherwise, in the one case, and any such applicant in the other case, may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties, and other due proceedings had, may adjudge and declare either the patents void in the whole or in part, or inoperative and invalid in any particular part or portion of the United States, according to the interest which the parties to such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and provisions of this act, to have and receive a patent for his invention, as specified in his claim, or for any part thereof, as the fact of priority of right or invention shall in any such case be made to appear. (c) And such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such patent, on his filing a copy of the adjudication, and otherwise complying with the requisitions of this act. *Provided, however*, That no such judgment or adjudication shall affect the rights of any person except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment.

(a) The second proviso of this section virtually superseded by the act of 1837, § 9, which see.

(b) Or of the chief-justice and assistant justices of the Circuit Court of the District of Columbia, as appeals are now authorized to be taken to them, instead of to the Board of Examiners referred to in this section. Acts of 1839, § 11, and of 1852, § 1.

The provisions of this section also extended "to all cases where patents are refused for any reason whatever." Act of 1839, § 10.

(c) Proceedings, under this section and § 10 of the act of 1839, in equity, against the Commissioner of Patents, to compel him to issue a patent, must be commenced in the Circuit Court of the United States for the District of Columbia, and the Circuit Courts in the various states have no jurisdiction. *Prentiss v. Ellsworth*, Mir. Pat. Off., 35, 36.—RANDALL, J.; Pa., 1846.

Upon a bill filed under this section and § 10 of the act of 1839, to declare a patent granted by the Commissioner invalid or inoperative, the hearing is altogether independent of that before the Commissioner, and takes place upon such testimony as the parties may see fit to produce, agreeably to the rules and practice of a court of equity. The evidence before the Commissioner is not evidence in such a suit except by consent of parties; nor are the parties restricted to the testimony used before the Commissioner. Either party is at liberty to introduce additional evidence. *Atkinson v. Boardman*, MS.—NELSON, J.; N. Y., 1851.

The assignee of an invention, by virtue of an assignment made before patent issued, may file a bill in his own name under this section and § 10 of the act of 1839, against a patentee to whom a patent issued on the rejection of his assignor's application, for the purpose of annulling the patent so issued, and having one granted to him as assignee. And such assignment need not have been recorded before suit brought; it

ACT OF 1836, CHAP. 357, § 17.

SECTION 17. *And be it further enacted*, That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the power and jurisdiction of a circuit court; which courts shall have power, upon a bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable: (a) *Provided, however*, That from all judgments and decrees from any such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the Supreme Court of the United States, in the same

will be sufficient if it is recorded at any time before the issuing of the patent. *Goy v. Cornell*, 1 Blatchf., 509, 510.—NELSON, J.; N. Y., 1849.

The Circuit Courts of the United States have exclusive jurisdiction under this section. *Gibson v. Woodworth*, 8 Paige, 134.—WALWORTH, Chan.; N. Y., 1840.

(a) The jurisdiction conferred upon the Circuit Courts by this section is the same in its nature and extent as the equity jurisdiction in England, from which it is derived. *Allen v. Blunt*, 1 Blatchf., 486.—NELSON, J.; N. Y., 1849.

Under this section the Circuit Courts have jurisdiction irrespective of the right of the plaintiff to an injunction or a demand for one. *Nevins v. Johnson*, 4 Blatchf.—NELSON, BETTS, JJ.; N. Y., 1853.

The natural interpretation of the language of this section seems to be, that Congress has bestowed upon this court a common jurisdiction, both on its law and equity sides, over all cases under the patent laws, and that no suit of that character can be maintained at law which may not also be prosecuted in equity. *Ibid.*

Under this section the Circuit Courts of the United States have not only original, but exclusive cognizance of all actions arising under the patent laws. *Dudley v. Mayhew*, 3 Coms., 14.—STRONG, J.; N. Y., 1849. *Elmer v. Pennel*, 40 Maine, 434.—RICE, J.; Me., 1855. *Parsons v. Barnard*, 7 John., 144.—CURIAM; N. Y., 1810.

In cases arising under the patent law, the jurisdiction of the Circuit Courts does not depend upon the citizenship of the parties to the action, or the amount in controversy, but upon the subject matter. *Allen v. Blunt*, 1 Blatchf., 486.—NELSON, J.; N. Y., 1849. *Goodyear v. Union Rub. Co.*, MS.—INGERSOLL, J.; N. Y., 1857.

The jurisdiction as to subject matter does not extend to a bill in equity filed for the specific performance of a contract respecting patents. *Nesmith v. Calvert*, 1 Wood. & Min., 37.—WOODBURY, J.; Mass., 1845. *Brooks v. Stolley*, 3 McLean, 525.—McLEAN, J.; Ohio, 1845. *Burr v. Gregory*, 2 Paine, 426, 429.—THOMPSON, J.; N. Y., 1828.

Nor to a suit brought to enforce the covenants of a license granted under a patent. *Goodyear v. Union Rub. Co.*, MS.—INGERSOLL, J.; N. Y., 1857.

Section 11 of the judiciary act of 1789 requiring one of the parties, plaintiff or defendant, to be an inhabitant of the state where the suit is brought, does not apply to actions arising under the patent laws. *Allen v. Blunt*, 1 Blatchf., 486.—NELSON, J.; N. Y., 1849.

To give the courts jurisdiction, the party defendant must be an inhabitant of the district in which the suit is brought, or he must be found within it at the time of the service of the original process. The provisions of § 11 of the act of 1789, in this respect, apply to patent actions. *Day v. Newark Ind. Rub. Co.*, 1 Blatchf., 631, 632.—NELSON, J.; N. Y., 1850. *Allen v. Blunt*, 1 Blatchf. 486.—NELSON, J.; N. Y., 1849.

manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the same. (a)

SECTION 18. *And be it further enacted*, That whenever any patentee (b) of an invention or discovery shall desire an extension of his patent beyond the term of its limitation, he may make application therefor, in writing, to the Commissioner of the Patent Office, setting forth the grounds thereof; (c) and the Commissioner shall, on the applicant's paying the sum of forty dollars to the credit of

Wilson v. Sherman, 1 Blatchf., 541.—NELSON, J.; N. Y., 1850. *Brown v. Shannon*, 20 How., 56.—TANEY, Ch. J.; Sup. Ct., 1857. *Chaffee v. Hayward*, 20 How., 215.—CATRON, J.; Sup. Ct., 1857.

See also DIGEST, title COURTS, B. 2.

(a) Other reasonable cases under this section in which appeals and writs of error may be allowed to the Supreme Court, must be limited to cases which relate to the construction of the patent laws, and such as involve important and not trifling matters connected with those laws, and questions really doubtful. *Allen v. Blunt*, 2 Wood. & Min., 157.—WOODBURY, J.; Mass., 1846.

Under this section, if a writ of error is allowed by the court as "reasonable," such writ must bring up the whole case for consideration, and the court below cannot decide as to what particular points shall be taken up. *Hogg v. Emerson*, 6 How., 478.—WOODBURY, J.; Sup. Ct., 1847.

The word "reasonable" applies to the cases rather than to any discrimination between the different points in the cases. *Ibid.*, 478.

A judge at chambers may allow a writ of error under this section in the "other cases" referred to, where the judgment is less than \$2,000. *Foote v. Silsby*, 1 Blatchf., 544.—NELSON, J.; N. Y., 1857.

The "other cases" in this section does not include a suit in equity to set aside an assignment of a patent. *Wilson v. Sandford*, 10 How., 101, 102.—TANEY, Ch. J.; Sup. Ct., 1850.

The discretionary power as to granting writs of error in patent cases, vested in the Circuit Courts by this section, is confined to cases which involve the construction of the patent laws, and the rights of patentees under them. *Sizer v. Many*, 16 How., 103.—TANEY, Ch. J.; Sup. Ct., 1853.

An appeal or writ of error now lies to the Supreme Court from all judgments and decrees of any Circuit Court rendered in any action arising under the patent laws, without regard to the value or amount in controversy. Act of 1861, chap. 37.

See also DIGEST, titles APPEALS, A.; WRIT OF ERROR.

(b) In this section the word *patentee* is used as equivalent to *inventor*. *Woodworth v. Sherman*, 3 Story, 176.—STORY, J.; Mass., 1844.

This section authorizes the extension of a patent on the application of an administrator. *Nyman's Case*, 3 Opin., 446.—GRUNDY, Atty. Gen.; 1839. *Van Hook v. Scudder* (cited 3 Story, 132), 3 McLean, 438.—THOMPSON, J.; N. Y., 1843. *Brooks v. Bicknell*, 3 McLean, 258.—MCLEAN, J.; Ohio, 1843. *Brooks v. Bicknell*, 3 McLean, 436.—MCLEAN, J.; Ohio, 1844. *Woodworth v. Sherman*, 3 Story, 172.—STORY, J.; Mass., 1844. *Woodworth v. Wilson*, 4 How., 716.—NELSON, J.; Sup. Ct., 1845.

And this, though the patentee during his lifetime had disposed of all his interest in the existing patent, and having at the time of his death no interest in it. *Wilson v. Rosseau*, 4 How., 675, 686, 688.—NELSON, J.; Sup. Ct., 1845.

See also DIGEST, title EXTENSION OF PATENT, A.

(c) The right of renewal is not limited to future patents, but applies to the past,

 ACT OF 1836, CHAP. 357, § 18.

the treasury, (a) as in the case of an original application for a patent, cause to be published in one or more of the principal newspapers in the city of Washington, and in such other paper or papers as he may deem proper, published in the section of country most interested adversely to the extension of the patent, a notice of such application and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. (b) And the Secretary of State, the Commissioner of the Patent Office, and the Solicitor of the Treasury, shall constitute a board (c) to hear and decide upon the evidence produced before them both for and against the extension, and shall sit for that purpose at the time and place designated in the published notice thereof. The patentee shall furnish to said board a statement, in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention. And if, upon a hearing of the matter, it shall appear to the full and entire satisfaction of said board, having due regard to the public interest therein, that it is just and proper that the term of the patent should be extended, by reason of the patentee, without neglect or fault on his part, having failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use, it shall be the duty of the Commissioner to renew and extend the patent, by making a certificate thereon of such extension, for the term of seven years from and after the expiration of the first term; which certificate, with a certificate of said board of their judgment and opinion as aforesaid, shall be entered on record in the Patent Office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for the term of twenty-

Woodworth v. Sherman, 3 Story, 176.—STORY, J.; Mass., 1844. *Wilson v. Turner*, 7 Law Rep., 529.—TANEY, Ch. J.; Md., 1845.

But this section provides for but one extension. *Gibson v. Cook*, 2 Blatchf., 146.—NELSON, J.; N. Y., 1850.

The decision of the Board of Commissioners, under this section, is conclusive within the scope of its authority. *Brooks v. Bicknell*, 3 McLean, 258.—MCLEAN, J.; Ohio, 1843. *Wilson v. Rosseau*, 4 How., 688.—NELSON, J.; Sup. Ct., 1845. *Woodworth v. Stone*, 3 Story, 753.—STORY, J.; Mass., 1845. *Colt v. Young*, 2 Blatchf., 473, 474.—NELSON, J.; N. Y., 1852. *Battin v. Taggart*, 17 How., 84.—MCLEAN, J.; Sup. Ct., 1854. *Clum v. Brewer*, 2 Curt., 518.—CURTIS, J.; Mass., 1855.

See also DIGEST, title EXTENSION OF PATENT, B.

(a) The fee is now fifty dollars on the application for an extension, and fifty dollars when the extension is granted. Act of 1861, § 10.

(b) The notice of application for an extension is intended to protect the public, and give all an opportunity to appear and oppose. *Gale's Case*, 3 Opin., 594.—GILPIN, Atty. Gen.; 1840.

Application must now be made at least ninety days before the expiration of the patent, and the notice must be published at least sixty days before such expiration. Act of 1861, § 12.

(c) Commissioner of Patents substituted for this board by act of 1848, § 1.

one years. (a) And the benefit of such renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interests therein; (b) *Provided, however,* That no extension of a patent shall be granted after the expiration of the term for which it was originally issued. (c)

SECTION 19. *And be it further enacted,* That there shall be provided for the use of said office, a library of scientific works and periodical publications, both foreign and American, calculated to facilitate the discharge of the duties hereby required of the chief officers therein, to be purchased under the direction of the

(a) A renewed patent confers the same rights with an original patent. *Evans v. Jordan*, 1 Brock., 254.—MARSHALL, Ch. J.; Va., 1813.

After an extension, the original patent becomes one virtually for twenty-one years. *Gibson v. Harris*, 1 Blatchf., 169.—NELSON, J.; N. Y., 1846.

If extended again by act of Congress, it becomes one for twenty-eight years. *Woodworth v. Edwards*, 3 Wood. & Min., 125.—WOODBURY, J.; Mass., 1847.

Patents may also be extended by act of Congress, after having been once extended under this section. *Evans v. Eaton*, Pct. C. C., 337.—WASHINGTON, J.; Pa., 1816. *Evans v. Eaton*, 3 Wheat., 528.—MARSHALL, Ch. J.; Sup. Ct., 1818. *Blanchard v. Haynes*, 6 West. Law Jour., 83.—WOODBURY, J.; N. H., 1848. *Bloomer v. Stalley*, 5 McLean, 160, 161.—McLEAN, J.; Ohio, 1850.

See also DIGEST, title EXTENSION OF PATENT, D., E.

(b) The object of the clause as to assignees, is to preserve any previous contract of assignment in the sense in which both parties understood and intended it at the time it was made, and to secure to the purchaser the right he had intended to buy, and which the patentee intended to sell. *Wilson v. Turner*, 7 Law Rep., 530.—TANEY, Ch. J.; Md., 1845.

The extension of a patent, under this section, does not inure to the benefit of assignees or grantees under the original patent, so as to vest in them any exclusive right. But the benefit of such renewal is limited to those who were in the use of the patented article at the time of the renewal, and saves to such persons the right to use the machines held by them at the time of such renewal. *Wilson v. Rosseau*, 4 How., 682.—NELSON, J.; Sup. Ct., 1845.

The meaning of the words "thing patented," in the latter part of this section, when construed in connection with the simple right to *use*, without the right to *make* and *vend*, has reference to the machine patented. *Ibid.*, 683.

The phrase "to the extent of their interests therein," means their interests in the patented machines, be that interest in one or more at the time of the extension. *Ibid.*, 683.

The words of this section as to assignees and grantees, seem to convey the impression that something more than the mere ownership of existing machines was intended, and that they were intended to embrace all classes of such assignees and grantees, and all inventions, whether of machines, processes, or compositions of matter, and to embrace rights and interests which were different in extent, either of time or territory, or both. *Day v. Union Rub. Co.*, 3 or 4 Blatchf.—HALL, J.; N. Y., 1856.

But such right is limited to a right to *use*, although the person holding it may also have held, during the original term, an exclusive right to use, to make, and vend. And such right to use is secured only to the extent of the respective interests of the assignees or grantees therein. *Ibid.*

See also DIGEST, title EXTENSION OF PATENT, C.

(c) The extension of all patents, except for designs, granted subsequently to March 2d, 1861, is now prohibited. Act of 1861, § 16.

 ACT OF 1837, CHAP. 45, § 1.

Committee of the Library of Congress. And the sum of fifteen hundred dollars is hereby appropriated for that purpose, to be paid out of the patent fund.

SECTION 20. *And be it further enacted,* That it shall be the duty of the Commissioner to cause to be classified and arranged, in such rooms or galleries as may be provided for that purpose, in suitable cases, when necessary for their preservation, and in such manner as shall be conducive to a beneficial and favorable display thereof, the models and specimens of compositions and of fabrics and other manufactures and works of art, patented or unpatented, which have been, or shall hereafter be, deposited in said office. (a) And said rooms or galleries shall be kept open during suitable hours for public inspection.

SECTION 21. *And be it further enacted,* That all acts and parts of acts heretofore passed on this subject be, and the same are hereby repealed: *Provided, however,* That all actions and processes in law or equity sued out prior to the passage of this act, may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action of the provisions of the fourteenth and fifteenth sections of this act, so far as they may be applicable thereto: *And provided, also,* That all applications or petitions for patents, pending at the time of the passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage hereof

Approved July 4th, 1836.

ACT OF 1837, CHAPTER 45.

(5 STAT. AT LARGE, 191.)

An Act in addition to the act to promote the progress of science and useful arts.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who may be in possession of, or in any way interested in, any patent for an invention, discovery, or improvement, issued prior to the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, or in an assignment of any patent, or interest therein, executed and recorded prior to the said fifteenth day of December, may, without charge, on presentation or transmission thereof to the Commissioner of Patents, have the same recorded anew in the Patent Office, together with the descriptions, specifications of claim and drawings annexed or belonging to the same; and it shall be the duty of the Commissioner to cause the same, or any authenticated copy of the original record, specification, or drawing which he may obtain, to be transcribed and copied into books of record to be kept for that purpose; and wherever a drawing was not

(a) The Commissioner of Patents may now restore to applicants, models of rejected applications, or of applications for designs, or otherwise dispose of them, in cases where he shall not think it necessary to preserve them. Act of 1861, § 5.

originally annexed to the patent and referred to in the specification, any drawing produced as a delineation of the invention, being verified by oath in such manner as the Commissioner shall require, may be transmitted and placed on file or copied as aforesaid, together with certificate of the oath; or such drawings may be made in the office, under the direction of the Commissioner, in conformity with the specification. And it shall be the duty of the Commissioner to take such measures as may be advised and determined by the Board of Commissioners provided for in the fourth section of this act, to obtain the patents, specifications, and copies aforesaid, for the purpose of being so transcribed and recorded. And it shall be the duty of each of the several clerks of the judicial courts of the United States, to transmit, as soon as may be, to the Commissioner of the Patent Office, a statement of all the authenticated copies of patents, descriptions, specifications, and drawings of inventions and discoveries made and executed prior to the aforesaid fifteenth day of December, which may be found on the files of his office; and also to make out and transmit to said Commissioner, for record as aforesaid, a certified copy of every such patent, description, specification, or drawing, which shall be specially required by said Commissioner.

SECTION 2. *And be it further enacted,* That copies of such record and drawings, certified by the Commissioner, or, in his absence, by the chief clerk, shall be prima facie evidence of the particulars of the invention and of the patent granted therefor in any judicial court of the United States, in all cases where copies of the original record or specification and drawings would be evidence, without proof of the loss of such originals; (a) and no patent issued prior to the aforesaid fifteenth day of December, shall, after the first day of June next, be received in evidence in any of the said courts in behalf of the patentee or other person who shall be in possession of the same, unless it shall have been so recorded anew, and a drawing of the invention, if separate from the patent, verified as aforesaid, deposited in the Patent Office; nor shall any written assignment of any such patent, executed and recorded prior to the said fifteenth day of December, be received in evidence in any of the said courts in behalf of the assignee or other person in possession thereof, until it shall have been so recorded anew.

(a) Under this section it was held, where a patent was granted in 1834, but no drawing was attached thereto, and in June, 1837, such patent was recorded anew, and was also extended for seven years on the 25th of September, 1848, and in November, 1848, a drawing with written references was filed, with an affidavit of the patentee of the correctness of such drawing, that a certified copy of such drawing was admissible in evidence in connection with the patent and specification, and that the whole together made *prima facie* evidence of the particulars of such invention. *Winans v. Schenec. & Troy R. R.*, 2 Blatchf., 283, 285, 298.—NELSON, J.; N. Y., 1851.

Such a drawing, however, as a general rule will not be effectual to correct any material defect in the specification. In case of discrepancy between the drawings and specification, the latter must prevail. Nor will such a drawing have the same effect as if it had been referred to in the specification. *Ibid.*, 299.

 ACT OF 1837, CHAP. 45, §§ 3, 4.

SECTION 3. *And be it further enacted*, That whenever it shall appear to the Commissioner that any patent was destroyed by the burning of the Patent Office building on the aforesaid fifteenth day of December, or was otherwise lost prior thereto, it shall be his duty, on application therefor by the patentee or other person interested therein, to issue a new patent for the same invention or discovery, bearing the date of the original patent, with his certificate thereon that it was made and issued pursuant to the provisions of the third section of this act, and shall enter the same of record: *Provided, however*, That before such patent shall be issued, the applicant therefor shall deposit in the Patent Office a duplicate, as near as may be, of the original model, drawings, and description, with specification of the invention or discovery, verified by oath, as shall be required by the Commissioner; and such patent and copies of such drawings and descriptions, duly certified, shall be admissible as evidence in any judicial court of the United States, and shall protect the rights of the patentee, his administrators, heirs, and assigns, to the extent only in which they would have been protected by the original patent and specification. (a)

SECTION 4. *And be it further enacted*, That it shall be the duty of the Commissioner to procure a duplicate of such of the models destroyed by fire on the aforesaid fifteenth day of December, as were most valuable and interesting, and whose preservation would be important to the public; and such as would be necessary to facilitate the just discharge of the duties imposed by law on the Commissioner in issuing patents, and to protect the rights of the public and of patentees in patented inventions and improvements: *Provided*, That a duplicate of such models may be obtained at a reasonable expense: *And provided, also*, That the whole amount of expenditure for this purpose shall not exceed the sum of one hundred thousand dollars. And there shall be a temporary board of commissioners, to be composed of the Commissioner of the Patent Office and two other persons to be appointed by the President, whose duty it shall be to con-

(a) Where a patent was obtained in 1834, the original of which and the drawings were destroyed by fire in 1836, and the patentee, under the act of 1837, filed in 1841 a copy of his patent, and deposited a drawing which, however, was not verified, but which he verified in February, 1844, and subsequently in March, 1844, considering such copy imperfect, filed another and a fuller drawing, and commenced suit in May, 1844; *Held*, that a certified copy of such second drawing was properly received in evidence in such action. *Emerson v. Hogg*, 2 Blatchf., 9.—BETTS, J.; N. Y., 1845.

When such drawings are put on file they become public records, and copies of them must be received in evidence. If they are discordant, one may destroy the effect of the other. *Ibid.*, 12.

Under this section drawings when burnt may be restored, and if in some respects erroneous they can be corrected. *Hogg v. Emerson*, 11 How., 606.—WOODBURY, J.; Sup. Ct., 1850.

But it would not be proper to leave the drawings so long not restored or corrected as to evince neglect, or a design to mislead the public. *Ibid.*, 606.

The provisions of this section extended to patents granted prior to December 15th, 1836, but lost subsequent thereto. Act of 1842, § 2.

 ACT OF 1837, CHAP. 45, § 5.

sider and determine upon the best and most judicious mode of obtaining models of suitable construction; and, also, to consider and determine what models may be procured in pursuance of, and in accordance with, the provisions and limitations in this section contained. And said Commissioners may make and establish all such regulations, terms, and conditions, not inconsistent with law, as in their opinion may be proper and necessary to carry the provisions of this section into effect, according to its true intent.

SECTION 5. *And be it further enacted*, That, whenever a patent shall be returned for correction and reissue under the thirteenth section of the act to which this is additional, and the patentee shall desire several patents to be issued for distinct and separate parts of the thing patented, he shall first pay, in manner and in addition to the sum provided by that act, the sum of thirty dollars for each additional patent so to be issued; (a) *Provided, however*, That no patent made prior to the aforesaid fifteenth day of December, shall be corrected and reissued until a duplicate of the model and drawing of the thing as originally invented, verified by oath as shall be required by the Commissioner, shall be deposited in the Patent Office;

Nor shall any addition of an improvement be made to any patent heretofore granted, nor any new patent be issued for an improvement made in any machine, manufacture, or process, to the original inventor, assignee, or possessor, of a patent therefor, nor any disclaimer be admitted to record, until a duplicate model and drawing of the thing originally invented, verified as aforesaid, shall have been deposited in the Patent Office, if the Commissioner shall require the same; nor shall any patent be granted for an invention, improvement, or discovery, the model or drawing of which shall have been lost, until another model and drawing, if required by the Commissioner, shall, in like manner, be deposited in the Patent Office;

And in all such cases, as well as in those which may arise under the third sec-

(a) If an original patent include two inventions, and its validity on that account is doubted, a separate renewal is just and proper. *Goodyear v. Day*, MS.—GRIER, J.; N. J., 1852.

With respect to reissues, this section, and § 13 of the act of 1836 are to be taken together in construction, and the most just and equitable extent to which the terms of the law in its true spirit will admit of, ought to be adopted. *Ball, Ex parte* MS. (App. Cas.)—MORSELL, J.; D. C., 1860.

If the patent be defective or insufficient, either in the specification or *claim*, the patentee has a right, in the absence of fraud and deception, to have a reissue, for each separate and distinct part, effectually to cure the defect: and he has the right, to *restrict* or *enlarge* his claim, so as to give it operation, and effectuate his invention. *Ibid*

Upon an application for a reissue, under this section, and asking for several reissued patents, each division or separate patent asked for is not such a separate case as to require the payment of \$25 00 on an appeal to the Judges of the Circuit Court: but one appeal carries up the *whole* case and not a part, and notwithstanding that separate reissued patents may be granted. *Selden, Ex parte*, MS. (App. Cas.)—MORSELL, J.; D. C., 1861.

See also notes to § 13 of the act of 1836.

 ACT OF 1837, CHAP. 45, §§ 6, 7.

tion of this act, the question of compensation for such models and drawing shall be subject to the judgment and decision of the commissioners provided for in the fourth section, under the same limitations and restrictions as are therein prescribed.

SECTION 6. *And be it further enacted*, That any patent hereafter to be issued, may be made and issued to the assignee or assignees of the inventor or discoverer, the assignment thereof being first entered of record, and the application therefor being duly made, and the specification duly sworn to by the inventor. (a) And in all cases hereafter, the applicant for a patent shall be held to furnish duplicate drawings, whenever the case admits of drawings, one of which to be deposited in the office, and the other to be annexed to the patent, and considered a part of the specification. (b)

SECTION 7. *And be it further enacted*, That, whenever any patentee shall have through inadvertence, accident, or mistake, made his specification of claim too broad, claiming more than that of which he was the original or first inventor,

(a) This is an enabling statute. Prior to its passage, letters patent could only issue to the inventor: and after they were issued, they were assignable so as to give the assignee, in whole or in part, legal rights. This act gave the right to the assignee or assignees to have the patent issued to him or them, and not to the inventor. *Anon.*, 4 Opin., 400.—MASON, Atty. Gen.; 1845.

But patents cannot issue jointly to the inventor as such, and to the assignee of a partial interest: but must issue to the assignee or assignees of the whole interest. *Ibid.*, 401.

A partial assignment before issue, does not entitle the partial assignee to have the patent issued to him to the extent of his interest. *Ibid.*, 401.

After the assignment of the invention, under this section, by which the inventor divests himself of all interest therein, and transfers it to the assignee, although the application for a patent must be in his name, still, for all substantial purposes, and in judgment of law, the assignee is the party making the application. *Gay v. Cornell*, 1 Blatchf., 509.—NELSON, J.; N. Y., 1849.

An assignment before patent issued, may be made after the rejection of the assignor's application, and after his appeal to the justices of the Circuit Court, and will be sufficient to enable such assignee to file his bill under § 16 of the act of 1836, amended by § 10 of the act of 1839, to compel the issue of a patent to him. *Ibid.*, 509, 510.

If an inventor assign all his right in an invention, the assignee may have the patent issued to himself. But if the assignment be only partial, though the part excepted is small, the assignee has no legal claim to the patent. It must be issued in the name of the inventor, and be held by him in trust for the use of the assignee, to the extent of the equities he has by virtue of his contract. *Ayer's Case*, MS., Opin.—BLACK, Atty. Gen.; 1859.

See also DIGEST, title ASSIGNEE, B. 3.

(b) The provision of this section, requiring duplicate drawings, though directory in its terms, is not a condition: and it has reference, in point of time, to the issuing of the patent, and not to the filing of the petition for it. Duplicate drawings need not be filed at the time of the application, and such is the interpretation of the Patent Office. *French v. Rogers*, MS.—KANE, J.; Pa., 1851. *O'Reilly v. Morse*, 15 How., 126.—GRIER, J.; Sup. Ct., 1853.

some material and substantial part of the thing patented being truly and justly his own, any such patentee, his administrators, executors, and assigns, whether, of the whole or of a sectional interest therein, may make disclaimer (a) of such parts of the thing patented as the disclaimant shall not claim to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; (b) which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office, on payment by the person disclaiming in manner as other patent duties are required by law to be paid, of the sum of ten dollars. And such disclaimer shall thereafter be taken and considered as part of the original specification, to the extent of the interest which shall be possessed in the patent or right secured thereby, by the disclaimant, and by those claiming by or under him (c) subsequent to the record thereof. But no

(a) The law requiring and permitting a patentee to enter a disclaimer, is penal and not remedial. It is intended for the protection of the patentee as well as the public, and should not receive a construction that would restrict its operation within narrower limits than the law fairly imports. *O'Reilly v. Morse*, 15 How., 121.—TANEY, Ch. J.; Sup. Ct., 1853.

Whether a patent is illegal in part because of claiming more than he had described, or more than he has invented, the patentee must in either case disclaim, in order to save the portion to which he is entitled. *Ibid.*, 122.

A patentee has a right to disclaim any thing which has been claimed through "inadvertence or mistake." *Parker v. Sears*, MS.—GRIER, J.; Pa., 1850.

Seemle, That a disclaimer, under this section, should not only disclaim what is not claimed as new, but should also distinctly set forth what part of the invention is still claimed, as it is manifestly designed to act as a new specification. *Lippincott v. Kelly*, 1 West. Law Jour., 513.—IRVIN, J.; Pa., 1844.

(b) Under this section the disclaimer must state the interest of the person disclaiming. But where an administrator in whose name a patent had been extended, entered a disclaimer, stating that he was the patentee, and referring to the patent as showing his interest, it was held sufficient. *Brooks v. Bicknell*, 3 McLean, 439.—McLEAN, J.; Ohio, 1844.

Where a disclaimer made by a patentee stated that "it was to operate to the extent of the interest in said letters patent vested" in the patentee, *Held*, that it fairly imported on its face, that the patentee was the owner of the entire interest in the patent, and if so, there was a substantial compliance with the statute, as to the disclaimer stating the interest of the party making it. *Foote v. Silsby*, 1 Blatchf., 461.—NELSON, J.; N. Y., 1849.

Where in a disclaimer the party stated that he was the patentee, and nothing was said as to any transfer of any part of it, the fair presumption is, that he still owns the whole, and it is a sufficient compliance with the statute, as to stating his interest, to say, "that such disclaimer is to operate to the extent of his interest therein." *Silsby v. Foote*, 14 How., 221.—CURTIS, J.; Sup. Ct., 1852.

(c) If a patent has been previously assigned in part, and a disclaimer has been filed by the patentee alone, such disclaimer will not operate in favor of the assignee, in any suit either at law or equity, unless he has joined in it. *Wyeth v. Stone*, 1 Story, 294.—STORY, J.; Mass., 1840.

A disclaimer of part of an invention cannot affect a prior grantee under the patent, unless he accepts of it; he may refuse to be affected by it. *Smith v. Mercer*, 5 West. Law Jour., 53.—KANE, J.; Pa., 1846.

ACT OF 1837, CHAP. 45, § 8.

such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing the same. (a)

SECTION 8. *And be it further enacted*, That, whenever application shall be made to the Commissioner for any addition of a newly discovered improvement to be made to an existing patent, or whenever a patent shall be returned for correction and reissue, the specification of claim annexed to every such patent shall be subject to revision and restriction, in the same manner as are original applications for patents; the Commissioner shall not add any such improvement to the patent in the one case, nor grant the reissue in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the decision of the Commissioner; and in all such cases, the applicant, if dissatisfied with such decision, shall have the same remedy, and be entitled to the benefit of the same privileges and proceedings as are provided by law in the case of original applications for patents. (b)

Under § 7 of the act of 1837, the owner of a sectional interest in a patent may make a disclaimer of part of the thing patented, which will be considered as a part of the original patent, to the extent of his interest; but the patentee is not compelled to join in such disclaimer, nor will it affect any one except him making it, and those claiming under him. *Potter v. Holland*, MS.—NELSON, INGERSOLL, JJ.; Ct., 1858.

After such a disclaimer, a different claim of right is secured to the disclaimant from what is purported to be secured to the patentee. Different claims of right in the same invention are thus secured to different sectional owners. *Ibid.*

A disclaimer before it can be received in evidence must be properly proved, either as an original paper, or by a certified copy, and if received at all, must have full effect given to it as a disclaimer. *Foot v. Silsby*, 1 Blatchf., 450, 461.—NELSON, J.; N. Y., 1849.

The disclaimer of part of an invention, provided such disclaimer arose from inadvertency, accident, or mistake, will not prevent the patent from embracing the part so disclaimed, on a reissue of his patent. *Hayden, Ex parte*, MS. (App. Cas.)—MERRICK, J.; D. C., 1860.

(a) The disclaimer mentioned in this section applies solely to suits pending when the disclaimer is filed; and the disclaimer mentioned in § 9, applies solely to suits brought after the disclaimer is filed. *Wyeth v. Stone*, 1 Story, 294.—STORY, J.; Mass., 1840.

A disclaimer to be effectual under this and § 9, must be filed before suit brought. If it is filed during the pendency of the suit, the plaintiff will not be entitled to the benefit thereof in that suit. *Reed v. Cutter*, 1 Story, 600.—STORY, J.; Mass., 1841.

If filed before suit, the plaintiff will be entitled to costs, if he establish that a part of his invention, not disclaimed, has been infringed by the defendant. *Ibid.*, 600.

But whether filed before or after suit brought, the plaintiff will not be entitled to the benefit thereof, if he has unreasonably neglected and delayed to file it. Such neglect or delay is a good defence to the suit. *Ibid.*, 600.

Sections 7 and 9 of the act of 1837, authorizing a disclaimer, do not apply when a patent is for a combination of parts. *Battin v. Clayton*, 2 Whar. Dig., 409.—KANE, J.; Pa., 1848.

See also DIGEST, title DISCLAIMER; and notes to § 9 of this act.

(b) This section so far as it relates to patents for additions to existing patents, is repealed by the act of 1861, § 9.

 ACT OF 1837, CHAP. 45, § 9.

SECTION 9. *And be it further enacted*, (any thing in the fifteenth section of the act to which this is additional to the contrary notwithstanding,) That, whenever by mistake, accident, or inadvertence, and without any wilful default or intent to defraud or mislead the public, any patentee shall have in his specification claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same, in every such case the patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and bona fide his own; *Provided*, It shall be a material and substantial part of the thing patented, and be definitely distinguishable from the other parts so claimed without right as aforesaid. (a) And every such patentee, his executors, administrators, and assigns, whether of the whole or of a sectional interest therein, shall be entitled to maintain a suit at law or in equity on such patent for any infringement of such part of the invention or discovery as shall be bona fide his own as aforesaid, notwithstanding the specification may embrace more than he shall have any legal right to claim. (b) But, in every such case in which a judgment or verdict shall be rendered for the plaintiff, he shall not be entitled to recover costs against the defendant, unless he

(a) This section contemplates the rule of the common law, that if a patent embraces different machines, and any one of them is not new, or was not the invention of the patentee, or the like, the whole patent would be void, as being then in full force, and therefore sought to mitigate it by providing that under the cases therein mentioned, the patent should be good to the extent of the patentee's invention. *Wyeth v. Stone*, 1 Story, 288, 289.—STORY, J.; Mass., 1840.

It points throughout to a single invention, as the "thing patented," and does not justify the position that one patent can lawfully include divers distinct and independent inventions, having no connection with each other, nor any common purpose. It may therefore be deemed a legislative recognition and adoption of the general rule of law in cases not within its exceptive provision. *Ibid.*, 290.

This section is intended to cover "inadvertences and mistakes" of law, as well as inadvertences and mistakes of fact. *Ibid.*, 295.

Prior to the act of 1836, if the patentee claimed more than he had invented, his patent was void. But under this section, his patent is not absolutely void, because the patentee claims more than he has actually invented, but is valid for as much as is truly and *bona fide* his own; but to secure the benefits of this section, the specification must state in what the improvement consists. *Peterson v. Wooden*, 3 McLean, 249.—McLEAN, J.; Ohio, 1843.

(b) Prior to the act of 1836, a patent was void if the claim extended beyond the invention. Under § 6 of the act of 1836, it was void if a substantial part had been patented or described in a printed publication. Section 15 of the same act saved the patent from being void, if the patentee believed himself to be the first inventor. Section 9 of the act of 1837, enlarged the right of the patentee, providing, notwithstanding § 15 of the act of 1836, that the patent should not be void, where the patentee had acted in good faith, if through mistake or inadvertence he had claimed more than he had invented, and that he might maintain suit on the part actually invented by him, provided he filed within a reasonable time, a disclaimer of the parts not invented by him. *Smith v. Ely*, 5 McLean, 84, 85.—McLEAN, J.; Ohio, 1849.

The doctrine that a party may take out a valid patent for a combination, and in-

ACT OF 1837, CHAP. 45, § 9.

shall have entered at the Patent Office, prior to the commencement of the suit, a disclaimer of all that part of the thing patented which was so claimed without right: (a) *Provided, however,* That no person bringing any such suit shall be entitled to the benefits of the provisions contained in this section, who shall have unreasonably neglected or delayed to enter at the Patent Office a disclaimer as aforesaid. (b)

clude in it a right to each distinct improvement, is confirmed by the obvious intent of this section, which gives a patentee a right of action for a piratical use of any one of his invented improvements, which is distinctly stated in his patent, though he may by mistake, accident, or inadvertence, have claimed others of which he was not the inventor. *Pitts v. Whitman*, 2 Story, 621.—STORY, J.; Mass., 1843.

(a) The disclaimer mentioned in this section applies solely to suits brought after the disclaimer is filed. *Wyeth v. Stone*, 1 Story, 294.—STORY, J.; Mass., 1840.

Where a patent contains several claims, and the invention embraced in one seems to be not new or useless, the patentee, under this and § 7 may still maintain an action for an infringement, although he did not, before action brought, make a disclaimer of the part claimed without right; but he will not be entitled to costs. *Hall v. Wiles*, 2 Blatchf., 198.—NELSON, J.; N. Y., 1851.

If in the progress of a trial, it turns out that a disclaimer ought to have been made, the plaintiff may still recover, but will not be entitled to costs. *Ibid.*, 198.

A disclaimer is necessary only where the thing claimed without right is a material and substantial part of the thing invented. If the part not new is not essential to the machine, and was not introduced into the patent through wilful default, or intent to defraud or mislead the public, the want of a disclaimer affords no ground for invalidating the patent. *Ibid.*, 199.

Under this section, in an action for infringement, the plaintiff cannot recover costs if he has claimed any thing of which he was not the first and original inventor, unless before suit brought he has disclaimed such part: and it makes no difference whether the infringement alleged was of or against the part so claimed, but not new, or of some other part claimed in the patent. *Seymour v. McCormick*, 19 How., 106.—NELSON, J.; Sup. Ct., 1856.

The omission to disclaim a part not new, prevents a plaintiff from recovering costs, and it makes no difference that such part is not alleged to be infringed. *Ibid.*, 106.

Though the neglect to file a disclaimer until after suit brought, will prevent the plaintiff recovering costs, it does not interfere with the power of the court to increase the verdict under § 14, of the act of 1836. *Guyon v. Serrell*, 1 Blatchf., 245, 246. NELSON, J.; N. Y., 1847.

(b) The plaintiff will not be entitled to the benefit of a disclaimer if he has unreasonably neglected and delayed to file it. Such neglect or delay is a good defence to a suit. *Reed v. Cutter*, 1 Story, 600.—STORY, J.; Mass., 1841.

An unreasonable delay to enter a disclaimer cuts off the patentee, not only from a right to costs, but also from a right of action. *Brooks v. Bicknell*, 3 McLean, 449.—McLEAN, J.; Ohio, 1844.

What is an unreasonable delay is a mixed question of law and fact. Less vigilance will be required from an administrator than from the original inventor. *Ibid.*, 449, 450.

Where a patentee has unintentionally claimed something which was not original, but has unreasonably neglected to file a disclaimer, he cannot, under this section, recover in an action of infringement, even if the defendant has infringed the parts of his invention which are new. *Parker v. Stiles*, 5 McLean, 56.—LEAVITT, J.; Ohio, 1849.

SECTION 10. *And be it further enacted*, That the Commissioner is hereby authorized and empowered to appoint agents in not exceeding twenty of the principal cities or towns in the United States as may best accommodate the different sections of the country, for the purpose of receiving and forwarding to the Patent Office all such models, specimens of ingredients and manufactures, as shall be intended to be patented or deposited therein, the transportation of the same to be chargeable to the Patent fund. (a)

SECTION 11. *And be it further enacted*, That, instead of one examining clerk, as provided by the second section of the act to which this is additional, there shall be appointed, in manner therein provided, two examining clerks, each to receive an annual salary of fifteen hundred dollars; (b) and also, an additional copying clerk, at an annual salary of eight hundred dollars. And the Commissioner is also authorized to employ, from time to time, as many temporary clerks as may be necessary to execute the copying and draughting required by the first section of this act, and to examine and compare the records with the originals, who shall receive not exceeding seven cents for every page of one hundred words, and for drawings and comparison of records with originals, such reasonable compensation as shall be agreed upon or prescribed by the Commissioner.

SECTION 12. *And be it further enacted*, That, whenever the application of any foreigner for a patent shall be rejected and withdrawn for want of novelty in the invention, pursuant to the seventh section of the act to which this is additional, the certificate thereof of the Commissioner shall be a sufficient warrant to the treasurer to pay back to such applicant two-thirds of the duty he shall have paid into the Treasury on account of such application. (c)

SECTION 13. *And be it further enacted*, That in all cases in which an oath is required by this act, or by the act to which this is additional, (d) if the person

Under this section, the question of unreasonable negligence or delay in entering a disclaimer goes to the right of the action; and if the delay shows great negligence, the jury may find the patent void. *Hall v. Wiles*, 2 Blatchf., 199.—NELSON, J.; N. Y., 1851.

Where a claim has been held valid by the Patent Office, and has been sanctioned by a court below, the patentee will not be guilty of *unreasonable delay* in disclaiming it by waiting to obtain the decision of the highest court upon it. *O'Reilly v. Morse*, 15 How., 122.—TANEY, Ch. J.; Sup. Ct., 1853.

Under this section, where a patentee claims more than he has invented, or is entitled to, the patent will still be valid for what he has invented, provided he enters a disclaimer of what he has included in his patent which he has not invented, without unreasonable neglect or delay. *Silsby v. Foote*, 20 How., 387.—NELSON, J.; Sup. Ct., 1857.

See also DIGEST, title DISCLAIMER; and notes to § 7 of this act.

(a) This section repealed by act of 1861, § 6.

(b) The Commissioner of Patents has now the power to appoint examiners, not to exceed four in each class. Act of 1861, § 7.

(c) The right of withdrawal, as to any portion of the patent fee, in applications made subsequent to March 2d, 1861, is now taken away. Act of 1861, § 9.

(d) Act of 1836, § 6.

 ACT OF 1839, CHAP. 88, §§ 1, 2.

of whom it is required shall be conscientiously scrupulous of taking an oath, affirmation may be substituted therefor. (a)

SECTION 14. *And be it further enacted*, That all moneys paid into the Treasury of the United States for patents and for fees for copies furnished by the Superintendent of the Patent Office prior to the passage of the act to which this is additional, shall be carried to the credit of the Patent fund created by said act; and the moneys constituting said fund shall be, and the same are hereby, appropriated for the payment of the salaries of the officers and clerks provided for by said act, and all other expenses of the Patent Office, including all the expenditures provided for by this act; and, also, for such other purposes as are or may be hereafter specially provided for by law. And the Commissioner is hereby authorized to draw upon said fund, from time to time, for such sums as shall be necessary to carry into effect the provisions of this act, governed, however, by the several limitations herein contained. And it shall be his duty to lay before Congress in the month of January, annually, a detailed statement of the expenditures and payments by him made from said fund; And it shall also be his duty to lay before Congress, in the month of January, annually, a list of all patents which shall have been granted during the preceding year, designating, under proper heads, the subjects of such patents, and furnishing an alphabetical list of the patentees, with their places of residence; and he shall also furnish a list of all patents which shall have become public property during the same period; together with such other information of the state and condition of the Patent Office as may be useful to Congress or the public. (b)

Approved March 3d, 1837.

ACT OF 1839, CHAPTER 88.

(5 STAT. AT LARGE, 353.)

An Act in addition to "An Act to promote the progress of Useful Arts."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be appointed, in manner provided in the second section of the act to which this is additional, two assistant examiners, each to receive an annual salary of twelve hundred and fifty dollars. (c)

SECTION 2. *And be it further enacted*, That the Commissioner be authorized to employ temporary clerks to do any necessary transcribing, whenever the

(a) As to what persons may administer this oath, when the applicant is without the jurisdiction of the United States, see act of 1842, § 4.

(b) The annual report of the Commissioner of Patents on mechanics is to be prepared so that the plates and drawings shall be comprised in one volume, not to exceed eight hundred pages. Act of 1859, § 4.

(c) The Commissioner of Patents has now authority to appoint examiners, not to exceed four in each class. Act of 1861, § 7.

 ACT OF 1839, CHAP. 88, §§ 3-6.

current business of the office requires it; *Provided, however,* That instead of salary, a compensation shall be allowed, at a rate not greater than is charged for copies now furnished by the office. (a)

SECTION 3. *And be it further enacted,* That the Commissioner is hereby authorized to publish a classified and alphabetical list of all patents granted by the Patent Office previous to said publication, and retain one hundred copies for the Patent Office and nine hundred copies to be deposited in the library of Congress, for such distribution as may be hereafter directed; and that one thousand dollars, if necessary, be appropriated, out of the Patent fund, to defray the expense of the same.

SECTION 4. *And be it further enacted,* That the sum of three thousand six hundred and fifty-nine dollars and twenty-two cents be, and is hereby, appropriated from the Patent fund, to pay for the use and occupation of rooms in the City Hall by the Patent Office.

SECTION 5. *And be it further enacted,* That the sum of one thousand dollars be appropriated from the Patent fund, to be expended under the direction of the Commissioner, for the purchase of necessary books for the library of the Patent Office.

SECTION 6. *And be it further enacted,* That no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty-six, to which this is additional, by reason of the same having been patented in a foreign country more than six months prior to his application: (b) *Provided,* That the same shall not have been introduced into public and common use in the United States, prior to the application for such patent: *And provided, also,* That in all cases every such patent shall be limited to the term of fourteen years (c) from the date of publication of such foreign letters patent. (d)

(a) Ten cents per hundred words. Act of 1836, § 4. Act of 1861, § 10.

(b) For provision referred to, see act of 1836, § 8.

(c) Patents are now granted for the term of seventeen years. Act of 1861, § 16.

(d) The date of a patent may be altered to correspond with that of a foreign patent, previously taken out by the inventor, where the mistake has not arisen from any fraudulent or deceptive intention. *Detmold's Case*, 4 Opin., 335.—NELSON, Atty Gen.; 1844.

Under this section, if the domestic patent, in a case where a foreign patent has been previously obtained, purports to give an exclusive right for fourteen years from its date, instead of from the date of the foreign patent, it is void, as having been issued without authority of law; but the error is not fatal, and may be corrected on application to the Patent Office. *Smith v. Ely*, 5 McLean, 78, 80.—McLEAN, J.; Ohio, 1849.

The proviso of this section as to when a home patent shall bear the date of a foreign patent, relates only to such patents as are *applied for here after* the issue of a foreign patent. *French v. Rogers*, MS.—KANE, J.; Pa., 1851.

Where, therefore, an application for a patent was made in this country in April, 1838, and acted on in that month, but a patent was not actually issued until June 20th, 1840, at which time the patent was dated, and a foreign patent was obtained

ACT OF 1839, CHAP. 88, § 7.

SECTION 7. *And be it further enacted, (a)* That every person or corporation who has, or shall have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter, so made or purchased, without liability therefor to the inventor, or any other

in August, 1838; *Held*, as the application here was before the foreign patent, that the grant of the patent here was under the general enactments of the act of 1836, and its term runs properly from its date. *Ibid.*

A patent is not void because it does not, on its face, bear the same date with a foreign patent. If it is not, for any reason, exempt from the operation of the statute on such subject, the only effect is to limit the monopoly to fourteen years from the date of the foreign patent. *O'Reilly v. Morse*, 15 How., 112.—TANÉY, Ch. J.; Sup. Ct., 1853.

(a) This section, allowing the use and sale of an invention for two years before the application for a patent, is in the nature of a statute of limitations. *Hovey v. Henry*, 3 West. Law Jour., 155.—WOODBURY, J.; Mass., 1845.

It virtually extends the patentee's privilege to sixteen years instead of fourteen. *McCormick v. Seymour*, 2 Blatchf., 254.—NELSON, J.; N. Y., 1851.

The object of this section is twofold: first, to protect the person who has used the thing patented from any liability to the patentee, or his assignee; and second, to protect the rights granted to the patentee against any infringement by any other person. *McClurg v. Kingsland*, 1 How., 208, 209.—BALDWIN, J.; Sup. Ct., 1843.

This section relieved the patentee from the effect of the former laws, and their construction by the court, while it puts the person who has had such prior use on the same footing as if he had a special license from the inventor, which, if given before the application for a patent, would justify a continued use of it after it issued, without liability. *Ibid.*, 209.

It is not limited to patents for machines, manufactures, and compositions of matter, but embraces inventions for modes of doing a thing, or processes, as a new improvement in the art of casting iron. *Ibid.*, 209.

This section is not to be construed as confined to a specific machine as distinguished from an invention or thing patented, but the words "newly invented machine, manufacture, or composition of matter," and "such invention," mean the "invention patented," and the words "specific machine" refer to "the thing as originally patented," whereof the right is secured by patent, but not to any newly invented improvement on a thing once patented. *Ibid.*, 210.

This section has exclusive reference, in respect to the use of a machine, to an original patent, and not to a renewal or reissue of it. *Stimpson v. West Chester R. R.*, 4 How., 403.—MCLEAN, J.; Sup. Ct., 1845.

This section allows the use of an invention, even with leave of the inventor, for two years before application for a patent, without invalidating his right to a patent; *a fortiori*, the use by a third person, or a subsequent inventor, after the invention and before the issuing of a patent to the first inventor, without his consent, is no bar to the issuing of a patent to the first inventor. *Hildreuth v. Heath*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

Both before and since the act of 1839, an inventor might exercise a claim to an inchoate right to an invention, which was capable of being perfected to an exclusive right by obtaining letters patent, and the public may acquiesce in such claim. *Sargant v. Seagrave*, 2 Curt., 555.—CURTIS, J.; R. I., 1855.

Before the act of 1839, he might, by way of experiment, bring the knowledge of his

person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent.

SECTION 8. *And be it further enacted*, That so much of the eleventh section of the above recited act as requires the payment of three dollars to the Commissioner of Patents for recording any assignment, grant, or conveyance of the

invention to the public, at the same time making known that he was about to apply for a patent; and since the act of 1839, he may sell any number of his machines to the public, during any period less than two years, accompanied by a claim to the inchoate right sufficient to show an intention not to abandon it to the public. *Ibid.*, 555.

Under this section the purchaser must be a purchaser from the inventor himself, before his application for a patent, and not from a wrongdoer, without his knowledge or against his will. *Pierson v. Eagle Screw Co.*, 3 Story, 406, 407.—STORY, J.; R. I., 1844.

The purchase or construction referred to in this section means a purchase from the inventor or his grantee, or a construction by their consent, or by the user's own ingenuity.—*Hovey v. Stevens*, 1 Wood. & Min., 301.—WOODBURY, J.; Mass., 1846.

A construction or use in fraud of the first inventor, or by piracy of his invention, is not protected. *Ibid.*, 301.

A surreptitious knowledge and use of an invention, before the application by the inventor for a patent, does not, under this section, give any right to continue to use it after the inventor has obtained a patent for it. *Kendall v. Winsor*, 21 How., 530.—DANIEL, J.; Sup. Ct., 1858.

The sale of the product of an invention is not a sale of the thing invented within this section: the sale here spoken of is a sale of the invention or patented article. *Booth v. Garely*, 1 Blatchf., 250.—NELSON, J.; N. Y., 1847.

This section gives no protection to those who may have seized upon an invention or discovery disclosed in a patent, whose specification may happen to be defective or insufficient. *Goodyear v. Day*, MS.—GRIER, J.; N. J., 1852.

The provision in this section as to the use of an invention, relates to the case of a use, sale, or license to use, given or made and claimed under the inventor who admits and claims the privilege. The clause should read thus: "The patent shall not be held invalid by reason that the inventor has sold or allowed his invention to be used prior to the application for a patent, unless he has abandoned it to the public, or that such sale or prior use has been for more than two years prior to such application for a patent." *Ellithorpe v. Robertson*, MS. (App. Cas.)—MORSELL, J.; D. C., 1858.

The privilege granted by this section is applicable only to the inventor, or those claiming under him, and this construction is sustained by *Pierson v. Eagle Screw Co.*, 3 Story, 402. The use of an invention by an independent inventor, or under a separate and independent patent, is not such a use as is contemplated by that section. *Beich v. Tucker*, MS. (App. Cas.)—MORSELL, J.; D. C., 1860.

This section provided a remedy for cases where the conduct of the party, as to the sale of his invention, did not show an actual abandonment. It also secures the rights of those who may have purchased or constructed any newly invented machine, prior to the application for a patent. *Sanders v. Logan*, 3 Wall., Jr.—GRIER, J.; Pa., 1861.

The obvious construction of it is, that a purchase, sale, or prior use, shall not invalidate, unless it amounts to an abandonment to the public. *Ibid.*

See also DIGEST, title PRIOR USE.

 ACT OF 1839, CHAP. 88, §§ 9-11.

whole or any part of the interest or right under any patent, be, and the same is hereby, repealed; and all such assignments, grants, and conveyances shall, in future, be recorded without any charge whatever. (a)

SECTION 9. *And be it further enacted*, That a sum of money not exceeding one thousand dollars, be, and the same is hereby, appropriated, out of the patent fund, to be expended by the Commissioner of Patents in the collection of agricultural statistics, and for other agricultural purposes; for which the said Commissioner shall account in his next annual report. (b)

SECTION 10. *And be it further enacted*, That the provisions of the sixteenth section of the before recited act shall extend to all cases where patents are refused for any reason whatever, either by the Commissioner of Patents or by the Chief Justice of the District of Columbia, upon appeals from the decision of said Commissioner, as well as where the same shall have been refused on account of, or by reason of, interference with a previously existing patent; and in all cases where there is no opposing party, a copy of the bill shall be served upon the Commissioner of Patents, when the whole of the expenses of the proceeding shall be paid by the applicant, whether the final decision shall be in his favor or otherwise. (c)

SECTION 11. *And be it further enacted*, That in all cases where an appeal is now allowed by law from the decision of the Commissioner of Patents to a board of examiners, provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the Chief Justice of the district court of the United States for the District of Columbia, (d) by giving notice thereof to the Commissioner, and filing in the Patent Office, within such time as the Commissioner shall appoint, (e) his reasons of appeal,

(a) Fees for recording assignments are again required, according to certain rates, by the act of 1848, § 2, and the act of 1861, § 10.

(b) There having been established a Department of Agriculture, it has been deemed advisable not to insert any other laws particularly referring to that subject.

(c) An assignee of an invention, by virtue of an assignment made before patent issued, may file a bill in his own name under § 16 of the act of 1836, and this section, against a patentee to whom a patent issued, upon an interference with complainant's assignor, for the purpose of having the patent so issued set aside, and one granted to the complainant. *Gay v. Cornell*, 1 Blatchf., 507.—NELSON, J.; N. Y., 1849.

And it will be sufficient if such assignment is recorded before patent is issued. *Ibid.*, 509.

(d) Appeals may also be made to either of the assistant judges of the Circuit Court of the District of Columbia. Act of August 18th, 1852, § 1.

(e) The filing of the reasons of appeal is essentially the appeal itself. *Greenough v. Clark*, MS. (App. Cas.)—MORSELL, J.; D. C., 1853.

Where the reasons of appeal are not filed within the time prescribed by the Commissioner of Patents, the right of appeal is lost. *Ibid.* Also, *Wade v. Matthews*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1850.

But the Commissioner may enlarge the time to file such reasons. *Justice v. Jones*, MS. (App. Cas.)—MERRICK, J.; D. C., 1859.

An appeal cannot be made after the time limited in the notice of appeal. *Linton, Ex parte*, MS. (App. Cas.)—MERRICK, J.; D. C., 1860.

See also DIGEST, title APPEALS, B. 1.

specifically set forth in writing, (a) and also paying into the Patent Office, to the credit of the Patent fund, the sum of twenty-five dollars. And it shall be the duty of said Chief Justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary way, on the evidence produced before the Commissioner, (b) at such early and convenient time as he may appoint, first notifying the Commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The Commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. (c) And at the request of any party interested, or at the desire of the

(a) The reasons of appeal must not be vague and unsatisfactory, as "that the decision of the Commissioner was in opposition to a clear apprehension of the merits of the case." *Winslow, Ex parte*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1850. *Douglass v. Blakinton*, MS. (App. Cas.)—MERRICK, J.; D. C., 1859.

No reason of appeal can be considered as valid, which would not justify the Commissioner in refusing a patent. *Wade v. Matthews*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1850.

No assignment is sufficiently explicit which does not, with reasonable certainty, point out the precise matter of alleged error. *Douglass v. Blakinton*, MS. (App. Cas.)—MERRICK, J.; D. C., 1859.

The reasons of appeal should be so expressed that the judge may gather from their language what is meant by them, but they need not be according to any technical formula. *Laidley v. James*, MS. (App. Cas.)—MERRICK, J.; D. C., 1860.

See also DIGEST, title APPEALS, B. 4.

(b) The questions are to be decided by the judge according to the evidence produced before the Commissioner. *Warner v. Goodyear*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1846. *Perry v. Cornell*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1847.

The provision requiring the judge to hear and determine appeals "on the evidence produced before the Commissioner," is to be construed with reference to § 7 of the act of 1836, providing that reasonable notice shall be given both to the party appealing, and the Commissioner, "so that they may have an opportunity of furnishing such facts and evidence as they may deem necessary to a just decision." *Fultz, Ex parte*, MS. (App. Cas.)—MORSELL, J.; D. C., 1853.

There is nothing in the act of 1839, which takes away or impairs that right, but there is every reason to infer that it was intended to be saved to the fullest extent. *Ibid.*

Where, therefore, a party has been prevented before the Commissioner from producing his proofs to support his claim, it is the duty of the judge, by reasonable regulations, similar to those directed by § 12 of the act of 1839, to pursue such a course, as will afford the party an opportunity to produce such proofs, and he may make an order, authorizing the party to take and file his proofs as to the originality and utility of his invention. *Ibid.*

(c) All the conditions prescribed by this section must be complied with as prerequisites, before the judge can take jurisdiction. His jurisdiction is special and limited, and no other power can be exercised except that expressly given. *Greenough Clark*, MS. (App. Cas.)—MORSELL, J.; D. C., 1853.

ACT OF 1839, CHAP. 88, § 11.

judge, the Commissioner and the examiners in the Patent Office may be examined under oath, in explanation of the principles of the machine or other thing for which a patent, in such case, is prayed for. (a) And it shall be the duty of said judge, after a hearing of any such case, to return all the papers to the Commissioner, with a certificate of his proceedings and decision, which shall be entered of record in the Patent Office; and such decision, so certified, shall govern the further proceedings of the Commissioner in such case; (b) *Provided, however,* That no opinion or decision of the judge in any such case, shall preclude any person interested in favor or against the validity of any patent which has been, or may hereafter, be granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

The powers and jurisdiction of the judges on appeal, are special and limited, and must be exercised and construed strictly. *Pomeroy v. Connison*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1842.

The power of the justices on appeal from the decision of the Commissioner of Patents is confined to the points involved in the reasons of appeal. *Kemper, Ex parte*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841. *Arnold v. Bishop*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841. *Smith v. Flickinger*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1843. *Cochrane v. Waterman*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1844. *Warner v. Goodyear*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1846. *Winslow, Ex parte*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1850. *Aiken, Ex parte*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1850. *Burlew v. O'Neil*, MS. (App. Cas.)—MORSELL, J.; D. C., 1853.

See also DIGEST, title APPEALS, B. 2, 3.

(a) The provision of this section as to the examination of the Commissioner, &c., must be considered in connection with § 7 of the act of 1836, as to the powers of the old Board of Examiners. The statute means that the explanation may be so full and clear an explanation of the *principles* of the thing, as to enable the judge to weigh and apply the evidence offered, and is not to be limited to a mere exposition of the terms used; and such explanations the judge is bound to respect as a part of the case. *Richardson v. Hicks*, MS. (App. Cas.)—MORSELL, J.; D. C., 1854.

The judge succeeds to all the authority conferred upon the Board of Examiners by § 7 of the act of 1836, to require of the Commissioner and examiners information relative to the subject matter under consideration, and to the full extent. *Seeley, Ex parte*, MS. (App. Cas.)—MORSELL, J.; D. C., 1853.

The officer of the Patent Office attending before the judge is not to be considered as counsel for the Patent Office, or for either of the parties, but only attends to explain the decision of the Commissioner. *Perry v. Cornell*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1847.

(b) The provision that "the decision of the judge shall govern the further proceedings of the Commissioner in the case," applies only to so much of the case as is involved in the reasons of appeal; and the appeal itself can only be considered as an appeal to so much of the decision of the Commissioner as is affected by such reasons. *Arnold v. Bishop*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

If, therefore, after the judge shall have decided in favor of an applicant, upon the points involved in the reasons of appeal, other grounds remain for rejecting the claim, it would seem the Commissioner might still reject it; whether such new rejection would be the subject of appeal; *query. Ibid.*

As to who may appeal, see notes to § 8, act of 1836.

See also DIGEST, title APPEALS, B. 3 and 5.

 ACT OF 1842, CHAP. 263, § 1.

SECTION 12. *And be it further enacted*, That the Commissioner of Patents shall have power to make all such regulations in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable. (a) And so much of the act to which this is additional, as provides for a board of examiners, is hereby repealed.

SECTION 13. *And be it further enacted*, That there be paid annually, out of the Patent fund, to the said Chief Justice, in consideration of the duties herein imposed, the sum of one hundred dollars. (b)

Approved March 3d, 1839.

ACT OF 1842, CHAPTER 263.

(5 STAT. AT LARGE, 543.)

An Act in addition to an act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose. (c)

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Treasurer of the United States be, and he hereby is, authorized to pay back, out of the patent fund, any sum or sums of money, to any person who shall have paid the same

(a) The rules as to evidence, made under this section by the Commissioner of Patents, in conformity with the law, while they remain unabrogated, are as binding as the law itself, and as well upon the Commissioner as on others. *Arnold v. Bishop*, MS. (App. Cas.)—CRANCH, Ch. J.; D. C., 1841.

After a deposition has been taken while the rules were in force, a revocation of them cannot affect such deposition. A revocation can affect only subsequent proceedings. *Ibid.*

The rules of the Patent Office as to taking evidence, prescribed under this section, must be *just and reasonable*, according to the established principles and precedents in like cases. *Nichols v. Harris*, MS. (App. Cas.)—MORSELL, J.; D. C., 1854.

The rules and regulations of the Patent Office as to taking testimony in cases of interference, are binding upon the parties, and each is entitled to the benefit of them, and until abrogated, they are as binding upon the Commissioner himself as if enacted by the very statute. *O'Hara v. Hawes*, MS. (App. Cas.)—MORSELL, J.; D. C., 1859.

The power granted to the Commissioner under this section to make rules as to the taking of evidence, gives no right to make new rules of evidence, or to make new rules of law so as to divest vested rights. *Dyson, Ex parte*, MS. (App. Cas.)—DUNLOP, J.; D. C., 1860.

The power of the Commissioner to make rules as to evidence is now extended to all cases pending before the Patent Office. Act of 1861, § 1.

See also DIGEST, title EVIDENCE, C. 3; RULES OF PATENT OFFICE.

(b) This section was repealed by § 3 of the act of 1852; and it was also provided that, in case of an appeal to the chief-justice, or to either of the assistant justices, there should be paid to the judge to whom appeal should be made, the \$25 required to be paid by this section. Act of 1852, § 2.

(c) This act purports, from its title, to repeal all acts and parts of acts heretofore made to promote the progress of the useful arts; but though it extends some of the existing laws to new cases, it in fact repeals no act or part of any act whatsoever. *Stimpson v. Pond*, 2 Curt., 506.—CURTIS, J.; Mass., 1855.

ACT OF 1842, CHAP. 263, §§ 2-4.

into the Treasury, or to any receiver or depositary to the credit of the Treasurer, as for fees accruing at the Patent Office through mistake, and which are not provided to be paid by existing laws, certificate thereof being made to said Treasurer by the Commissioner of Patents.

SECTION 2. *And be it further enacted*, That the third section of the act of March, eighteen hundred and thirty-seven, which authorizes the renewing of patents lost prior to the fifteenth of December, eighteen hundred and thirty-six, is extended to patents granted prior to said fifteenth day of December, though they may have been lost subsequently: *Provided, however*, The same shall not have been recorded anew under the provisions of said act.

SECTION 3. *And be it further enacted*, That any citizen or citizens, or alien or aliens, having resided one year in the United States and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woollen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or bas relief or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make, use, and sell and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application in writing to the Commissioner of Patents expressing such desire, and the Commissioner, on due proceedings had, may grant a patent therefor, as in the case now of application for a patent: *Provided*, That the fee in such cases which by the now existing laws would be required of the particular applicant shall be one-half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents not inconsistent with the provisions of this act shall apply to applications under this section. (a)

SECTION 4. *And be it further enacted*, That the oath required for applicants for patents may be taken, when the applicant is not, for the time being, residing in the United States, before any minister, plenipotentiary, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public of the foreign country in which such applicant may be. (b)

(a) This section repealed, or superseded, by the act of 1861, § 11, which makes other provisions as to patents for designs.

(b) Oath required by act of 1836, § 6; affirmation substituted therefor in certain cases by act of 1837, § 13.

 ACT OF 1842, CHAP. 263, §§ 5, 6.

SECTION 5. *And be it further enacted*, That if any person or persons, shall paint or print or mould, cast, carve, or engrave, or stamp, upon any thing made, used, or sold, by him, for the sole making or selling which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without consent of such patentee, or his assigns or legal representatives; or if any person, upon any such thing not having been purchased, from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters patent," or the word "patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall affix the same, or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, (a) he, she, or they, so offending, shall be liable for such offence to a penalty of not less than one hundred dollars, (b) with costs, to be recovered by action in any of the circuit courts of the United States, or in any of the district courts of the United States having the powers and jurisdiction of a circuit court; (c) one-half of which penalty, as recovered, shall be paid to the Patent fund, and the other half to any person or persons who shall sue for the same.

SECTION 6. *And be it further enacted*, That all patentees and assignees of patents hereafter granted, are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended, or offered for sale, the date of the patent; and if any person or persons, patentees or assignees, shall neglect to do so, he, she, or they, shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act. (d)

Approved August 29th, 1842.

(a) The penalty mentioned in this section is incurred as to all articles made, and having the word "patent" affixed, with a guilty purpose or intent. *Stephens v. Caldwell*, MS.—SPRAGUE, J.; Mass., 1860.

(b) This section—though its phraseology, "a penalty of not less than one hundred dollars" is peculiar—authorizes the infliction of a penalty of just one hundred dollars for the offence therein described, and no more. *Stimpson v. Pond*, 2 Curt., 506.—CURTIS, J.; Mass., 1855.

The penalty may be recovered in an action of debt.—*Ibid.*, 506.

(c) The two years' limitation of suits for penalties, contained in § 32 of the Crimes act of 1790 (1 Stat. at Large, 119), is repealed by implication by § 4 of the act of 1839 (5 Stat. at Large, 322), which extends the time to five years. *Ibid.*, 503.

(d) Under this section it was held, that it was not the selling the articles unstamped that made the party liable to the penalty, but the omitting to put the stamp on. *Palmer v. Allen*, MS.—BETTS, J.; N. Y., 1854.

The assignees of an interest in a patent are no more liable for articles purchased

ACTS OF 1846, CHAP. 90; 1848, CHAP. 47.

ACT OF 1846, CHAPTER 90.

(9 STAT. AT LARGE, 62.)

Extract from the Act entitled "An act to provide for the better organization of the Treasury, and for the collection, safe-keeping, transfer, and disbursement of the public revenue."

SECTION 15. *And be it further enacted*, That all marshals, district attorneys, and others having public money to pay to the United States, and all patentees wishing to make payment for patents to be issued, may pay all such moneys to the Treasurer of the United States, or to the treasurer of either of the mints in Philadelphia or New Orleans, to either of the other assistant treasurers, or to such other depositary constituted by this act as shall be designated by the Secretary of the Treasury in other parts of the United States, to receive such payments, and give receipts or certificates of deposit therefor. (a)

Approved August 6th, 1846.

ACT OF 1848, CHAPTER 47.

(9 STAT. AT LARGE, 231.)

An Act to provide additional examiners in the Patent Office, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be appointed, in the manner provided in the second section of the act entitled "An

and sold by them, without the date of the patent stamped on them, than any other persons, unless the articles were manufactured with their connivance. *Ibid.*

Held, also, that the penalty attaches for each separate article sold. *Ibid.*

It is necessary that each article should be stamped with the day of the month, as well as the year; but if this is done it is sufficient, even if the word "patented" is abbreviated. *Hawley v. Bagley*, MS.—BETTS, J.; N. Y., 1855.

This section is now repealed by the act of 1861, § 13.

(a) Under this act the following officers are authorized to receive patent fees on account of the Treasurer of the United States, and to give receipts or certificates of deposit therefor, to wit:

Assistant Treasurer of the United States, Boston, Massachusetts.

Assistant Treasurer of the United States, New York, New York.

Treasurer of the Mint, Philadelphia, Pennsylvania.

Surveyor and Inspector, Pittsburg, Pennsylvania.

Collector, Baltimore, Maryland.

Collector, Buffalo Creek, New York.

Assistant Treasurer United States, St. Louis, Missouri.

Surveyor of the Customs, Cincinnati, Ohio.

Receiver of Public Moneys, Jeffersonville, Indiana.

Receiver of Public Moneys, Chicago, Illinois.

Receiver of Public Moneys, Detroit, Michigan.

Collector, San Francisco, California.

 ACT OF 1848, CHAP. 47, §§ 1, 2.

act to promote the progress of useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six, two principal examiners, and two assistant examiners, in addition to the number of examiners now employed in the Patent Office; and that hereafter each of the principal examiners employed in the Patent Office shall receive an annual salary of twenty-five hundred dollars, and each of the assistant examiners an annual salary of fifteen hundred dollars: (a) *Provided*, That the power to extend patents now vested in the board composed of the Secretary of State, Commissioner of Patents, and Solicitor of the Treasury, by the eighteenth section of the act approved July fourth, eighteen hundred and thirty-six, respecting the Patent Office, shall hereafter be vested solely in the Commissioner of Patents; (b) and when an application is made to him for the extension of a patent according to said eighteenth section, and sixty days' notice given thereof, he shall refer the case to the principal examiner having charge of the class of inventions to which said case belongs, who shall make a full report to said Commissioner of the said case, and particularly whether the invention or improvement secured in the patent was new and patentable when patented; and thereupon the said Commissioner shall grant or refuse the extension of said patent, upon the same principles and rules that have governed said board; but no patent shall be extended for a longer term than seven years. (c)

SECTION 2. *And be it further enacted*, That hereafter the Commissioner of Patents shall require a fee of one dollar for recording any assignment, grant or conveyance of the whole or any part of the interest in letters patent, or power of attorney, or license to make or use the thing patented, when such instrument shall not exceed three hundred words; the sum of two dollars when it shall exceed three hundred and shall not exceed one thousand words; and the sum of

(a) The Commissioner of Patents is now authorized to appoint from time to time examiners, not to exceed four in each class. Act of 1861, § 7.

As to the gradation and pay of examiners and clerks in the Patent Office, see act of 1853, chap. 97, § 3, and act of 1860, § 5, and act of 1861, § 7.

(b) This act is not a repeal of § 18 of the act of 1836, providing for the extension of patents, and the enactment of a new system for that purpose, but simply a repeal of so much of it as related to the action of the Secretary of State, and the solicitor of the treasury, leaving the Commissioner of Patents alone to go on in the execution of the duty. *Colt v. Young*, 2 Blatchf., 473.—NELSON, J.; N. Y., 1852.

Where an application for an extension of a patent under § 18 of the act of 1836 was pending at the time of the passage of the act of 1848, which conferred upon the Commissioner of Patents solely, the power previously vested in the Board created by the act of 1836, *Held*, that it was not necessary to renew the application, but that the Commissioner had the power to go on with the proceedings as having been already properly instituted, and complete them by granting the extension. *Ibid.*, 473.

For reference to other decisions bearing upon the extension of patents, see § 18 of the act of 1836, and the notes thereto.

(c) The extension of all patents granted subsequently to March 2d, 1861, except patents for designs, which may be extended for seven years, is now prohibited. Act of 1861, § 16.

 ACTS OF 1849, CHAP. 108; 1851, CHAP. 32.

three dollars when it shall exceed one thousand words; which fees shall in all cases be paid in advance. (a)

SECTION 3. *And be it further enacted*, That there shall be appointed, in manner aforesaid two clerks, to be employed in copying and recording, and in other services in the Patent Office, who shall each be paid a salary of one thousand two hundred dollars per annum.

SECTION 4. *And be it further enacted*, That the Commissioner of Patents is hereby authorized to send by mail, free of postage, the annual reports of the Patent Office, in the same manner in which he is empowered to send letters and packages relating to the business of the Patent Office.

Approved May 27th, 1848.

ACT OF 1849, CHAPTER 108.

(9 STAT. AT LARGE, 395.)

Extract from the act entitled "An act to establish the Home Department, and to provide for the Treasury Department an Assistant Secretary of the Treasury and a Commissioner of the Customs."

SECTION 2. *And be it further enacted*, That the Secretary of the Interior shall exercise and perform all the acts of supervision and appeal in regard to the office of Commissioner of Patents, now exercised by the Secretary of State; and the said Secretary of the Interior shall sign all requisitions for the advance or payment of money out of the Treasury on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the First or Fifth Auditor and First Comptroller of the Treasury.

Approved March 3d, 1849.

ACT OF 1851, CHAPTER 32.

(9 STAT. AT LARGE, 617.)

Extract from the act entitled "An act making appropriations for the civil and diplomatic expenses of government," &c.

SECTION 2. *And be it further enacted*, That there shall be appointed and paid, in the manner now provided by law, two principal examiners and two assistant examiners of patents, in addition to the examining force now employed in the Patent Office. (b)

Approved March 3d, 1851.

(a) The original provision as to fees for recording assignments, was contained in the act of 1836, § 11. That section was repealed by act of 1839, § 8. Fees for recording were again restored by this section, which is also re-enacted in act of 1861, § 10.

(b) The Commissioner of Patents is now authorized to appoint from time to time, examiners, not to exceed four in each class. Act of 1861, § 7.

 ACT OF 1852, CHAPS. 107, 108.

ACT OF 1852, CHAPTER 107.

(10 STAT. AT LARGE, 75.)

An Act in addition to an act to promote the progress of the Useful Arts.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That appeals provided for in the eleventh section of the act entitled "An act in addition to an act to promote the progress of the useful arts," approved March the third, eighteen hundred and thirty-nine, may also be made to either of the assistant judges of the circuit court of the District of Columbia, and all the powers, duties, and responsibilities imposed by the aforesaid act, and conferred upon the chief judge, are hereby imposed and conferred upon each of the said assistant judges. (a)

SECTION 2. *And be it further enacted,* That in case appeal shall be made to the said chief judge, or to either of the said assistant judges, the Commissioner of Patents shall pay to such chief judge or assistant judge the sum of twenty-five dollars, required to be paid by the appellant into the Patent Office by the eleventh section of said act, on said appeal.

SECTION 3. *And be it further enacted,* That section thirteen of the aforesaid act, approved March the third, eighteen hundred and thirty-nine, is hereby repealed.

Approved August 30th, 1852.

ACT OF 1852, CHAPTER 108.

(10 STAT. AT LARGE, 95, 96.)

Extracts from the act entitled "An act making appropriations for the civil and diplomatic expenses of the government," &c.

For compensation of the librarian of the Patent Office, twelve hundred dollars to be paid out of the Patent Fund. (b)

For books for the library of the Patent Office, to be paid out of the Patent Fund, one thousand five hundred dollars.

For fitting up the library of the Patent Office, to be paid out of the Patent Fund, two thousand dollars.

For additional compensation to the disbursing clerk and draughtsman in the Patent Office, the sum of three hundred dollars each, to be paid out of the Patent Office Fund; and that hereafter the disbursing clerk shall be required to give

(a) As to appeals to the justices of the Circuit Court, who may make, and when, see notes to §§ 7 and 8 of the act of 1836.

As to the power of such justices on appeal, and the effect of their action, see § 11 of the act of 1839, and the notes thereto.

(b) The salary of the librarian is now fixed at one thousand eight hundred dollars Act of 1861, § 4.

ACTS OF 1853, CHAP. 97; 1855, CHAP. 175.

bond, with approved security in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office.

For the compensation of two additional permanent clerks in the Patent Office, to be appointed by the Commissioner of Patents, at a salary of fourteen hundred dollars each, the sum of twenty-eight hundred dollars, to be paid out of the Patent Office Fund.

Approved August 31st, 1852.

ACT OF 1853, CHAPTER 97.

(10 STAT. AT LARGE, 209, 210, 211.)

Extracts from "An act making appropriations for the Civil and Diplomatic Expenses of the Government," &c.

SECTION 1. For the purchase of books for the library of the Patent Office, to be paid out of the patent fund, one thousand five hundred dollars.

SECTION 3. *And be it further enacted*, That from and after the thirtieth of June, eighteen hundred and fifty-three, the clerks in the Departments of the Treasury, War, Navy, the Interior, and the Post Office, shall be arranged into four classes, of which class number one shall receive an annual salary of nine hundred dollars each, class number two an annual salary of one thousand two hundred dollars each, class number three an annual salary of one thousand five hundred dollars each, and class number four an annual salary of one thousand eight hundred dollars each.

This section also provides for eight clerks of the second class, twelve (including six assistant examiners) of the third class, and one of the fourth class; (a) and also provides for an increase of the salary of the chief clerk to two thousand dollars. (b)

Approved March 3d, 1853.

ACT OF 1855, CHAPTER 175.

(10 STAT. AT LARGE, 670, 674.)

Extracts from "An Act making appropriations for the civil and diplomatic expenses of Government," &c.

SECTION 10. *And be it further enacted*, That there shall be appointed and paid in the manner now provided by law, four principal examiners and four assistant

(a) The Commissioner of Patents is now authorized to appoint examiners, not to exceed four in each class. Act of 1861, § 7.

As to the pay of examiners, see also act of 1860, § 5, and act of 1861, § 7.

(b) The salary of the chief clerk is now fixed at two thousand five hundred dollars. Act of 1861, § 4.

ACT OF 1856, CHAP. 129; 1859, CHAP. 80.

examiners of patents, in addition to the examining force now authorized by law, to be so employed in the Patent Office; and should the necessities of the public service, in the estimation of the Commissioner of Patents, require any additional examining force to that herein provided, previous to the next session of Congress, there may also be appointed and paid in the manner now provided by law, in addition to the foregoing, not exceeding two principal and two assistant examiners, who shall not so continue to be employed subsequent to the expiration of said next session of Congress, without further provision of law. (a)

SECTION 25. *And be it further enacted*, That the first assistant examiners in the Patent Office shall be rated as of the fourth class of clerks, and the second assistant examiners, machinist, and librarian as of the third class.

Approved March 3d, 1855.

ACT OF 1856, CHAPTER 129.

(11 STAT. AT LARGE, 91.)

Extracts from the "Act making appropriations for certain civil expenses of the Government," &c.

SECTION 9. *And be it further enacted*, That there shall be appointed and paid, in the manner now provided by law, two principal examiners and two assistant examiners, in addition to the examining force now authorized by law to be so employed in the Patent Office. (b)

SECTION 10. *And be it further enacted*, That the Commissioner of Patents is hereby authorized to pay those employed in the United States Patent Office from April first eighteen hundred and fifty-four, until April first eighteen hundred and fifty-five, as examiners and assistant examiners of patents, at the rates fixed by law for these respective grades: *Provided*, That the same be paid out of the Patent Office Fund, and that the compensation thus paid shall not exceed that received by those duly enrolled as examiners and assistant examiners of patents for the same period.

Approved August 18th, 1856.

ACT OF 1859, CHAPTER 80.

(11 STAT. AT LARGE, 422.)

Extract from an "Act making appropriations for the legislative, and other expenses of the Government," &c.

SECTION 4. *And be it further enacted*, That the Secretary of the Interior be,

(a) For provision as to the appointment of examiners by the Commissioner of Patents, see act of 1861, § 7.

(b) For provision authorizing the appointment of examiners by the Commissioner of Patents, see act of 1861, § 7.

ACTS OF 1860, CHAP. 211; 1861, CHAP. 37.

and he is hereby, directed to cause the annual report of the Commissioner of Patents on mechanics hereafter to be made to the Senate and House of Representatives to be prepared and submitted in such manner as that the plates and drawings necessary to illustrate each subject shall be inserted so as to comprise the entire report in one volume not to exceed eight hundred pages.

Approved March 3d, 1859.

ACT OF 1860, CHAPTER 211.

(12 STAT. AT LARGE, 110.)

Extract from an "Act making appropriations for sundry civil expenses of the Government," &c.

SECTION 5. *And be it further enacted*, That the Commissioner of Patents is hereby authorized to pay those employed in the Patent Office from April first, eighteen hundred and fifty-five, until April first, eighteen hundred and sixty, as examiners and assistant examiners of patents, at the rates fixed by law for these respective grades: *Provided*, that the same be paid out of the Patent Office Fund, and that the compensation thus paid shall not exceed that received by those duly enrolled as examiners and assistant examiners of patents for the same period.

Approved June 25th, 1860.

ACT OF 1861, CHAPTER 37.

(12 STAT. AT LARGE, 130.)

An Act to extend the right of appeal from the decisions of circuit courts to the Supreme Court of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from all judgments and decrees of any circuit court rendered in any action, suit, controversy, or case, at law or in equity, arising under any law of the United States granting or confirming to authors the exclusive right to their respective writings, or to inventors the exclusive right to their inventions or discoveries, a writ of error or appeal, as the case may require, shall lie, at the instance of either party, to the Supreme Court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of such circuit courts, without regard to the sum or value in controversy in the action. (a)

Approved February 18th, 1861.

(a) The provision as to writs of error or appeals from judgments and decrees rendered in actions arising under the patent laws, previous to the passage of this act, is contained in the act of 1836, § 17.

 ACT OF 1861, CHAP. 88, § 1.

ACT OF 1861, CHAPTER 88.

(12 STAT. AT LARGE, 246.)

An Act in addition to "An Act to promote the Progress of the Useful Arts."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Commissioner of Patents may establish rules for taking affidavits and depositions required in cases pending in the Patent Office, (a) and such affidavits and depositions may be taken before any justice of the peace, or other officer authorized by law to take depositions to be used in the courts of the United States, or in the state courts of any state where such officer shall reside; and in any contested case (b) pending in the Patent Office it shall be lawful for the clerk of any court of the United States for any district or territory, and he is hereby required, upon the application of any party to such contested case, or the agent or attorney of such party, to issue subpoenas for any witnesses residing or being within the said district or territory, commanding such witnesses to appear and testify before any justice of the peace, or other officer as aforesaid, residing within the said district or territory, at any time and place in the subpoena to be stated; and if any witness, after being duly served with such subpoena, shall refuse or neglect to appear, or, after appearing, shall refuse to testify, (not being privileged from giving testimony,) such refusal or neglect being proved to the satisfaction of any judge of the court whose clerk shall have issued such subpoena, said judge may thereupon proceed to enforce obedience to the process, or to punish the disobedience in like manner as any court of the United States may do in case of disobedience to process of *subpoena ad testificandum* issued by such court; and witnesses in such cases shall be allowed the same compensation as is allowed to witnesses attending the courts of the United States: (c) *Provided*, That no witnesses shall be required to attend at any place more than forty miles from the place where the subpoena shall be served upon him to give a deposition under this law: *Provided, also*, That no witness shall be deemed guilty of contempt for refusing to disclose any secret invention made or owned by him: *And provided, further*, That no witness shall be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of this act, unless his fees for going to, returning from, and one day's attendance at the place of examination, shall be paid or tendered to him at the time of the service of the subpoena.

(a) By the act of 1839, § 12, the Commissioner was empowered to make regulations as to taking evidence in contested cases. This act extends to all cases pending in the Patent Office.

(b) Whether, under this act, the power to compel the attendance of witnesses is not confined to "contested cases"—as cases of interference—*query*.

(c) Witnesses are allowed one dollar and fifty cents per day, and five cents per mile travelling from their places of residence to the place of trial or hearing, and five cents per mile for returning. Act of 1853, chap. 167, § 3.

 ACT OF 1861, CHAP. 88, §§ 2-4.

SECTION 2. *And be it further enacted*, That for the purposes of securing greater uniformity of action in the grant and refusal of letters patent, there shall be appointed by the President, by and with the advice and consent of the Senate, three examiners-in-chief, at an annual salary of three thousand dollars each, to be composed of persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the applicant for that purpose being filed, to revise and determine upon the validity of decisions made by examiners when adverse to the grant of letters patent; and also to revise and determine in like manner upon the validity of the decisions of examiners in interference cases, and when required by the Commissioner in applications for the extension of patents, and to perform such other duties as may be assigned to them by the Commissioner; that from their decisions appeals may be taken to the Commissioner of Patents in person, upon payment of the fee hereinafter prescribed; that the said examiners-in-chief shall be governed in their action by the rules to be prescribed by the Commissioner of Patents. (a)

SECTION 3. *And be it further enacted*, That no appeal shall be allowed to the examiners-in-chief from the decisions of the primary examiners, except in interference cases, until after the application shall have been twice rejected; (a) and the second examination of the application by the primary examiner shall not be had until the applicant, in view of the references given on the first rejection, shall have renewed the oath of invention, as provided for in the seventh section of the act entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six.

SECTION 4. *And be it further enacted*, That the salary of the Commissioner of Patents, from and after the passage of this act, shall be four thousand five hundred dollars per annum, and the salary of the chief clerk of the Patent Office

(a) NOTES TO §§ 2 AND 3.

1. Previous to this act, all judicial acts done in the Patent Office by the primary examiners or the board of appeals were, in intendment of law, the judicial acts of the Commissioner, and had no legal validity until sanctioned by him. They were the organs of the Commissioner to *inquire* and *enlighten* his judgment, and till the Commissioner gave validity to their judicial acts, by his *fiat*, they had no legal evidence as judgment. *Snowden v. Pierce* MS. (App. Cas.)—DUNLOP, J.; D. C., 1861.

2. Under the act of 1861, the primary examiners and examiners-in-chief are recognized as *judicial officers*, acting independently of the Commissioner, who can *only control them*, when their judgment in due course comes before the Commissioner, on appeal. *Ibid.*

3. Their acts are not the acts of the Commissioner, but their own acts. They are no longer *mere* organs of the Commissioner, but independent officers. He can only reach and overrule them, when their judgments come regularly before him, *on appeal*. *Ibid.*

4. The Commissioner can give no judgment till the appeal reaches him, and this cannot be done till the judgment of the primary examiners has been submitted to the examiners-in-chief. *Ibid.*

shall be two thousand five hundred dollars, and the salary of the librarian of the Patent Office shall be eighteen hundred dollars. (a)

SECTION 5. *And be it further enacted*, That the Commissioner of Patents is authorized to restore to the respective applicants, or when not removed by them, to otherwise dispose of such of the models belonging to rejected applications as he shall not think necessary to be preserved. The same authority is also given in relation to all models accompanying applications for designs. He is further authorized to dispense in future with models of designs when the design can be sufficiently represented by a drawing.

SECTION 6. *And be it further enacted*, That the tenth section of the act approved the third of March, eighteen hundred and thirty-seven, authorizing the appointment of agents for the transportation of models and specimens to the patent office, is hereby repealed.

SECTION 7. *And be it further enacted*, That the Commissioner is further authorized, from time to time, to appoint, in the manner already provided for by law, such an additional number of principal examiners, first assistant examiners, and second assistant examiners as may be required to transact the current business of the office with dispatch, provided the whole number of additional examiners shall not exceed four of each class, and that the total annual expenses of the patent office shall not exceed the annual receipts.

SECTION 8. *And be it further enacted*, That the Commissioner may require all papers filed in the patent office, if not correctly, legibly, and clearly written, to be printed at the cost of the parties filing such papers; and for gross misconduct he may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons of the Commissioner for such refusal shall be duly recorded, and be subject to the approval of the President of the United States.

SECTION 9. *And be it further enacted*, That no money paid as a fee on any application for a patent after the passage of this act shall be withdrawn or refunded, (b) nor shall the fee paid on filing a caveat be considered as part of the sum required to be paid on filing a subsequent application for a patent for the same invention. (c) That the three months' notice given to any caveator, in pursuance of the requirements of the twelfth section of the act of July fourth, eighteen hundred and thirty-six, shall be computed from the day on which such notice is deposited in the post office at Washington, with the regular time for the transmission of the same added thereto, which time shall be endorsed on the

(a) Previous to this act, the salary of the Commissioner had been three thousand dollars per annum (act of 1836, § 1); that of the chief clerk, seventeen hundred dollars per annum (act of 1836, § 2); and the compensation of the librarian, twelve hundred dollars per annum (act of 1852; act of 1856, § 25.)

(b) The right of withdrawal was given to American applicants by the act of 1836, § 7; and was extended to foreigners by the act of 1837, § 12.

(c) The right of having a caveat fee applied as part of the sum to be paid upon a subsequent application, was given by the act of 1836, § 12.

ACT OF 1861, CHAP. 88, §§ 10, 11.

notice; and that so much of the thirteenth section of the act of Congress, approved July fourth, eighteen hundred and thirty-six, as authorizes the annexing to letters patent of the description and specification of additional improvements is hereby repealed, and in all cases where additional improvements would now be admissible, independent patents must be applied for.

SECTION 10. *And be it further enacted,* That all laws now in force fixing the rates of the patent office fees to be paid, and discriminating between the inhabitants of the United States and those of other countries, which shall not discriminate against the inhabitants of the United States, are hereby repealed, and in their stead the following rates are established :

On filing each caveat, ten dollars.

On filing each original application for a patent, except for a design, fifteen dollars.

On issuing each original patent, twenty dollars.

On every appeal from the examiners-in-chief to the Commissioner, twenty dollars.

On every application for the reissue of a patent, thirty dollars.

On every application for the extension of a patent, fifty dollars; and fifty dollars in addition, on the granting of every extension.

On filing each disclaimer, ten dollars.

For certified copies of patents and other papers, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, and other papers of three hundred words or under, one dollar.

For recording every assignment, and other papers, over three hundred and under one thousand words, two dollars.

For recording every assignment or other writing, if over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making the same.

SECTION 11. *And be it further enacted,* That any citizen or citizens, or alien or aliens, having resided one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design, or a manufacture, whether of metal or other material or materials, and original design for a bust, statue or bas-relief, or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed, or painted, or cast, or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture, not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make, use, and sell, and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application, in writing, to the Commissioner of Patents, expressing such desire; and the

 ACT OF 1861, CHAP. 88, §§ 12-14.

Commissioner, on due proceedings had, may grant a patent therefor as in the case now of application for a patent, for the term of three and one-half years, or for the term of seven years, or for the term of fourteen years, as the said applicant may elect in his application: *Provided*, that the fee to be paid in such application shall be for the term of three years and six months, ten dollars, for seven years, fifteen dollars, and for fourteen years, thirty dollars: *And, provided*, That the patentees of designs under this act, shall be entitled to the extension of their respective patents for the term of seven years, from the day on which said patent shall expire, upon the same terms and restrictions as are now provided for the extension of letters patent. (a)

SECTION 12. *And be it further enacted*, That all applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable; and all applications now pending shall be treated as if filed after the passage of this act, and all applications for the extension of patents, shall be filed at least ninety days before the expiration thereof; and notice of the day set for the hearing of the case shall be published, as now required by law, for at least sixty days. (b)

SECTION 13. *And be it further enacted*, That in all cases where an article is made or vended by any person under the protection of letters patent, it shall be the duty of such person to give sufficient notice to the public that said article is so patented, either by fixing thereon the word patented, together with the day and year the patent was granted; or when, from the character of the article patented, that may be impracticable, by enveloping one or more of the said articles, and affixing a label to the package or otherwise attaching thereto a label on which the notice, with the date, is printed; on failure of which, in any suit for the infringement of letters patent by the party failing so to mark the article the right to which is infringed upon, no damage shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued after such notice to make or vend the article patented. And the sixth section of the act entitled "An act in addition to an act to promote the progress of the useful arts," and so forth, approved the twenty-ninth day of August, eighteen hundred and forty-two, be, and the same is hereby repealed. (c)

SECTION 14. *And be it further enacted*, That the Commissioner of Patents be, and he is hereby, authorized to print, or in his discretion to cause to be printed, ten copies of the description and claims of all patents which may hereafter be

(a) This section supersedes § 3 of the act of 1842.

(b) The previous provisions as to the extension of patents are contained in § 18 of the act of 1836, and § 1 of the act of 1848, amending the former act of 1836.

(c) The act of 1842 imposed a penalty of one hundred dollars on each article vended or offered for sale, not having the date of the patent stamped or marked upon it; but the neglect to do so did not affect the right of the patentee in any action of infringement brought by him under his patent.

ACT OF 1861, CHAP. 88, §§ 15-17.

granted, and ten copies of the drawings of the same, when drawing shall accompany the patents: *Provided*, The costs of printing the text of said descriptions and claims shall not exceed, exclusive of stationery, the sum of two cents per hundred words for each of said copies, and the cost of the drawing shall not exceed fifty cents per copy; one copy of the above number shall be printed on parchment to be affixed to the letters patent; the work shall be under the direction, and subject to the approval, of the Commissioner of Patents, and the expense of the said copies shall be paid for out of the patent fund. (a)

SECTION 15. *And be it further enacted*, That printed copies of the letters patent of the United States, with the seal of the patent office affixed thereto and certified and signed by the Commissioner of Patents, shall be legal evidence of the contents of said letters patent in all cases.

SECTION 16. *And be it further enacted*, That all patents hereafter granted, shall remain in force for the term of seventeen years from the date of issue; and all extensions of such patents is hereby prohibited.

SECTION 17. *And be it further enacted*, That all acts and parts of acts heretofore passed, which are inconsistent with the provisions of this act, be, and the same are hereby, repealed.

Approved March 2d, 1861.

ACT OF 1863, CHAPTER 102.

An Act to amend an Act entitled "An Act to promote the progress of the Useful Arts."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That so much of section seven of the act entitled "An act to promote the progress of the useful arts," approved July 4th, 1836, as requires a renewal of the oath, be, and the same is hereby repealed.

SECTION 2. *And be it further enacted*, That, whereas the falling off of the revenue of the Patent Office required a reduction of the compensation of the examiners and clerks, or other employes of the office, after the 31st day of August, 1861, that the Commissioner of Patents be, and he is hereby authorized, whenever the revenue of the office will justify him in so doing, to pay them such sums, in addition to what they shall already have received, as will make their compensation the same as it was at that time.

SECTION 3. *And be it further enacted*, That every Patent shall be dated as of a day not later than six months after the time at which it was passed and allowed, and notice thereof sent to the applicant or his agent. And if the final fee for such patent be not paid within the said six months, the patent shall be withheld, and the invention therein described shall become public property as against the applicant therefor: *Provided*, That, in all cases where patents have been allowed previous to the passage of this act, the said six months shall be reckoned from the date of such passage.

Approved March 3, 1833.

(a) This section repealed by act of July 18, 1862.

ACTS OF 1864, CHAP. 159; 1865, CHAP. 113; 1866, CHAP. 143.

ACT OF 1864, CHAPTER 159.

(13 STAT. AT LARGE, 194.)

An Act amendatory of "An Act to amend an Act entitled an Act to promote the progress of the useful arts," approved March three, eighteen hundred and sixty-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person having an interest in an invention, whether as the inventor or assignee, for which a patent was ordered to issue upon the payment of the final fee, as provided in section three of an act approved March three, eighteen hundred and sixty-three, but who has failed to make payment of the final fee, as provided by said act, shall have the right to make the payment of such fee, and receive the patent withheld on account of the non-payment of said fee, provided such payment be made within six months from the date of the passage of this act: *Provided,* That nothing herein shall be so construed as to hold responsible in damages any persons who have manufactured or used any article or thing for which a patent as aforesaid was ordered to be issued.

Approved June 25, 1864.

ACT OF 1865, CHAPTER 113.

(13 STAT. AT LARGE, 533.)

An Act amendatory of "An Act to amend an Act entitled an Act to promote the progress of the useful arts," approved March three, eighteen hundred and sixty-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person having an interest in an invention, whether as inventor or assignee, for which a patent was ordered to issue upon the payment of the final fee, as provided in section three of an act approved March three, eighteen hundred and sixty-three, but who has failed to make payment of the final fee, as provided in said act, shall have the right to make an application for a patent for his invention the same as in the case of an original application, provided such application be made within two years after the date of the allowance of the original application: *Provided,* That nothing herein shall be so construed as to hold responsible in damages any persons who have manufactured or used any article or thing for which a patent aforesaid was ordered to issue. This act shall apply to all cases now in the Patent Office, and also to such as shall hereafter be filed. And all acts or parts of acts inconsistent with this act are hereby repealed.

Approved March 3, 1865.

ACT OF 1866, CHAPTER 143.

(14 STAT. AT LARGE, 76.)

An Act in amendment of an Act to promote the progress of the useful arts, and the Acts in amendment of and in addition thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon appealing for the first time from the decision of the primary examiner to the examiners-in-chief in the Patent Office, the appellant shall pay a fee of ten dollars into the Patent Office, to the credit of the patent fund; and no appeal from the primary examiner to the examiners-in-chief shall hereafter be allowed until the appellant shall pay said fee.

Approved June 27, 1866.

ACT OF 1867, CHAP. 17; 1868, CHAP. 177, 227.

ACT OF 1867, CHAPTER 17.

(15 STAT. AT LARGE, 10.)

[*This Act still in Force. Re-enactment of Act of 1861, § 7.*]

An Act to increase the force in the Patent Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Patents is authorized from time to time to appoint, in the manner already provided for by law, such an additional number of principal examiners, first assistant examiners, and second assistant examiners, as may be required to transact the correct business of the office with dispatch: *Provided,* That the whole number of such additional examiners shall not exceed four of each class, and that the total annual expense of the Patent Office shall not exceed its annual receipts.

Approved March 29, 1867.

ACT OF 1868, CHAPTER 177.

(15 STAT. AT LARGE, 119.)

[*This Act partly in Force and partly Temporary.*]

Extract from "An Act making appropriations for sundry civil expenses of the Government," &c.

SECTION 7. *And be it further enacted,* That the Commissioner of Patents be authorized to rent, under the direction of the committees on patents of the Senate and of the House of Representatives, such rooms as may be necessary for the speedy and convenient transaction of the business of the office: *Provided,* That all the moneys standing to the credit of the "Patent Fund," or in the hands of the Commissioner of Patents, and all moneys hereafter received at the Patent Office, for any purpose, or from any source whatever, shall be paid into the treasury as received, without any deduction whatever; and the sum of two hundred and fifty thousand dollars is hereby appropriated for salaries, and miscellaneous and contingent expenses of the Patent Office, and for withdrawals, and for *monies* [moneys] paid by mistake, to be disbursed under the direction of the Secretary of the Interior. And it shall be the duty of the Commissioner of Patents to communicate to Congress at the commencement of every December session, a full and detailed account of moneys received for duties on patents, and for copies of records and drawings, and all other moneys received by virtue of said office; and of all moneys expended by him under and by virtue of this provision for said contingent and miscellaneous expenses, and for salaries, and the names of the persons to whom such salaries are paid, and the amount thereof paid to each.

Approved July 20, 1868.

ACT OF 1868, CHAPTER 227.

(15 STAT. AT LARGE, 168.)

[*This Act still in Force.*]

Extract from "An Act to authorize the temporary supplying of vacancies in the executive departments."

And provided also, That in case of the death, resignation, absence, or sickness of the Commissioner of Patents, the duties of said commissioner, until a successor be appointed, or such absence or sickness shall cease, shall devolve upon the examiner-in-chief in said office oldest in length of commission.

Approved July 23d, 1868.

ACT OF 1868, RES. 77; 1869, CHAP. 23, 121.

ACT OF 1868, RESOLUTION No. 77.

(15 STAT. AT LARGE, 262.)

[*This Resolution still in Force.*]

Joint Resolution relative to printing specifications of patents.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That no bills be paid by the treasury for printing specifications of patents above the contract price, except that seventy cents may be added to each thousand words for the additional cost of composition occasioned by change made in printing by order of the Commissioner of Patents.

Approved July 27th, 1868.

ACT OF 1869, CHAPTER 23.

(15 STAT. AT LARGE, 269.)

[*Temporary Act.*]

An Act making appropriations for the payment of salaries and contingent expenses of the Patent Office, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be appropriated, out of any money in the treasury not otherwise appropriated, the sum of fifty-four thousand seven hundred and sixty-six dollars, for the payment of the salaries of the officers and employees of the Patent Office, and for the ordinary contingent expenses of said office, for the months of January and February, eighteen hundred and sixty-nine.

Approved February 9th, 1869.

ACT OF 1869, CHAPTER 121.

(15 STAT. AT LARGE, 293.)

[*This Act in Force in Part, and partly Temporary.*]

Extract from "An Act making appropriations for the legislative, executive, and judicial expenses of the Government," &c.

United States Patent Office.—For compensation of the Commissioner of the Patent Office, four thousand five hundred dollars; for chief clerk, two thousand five hundred dollars; one superintendent of drawing for the annual report, two thousand five hundred dollars; for three examiners-in-chief, at three thousand dollars each, nine thousand dollars; twenty principal examiners, at two thousand five hundred dollars each, fifty thousand dollars; twenty first assistant examiners, at eighteen hundred dollars each, thirty-six thousand dollars; twenty second assistant examiners, at sixteen hundred dollars each, thirty-two thousand dollars; one librarian, one thousand eight hundred dollars; one machinist, one thousand six hundred dollars; one messenger, one thousand dollars; making, in all, the sum of one hundred and forty thousand nine hundred dollars.

For compensation of six clerks of class three, nine thousand six hundred dollars.

For thirty-five clerks of class two, forty-four thousand eight hundred dollars.

For forty clerks of class one, forty-eight thousand dollars.

ACT OF 1869. CHAP. 15.

For six permanent clerks, at one thousand dollars each, six thousand dollars.

For thirteen copyists of drawings, at one thousand dollars each, thirteen thousand dollars.

For fifty-three female copyists, at seven hundred dollars each, thirty-seven thousand one hundred dollars.

For nine permanent clerks, at nine hundred dollars each, eight thousand one hundred dollars.

For two skilled laborers, at twelve hundred dollars each, two thousand four hundred dollars.

For two skilled laborers, at one thousand dollars each, two thousand dollars.

For seven skilled laborers, at nine hundred dollars each, six thousand three hundred dollars.

For thirty laborers, at six hundred dollars each, eighteen thousand dollars.

For two laborers, at five hundred and seventy-six dollars each, one thousand one hundred and fifty-two dollars.

For one watchman, nine hundred dollars.

For five watchmen, at seven hundred and twenty dollars, three thousand six hundred dollars.

For seven laborers, at six hundred dollars each, four thousand two hundred dollars.

For contingent expenses of the Patent Office, viz.: For illustrations of annual report, stationery for use of office, printing patents, furniture for rooms, repairs, advertising, books for library, international exchanges, plumbing, gas-fitting, and other contingencies, one hundred and twenty thousand dollars; and no further or greater sum shall be paid, or contracted to be paid, for said contingent expenses; and it shall be the duty of the Commissioner of Patents to make a full and detailed report, to each December session of Congress, of the manner in which said contingent expenses have been disbursed: *Provided*, That with the exception of the Commissioner of Patents and the examiners-in-chief, all the officers, clerks, and employees of the Patent Office, shall be subject to the appointing and removing power of the Secretary of the Interior, in like manner and to the same extent as the clerks of the Pension Office are so subject under existing laws; and the disbursements of the Patent Office shall be made by the disbursing clerk of the Department of the Interior.

Approved March 3d, 1869.

ACT OF 1869, CHAPTER 15.

(16 STAT. AT LARGE, 11.)

[*Temporary Act.*]

Extract from "An Act making appropriations to supply deficiencies in the appropriations for the service of Government," &c.

For compensation of two additional examiners in the Patent Office, at two thousand five hundred dollars each, five thousand dollars.

For twenty-one clerks, class two, in the Patent Office, at fourteen hundred dollars each, twenty-nine thousand four hundred dollars.

For fourteen clerks, class one, in the Patent Office, at twelve hundred dollars each, sixteen thousand eight hundred dollars.

ACT OF 1870, CHAPTER 230.

(15 STAT. AT LARGE, 198.)

“An Act to revise, consolidate, and amend the statutes relating to patents and copyrights.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be attached to the Department of the Interior the office, heretofore established, known as the Patent Office, wherein all records, books, models, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved.

SEC. 2. *And be it further enacted,* That the officers and employees of said office shall continue to be one Commissioner of Patents, one Assistant Commissioner, and three examiners-in-chief, to be appointed by the President, by and with the advice and consent of the Senate; one chief clerk, one examiner in charge of interferences, twenty-two principal examiners, twenty-two first assistant examiners, twenty-two second assistant examiners, one librarian, one machinist, five clerks of class four, six clerks of class three, fifty clerks of class two, forty-five clerks of class one, and one messenger and purchasing clerk, all of whom shall be appointed by the Secretary of the Interior, upon nomination of the Commissioner of Patents.

SEC. 3. *And be it further enacted,* That the Secretary of the Interior may also appoint, upon like nomination, such additional clerks of classes two and one, and of lower grades, copyists of drawings, female copyists, skilled laborers, laborers, and watchmen, as may be from time to time appropriated for by Congress.

SEC. 4. *And be it further enacted,* That the annual salaries of the officers and employees of the Patent Office shall be as follows:

Of the Commissioner of Patents, four thousand five hundred dollars.

Of the Assistant Commissioner, three thousand dollars.

Of the examiners-in-chief, three thousand dollars each.

Of the chief clerk, two thousand five hundred dollars.

Of the examiner, in charge of interferences, two thousand five hundred dollars.

Of the principal examiners, two thousand five hundred dollars each.

Of the first assistant examiners, one thousand eight hundred dollars each.

Of the second assistant examiners, one thousand six hundred dollars each.

Of the librarian, one thousand eight hundred dollars.

Of the machinist, one thousand six hundred dollars.

Of the clerks of class four, one thousand eight hundred dollars each.

Of the clerks of class three, one thousand six hundred dollars each.

Of the clerks of class two, one thousand four hundred dollars each.

Of the clerks of class one, one thousand two hundred dollars each.

Of the messenger and purchasing clerk, one thousand dollars.

Of laborers and watchmen, seven hundred and twenty dollars each.

Of the additional clerks, copyists of drawings, female copyists and skilled laborers, such rates as may be fixed by the acts making appropriations for them.

SEC. 5. *And be it further enacted,* That all officers and employees of the Patent Office shall, before entering upon their duties, make oath or affirmation truly and faithfully to execute the trusts committed to them.

SEC. 6. *And be it further enacted,* That the commissioner and chief clerk, before entering upon their duties, shall severally give bond, with sureties, to the Treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, conditioned for the faithful discharge of their duties, and that they will render to the proper officers of the treasury a true account of all money received by virtue of their office.

SEC. 7. *And be it further enacted,* That it shall be the duty of the Commissioner, under the direction of the Secretary of the Interior, to superintend or perform all the duties respecting the granting and issuing of patents which herein are, or may hereafter be, by law directed to be done; and he shall have charge of all books, records, papers, models, machines, and other things belonging to said office.

SEC. 8. *And be it further enacted,* That the Commissioner may send and receive by mail, free of postage, letters, printed matter, and packages relating to the business of his office, including Patent Office reports.

SEC. 9. *And be it further enacted,* That the Commissioner shall lay before Congress, in the month of January, annually, a report, giving a detailed statement of all moneys received for patents, for copies of records or drawings, or from any other source whatever; a detailed statement of all expenditures for contingent and miscellaneous expenses; a list of all patents which were granted during the preceding year, designating under proper heads the subject of such patents; an alphabetical list of the patentees, with their places of residence; a list of all patents which have been extended during the year; and such other information of the condition of the Patent Office as may be useful to Congress or the public.

SEC. 10. *And be it further enacted,* That the examiners-in-chief shall be persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant, to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents, and for reissues of patents, and in interference cases; and when required by the Commissioner, they shall hear and report upon claims for extensions, and perform such other like duties as he may assign them.

SEC. 11. *And be it further enacted,* That in case of the death, resignation, absence, or sickness of the Commissioner, his duties shall devolve upon the Assistant Commissioner until a successor shall be appointed, or such absence or sickness shall cease.

SEC. 12. *And be it further enacted,* That the Commissioner shall cause a seal to be provided for said office, with such device as the President may approve, with which all records or papers issued from said office, to be used in evidence, shall be authenticated.

SEC. 13. *And be it further enacted,* That the Commissioner shall cause to be classified and arranged in suitable cases, in the rooms and galleries provided for that purpose, the models, specimens of composition, fabrics, manufactures, works of art, and designs, which have been or shall be deposited in said office; and said rooms and galleries shall be kept open during suitable hours for public inspection.

SEC. 14. *And be it further enacted,* That the Commissioner may restore to the respective applicants such of the models belonging to rejected applications as he shall not think necessary to be preserved, or he may sell or otherwise dispose of them after the application has been finally rejected for one year, paying the proceeds into the treasury, as other patent moneys are directed to be paid.

SEC. 15. *And be it further enacted.* That there shall be purchased, for the use of said office, a library of such scientific works and periodicals, both foreign and

ACT OF 1870, CHAP. 332.

American, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated by Congress for that purpose.

SEC. 15. *And be it further enacted,* That all officers and employees of the Patent Office shall be incapable, during the period for which they shall hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by said office.

SEC. 17. *And be it further enacted,* That for gross misconduct the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal shall be duly recorded and be subject to the approval of the Secretary of the Interior.

SEC. 18. *And be it further enacted,* That the Commissioner may require all papers filed in the Patent Office, if not correctly, legibly, and clearly written, to be printed at the cost of the party filing them.

SEC. 19. *And be it further enacted,* That the Commissioner, subject to the approval of the Secretary of the Interior, may from time to time establish rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

SEC. 20. *And be it further enacted,* That the Commissioner may print or cause to be printed copies of the specifications of all letters patent and of the drawings of the same, and copies of the claims of current issues, and copies of such laws, decisions, rules, regulations, and circulars as may be necessary for the information of the public.

SEC. 21. *And be it further enacted,* That all patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Secretary of the Interior and countersigned by the Commissioner, and they shall be recorded, together with the specification, in said office, in books to be kept for that purpose.

SEC. 22. *And be it further enacted,* That every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the said invention or discovery throughout the United States and the Territories thereof, referring to the specifications for the particulars thereof; and a copy of said specifications and of the drawings shall be annexed to the patent, and be a part thereof.

SEC. 23. *And be it further enacted,* That every patent shall date as of a day not later than six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant, or his agent; and if the final fee shall not be paid within that period, the patent shall be withheld.

SEC. 24. *And be it further enacted,* That 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, not known or used by others in this country, and not patented, or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor.

SEC. 25. *And be it further enacted,* That no person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country: provided the same shall not have been introduced into public use in the United States for more than two years prior to the application, and that the patent shall expire at the same time with the foreign patent, or if there be

ACT OF 1870, CHAP. 230.

more than one, at the same time with the one having the shortest term ; but in no case shall it be in force more than seventeen years.

SEC. 26. *And be it further enacted,* That before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same ; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle so as to distinguish it from other inventions ; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery ; and said specification and claim shall be signed by the inventor and attested by two witnesses.

SEC. 27. *And be it further enacted,* That when the nature of the case admits of drawings, the applicant shall furnish one copy signed by the inventor or his attorney in fact, and attested by two witnesses, which shall be filed in the Patent Office ; and a copy of said drawings, to be furnished by the Patent Office, shall be attached to the patent as part of the specification.

SEC. 28. *And be it further enacted,* That when the invention or discovery is of a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of ingredients and of the composition sufficient in quantity for the purpose of experiment.

SEC. 29. *And be it further enacted,* That in all cases which admit of representation by model, the applicant, if required by the Commissioner, shall furnish one of convenient size to exhibit advantageously the several parts of his invention or discovery.

SEC. 30. *And be it further enacted,* That the applicant shall make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent ; that he does not know and does not believe that the same was ever before known or used ; and shall state of what country he is a citizen. And said oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be.

SEC. 31. *And be it further enacted,* That on the filing of any such application and the payment of the duty required by law, the Commissioner shall cause an examination to be made of the alleged new invention or discovery ; and if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner shall issue a patent therefor.

SEC. 32. *And be it further enacted,* That all applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

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SEC. 33. *And be it further enacted,* That patents may be granted and issued or reissued to the assignee of the inventor or discoverer, the assignment thereof being first entered of record in the Patent Office ; but in such case the application for the patent shall be made and the specification sworn to by the inventor or discoverer ; and, also, if he be living, in case of an application for re-issue.

SEC. 34. *And be it further enacted,* That when any person having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate ; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his lifetime ; and when the application shall be made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them.

SEC. 35. *And be it further enacted,* That any person who has an interest in an invention or discovery, whether as an inventor, discoverer, or assignee, for which a patent was ordered to issue upon the payment of the final fee, but who has failed to make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a patent for such invention or discovery the same as in the case of an original application : *Provided,* That the second application be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a patent, as aforesaid, was ordered to issue, prior to the issue thereof ; *And provided further,* That when an application for a patent has been rejected or withdrawn, prior to the passage of this act, the applicant shall have six months from the date of such passage to renew his application, or to file a new one ; and if he omit to do either, his application shall be held to have been abandoned. Upon the hearing of such renewed applications abandonment shall be considered as a question of fact.

SEC. 36. *And be it further enacted,* That every patent, or any interest therein, shall be assignable in law, by an instrument in writing ; and the patentee, or his assigns or legal representatives, may in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States ; and said assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof.

SEC. 37. *And be it further enacted,* That every person who may have purchased of the inventor, or with his knowledge and consent may have constructed, any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or sold or used one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor.

SEC. 38. *And be it further enacted,* That it shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented, either by fixing thereon the word "patented," together with the day and year the patent was granted ; or when, from the character of the article, this cannot be done, by fixing to it or to the package wherein one or more of them is enclosed, a label containing the like notice ; and in any suit for infringement, by

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the party failing so to mark, no damages shall be recovered by the plaintiff except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make, use, or vend the article so patented.

SEC. 39. *And be it further enacted,* That if any person shall, in any manner, mark upon anything made, used, or sold by him, for which he has not obtained a patent, the name, or any imitation of the name, of any person who has obtained a patent therefor, without the consent of such patentee, or his assigns or legal representatives; or shall in any manner mark upon or affix to any such patented article the word "patent" or "patentee," or the words "letters patent," or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee, or his assigns or legal representatives; or shall in any manner mark upon or affix to any unpatented article the word "patent," or any word importing that the same is patented, for the purpose of deceiving the public, he shall be liable for every such offense to a penalty of not less than one hundred dollars, with costs; one moiety of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offense may have been committed.

SEC. 40. *And be it further enacted,* That any citizen of the United States who shall have made any new invention or discovery, and shall desire further time to mature the same, may, on payment of the duty required by law, file in the Patent Office a caveat setting forth the design thereof, and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention; and such caveat shall be filed in the confidential archives of the office and preserved in secrecy, and shall be operative for the term of one year from the filing thereof; and if application shall be made within the year by any other person for a patent with which such caveat would in any manner interfere, the Commissioner shall deposit the description, specification, drawings, and model of such application in like manner in the confidential archives of the office, and give notice thereof, by mail, to the person filing the caveat, who, if he would avail himself of his caveat, shall file his description, specifications, drawings, and model within three months from the time of placing said notice in the post-office in Washington, with the usual time required for transmitting it to the caveator added thereto, which time shall be indorsed on the notice. And an alien shall have the privilege herein granted, if he shall have resided in the United States one year next preceding the filing of his caveat, and made oath of his intention to become a citizen.

SEC. 41. *And be it further enacted,* That whenever, on examination, any claim for a patent is rejected for any reason whatever, the Commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if, after receiving such notice, the applicant shall persist in his claim for a patent, with or without altering his specifications, the Commissioner shall order a re-examination of the case.

SEC. 42. *And be it further enacted,* That whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a patent to the party who shall be adjudged the prior inventor, unless the adverse party shall appeal from the decision of the prim-

any examiner, or of the board of examiners-in-chief, as the case may be, within such time, not less than twenty days, as the Commissioner shall prescribe.

SEC. 43. *And be it further enacted*, That the Commissioner may establish rules for taking affidavits and depositions required in cases pending in the Patent Office, and such affidavits and depositions may be taken before any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where the officer resides.

SEC. 44. *And be it further enacted*, That the Clerk of any court of the United States for any district or territory wherein testimony is to be taken for use in any contested case pending in the Patent Office, shall, upon the application of any party thereto, or his agent or attorney, issue [a] subpoena for any witness residing or being within said district or territory, commanding him to appear and testify before any officer in said district or territory authorized to take depositions and affidavits, at any time and place in the subpoena stated; and if any witness, after being duly served with such subpoena, shall neglect or refuse to appear, or, after appearing, shall refuse to testify, the judge of the court whose clerk issued the subpoena may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience as in other like cases.

SEC. 45. *And be it further enacted*, That every witness duly subpoenaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States, but no witness shall be required to attend any place more than forty miles from the place where the subpoena is served upon him, nor be deemed guilty of contempt for disobeying such subpoena, unless his fees and traveling expenses in going to, returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret invention or discovery made or owned by himself.

SEC. 46. *And be it further enacted*, That every applicant for a patent or the reissue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the primary examiner, or of the examiner in charge of interference, in such case to the board of examiners-in-chief, having once paid the fee for such appeal provided by law.

SEC. 47. *And be it further enacted*, That if such party is dissatisfied with the decision of the examiners-in-chief, he may, on payment of the duty required by law, appeal to the Commissioner in person.

SEC. 48. *And be it further enacted* That if such party, except a party to an interference, is dissatisfied with the decision of the Commissioner, he may appeal to the supreme court of the District of Columbia sitting in banc.

SEC. 49. *And be it further enacted*, That when an appeal is taken to the supreme court of the District of Columbia, the appellant shall give notice thereof to the Commissioner, and file in the Patent Office, within such time as the Commissioner shall appoint, his reasons of appeal, specifically set forth in writing.

SEC. 50. *And be it further enacted*, That it shall be the duty of said court, on petition, to hear and determine such appeal, and to revise the decision appealed from in a summary way, on the evidence produced before the Commissioner, at such early and convenient time as the court may appoint, notifying the Commissioner of the time and place of hearing; and the revision shall be confined to the points set forth in the reasons of appeal. And after hearing the case, the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office, and govern the further proceedings in the case. But no opinion or decision of the court in any such case

shall preclude any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question.

SEC. 51. *And be it further enacted,* That on receiving notice of the time and place of hearing such appeal, the Commissioner shall notify all parties who appear to be interested therein, in such manner as the court may prescribe. The party appealing shall lay before the court certified copies of all the original papers and evidence in the case, and the Commissioner shall furnish it with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal. And at the request of any party interested, or of the court, the Commissioner and the examiners may be examined under oath, in explanation of the principles of the machine or other thing for which a patent is demanded.

SEC. 52. *And be it further enacted,* That whenever a patent on application is refused, for any reason whatever, either by the Commissioner or by the Supreme court of the District of Columbia upon appeal from the Commissioner, the applicant may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear. And such adjudication, if it be in favor of the right of the applicant, shall authorize the Commissioner to issue such patent, on the applicant filing in the Patent Office a copy of the adjudication, and otherwise complying with the requisitions of law. And in all cases where there is no opposing party a copy of the bill shall be served on the Commissioner, and all the expenses of the proceeding shall be paid by the applicant, whether the final decision is in his favor or not.

SEC. 53. *And be it further enacted,* That whenever any patent is inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the Commissioner shall, on the surrender of such patent and the payment of the duty required by law, cause a new patent for the same invention, and in accordance with the corrected specifications, to be issued to the patentee, or, in the case of his death or assignment of the whole or any undivided part of the original patent, to his executors, administrators, or assigns for the unexpired part of the term of the original patent, the surrender of which shall take effect upon the issue of the amended patent; and the Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued letters patent. And the specification and claim in every such case shall be subject to revision and restriction in the same manner as original applications are. And the patent so reissued, together with the corrected specification, shall have the effect and operation in law, on the trial of all actions for causes thereafter arising, as though the same had been originally filed in such corrected form; but no new matter shall be introduced into the specification, nor in case of a machine patent shall the model or drawings be amended, except each by the other; but when there is neither model or drawing, amendments may be made upon proof satisfactory to the Commissioner that such new matter or amendment was part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

SEC. 54. *And be it further enacted,* That whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee

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has claimed more than that of which he was the original or first inventor or discoverer, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the duty required by law, make disclaimer of such parts of the thing patented as he shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; said disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office, and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it.

SEC. 55. *And be it further enacted,* That all actions, suits, controversies, and cases arising under the patent laws of the United States shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court, or by the supreme court of the District of Columbia, or of any Territory; and the court shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the *claimant* [complainant] has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction, and the court shall have the same powers to increase the same in its discretion that are given by said act to increase the damages found by verdicts in actions upon the case; but all actions shall be brought during the term for which the letters patent shall be granted or extended, or within six years after the expiration thereof.

SEC. 56. *And be it further enacted,* That a writ of error or appeal to the supreme court of the United States shall lie from all judgments and decrees of any circuit court, or of any district court exercising the jurisdiction of a circuit court, or of the supreme court of the District of Columbia or of any Territory, in any action, suit, controversy, or case, at law or in equity, touching patent rights, in the same manner and under the same circumstances as in other judgments and decrees of such circuit courts, without regard to the sum or value in controversy.

SEC. 57. *And be it further enacted,* That written or printed copies of any records, books, papers, or drawings belonging to the Patent Office, and of letters patent under the signature of the Commissioner or acting Commissioner, with the seal of office affixed, shall be competent evidence in all cases wherein the originals could be evidence, and any person making applications therefor, and paying the fee required by law, shall have certified copies thereof. And copies of the specifications and drawings of foreign letters patent, certified in like manner, shall be prima facie evidence of the fact of the granting of such foreign letters patent and of the date and contents thereof.

SEC. 58. *And be it further enacted,* That whenever there shall be interfering patents, any person interested in any one of such interfering patents, or in the working of the invention claimed under either of such patents, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court having cognizance thereof, as

hereinbefore provided, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall affect the rights of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment.

SEC. 59. *And be it further enacted,* That damages for the infringement of any patent may be recovered by action on the case in any circuit court in the United States, or district court exercising the jurisdiction of a circuit court, or in the supreme court of the district of Columbia, or of any Territory, in the name of the party interested, either as patentee, assignee or grantee. And whenever in any such action a verdict shall be rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

SEC. 60. *And be it further enacted,* That whenever, through inadvertence, accident, or mistake, and without any willful default or intent to defraud or mislead the public, a patentee shall have (in his specification) claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer as aforesaid, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity, for the infringement of any part thereof, which was bona fide his own, provided it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the parts so claimed, without right as aforesaid, notwithstanding the specifications may embrace more than that of which the patentee was the original or first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff, no costs shall be recovered unless the proper disclaimer has been entered at the Patent Office before the commencement of the suit; nor shall he be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to enter said disclaimer.

SEC. 61. *And be it further enacted,* That in any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove on trial any one or more of the following special matters:

First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or,

Second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or,

Third. That it had been patented or described in some printed publication prior to his supposed invention or discovery thereof; or,

Fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented; or,

Fifth. That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.

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And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defenses may be pleaded in any suit in equity for relief against an alleged infringement; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect.

SEC. 62. *And be it further enacted,* That whenever it shall appear that the patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented, or described in a printed publication.

SEC. 63. *And be it further enacted,* That where the patentee of any invention or discovery, the patent for which was granted prior to the second day of March, eighteen hundred and sixty-one, shall desire an extension of his patent beyond the original term of its limitation, he shall make application therefor, in writing, to the Commissioner, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement, under oath, of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of said invention or discovery. And said application shall be filed not more than six months nor less than ninety days before the expiration of the original term of the patent, and no extension shall be granted after the expiration of said original term.

SEC. 64. *And be it further enacted,* That upon the receipt of such application, and the payment of the duty required by law, the Commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted.

SEC. 65. *And be it further enacted,* That on the publication of such notice, the Commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make to said Commissioner a full report of the case, and particularly whether the invention or discovery was new and patentable when the original patent was granted.

SEC. 66. *And be it further enacted,* That the Commissioner shall, at the time and place designated in the published notice, hear and decide upon the evidence produced, both for and against the extension; and if it shall appear to his satisfaction that the patentee, without neglect or fault on his part, has failed to obtain from the use and sale of his invention or discovery a reasonable remuneration for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use, and that it is just and proper, having due regard to the public interest, that the term of the patent should be extended, the said Commissioner shall make a certificate thereon, renewing and extending the said patent for the term of three years from the expiration of the first term, which cer-

tificate shall be recorded in the Patent Office, and thereupon the said patent shall have the same effect in law as though it had been originally granted for twenty-one years.

SEC. 67. *And be it further enacted,* That the benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented to the extent of their interest therein.

SEC. 68. *And be it further enacted,* That the following shall be the rates for patent fees :

On filing each original application for a patent, fifteen dollars.

On issuing each original patent, twenty dollars.

On filing each caveat, ten dollars.

On every application for the reissue of a patent, thirty dollars.

On filing each disclaimer, ten dollars.

On every application for the extension of a patent, fifty dollars.

On the granting of every extension of a patent, fifty dollars.

On an appeal for the first time from the primary examiners to the examiners-in-chief, ten dollars.

On every appeal from the examiners-in-chief to the Commissioner, twenty dollars.

For certified copies of patents and other papers, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under, one dollar ; of over three hundred and under one thousand words, two dollars ; of over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making them.

SEC. 69. *And be it further enacted,* That patent fees may be paid to the Commissioner, or to the Treasurer or any of the assistant treasurers of the United States, or to any of the designated depositories, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit, therefor. And all money received at the Patent Office, for any purpose, or from any source whatever, shall be paid into the treasury as received, without any deduction whatever ; and all disbursements for said office shall be made by the disbursing clerk of the Interior Department.

SEC. 70. *And be it further enacted,* That the Treasurer of the United States is authorized to pay back any sum or sums of money to any person who shall have paid the same into the treasury, or to any receiver or depository, to the credit of the Treasurer, as for fees accruing at the Patent Office through mistake, certificate thereof being made to said Treasurer by the Commissioner of Patents.

DESIGNS.

SEC. 71. *And be it further enacted,* That any person who, by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief, any new and original design for the printing of woolen, silk, cotton, or other fabrics ; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture ; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may,

upon payment of the duty required by law, and other due proceedings had, the same as in cases of inventions or discoveries, obtain a patent therefor.

SEC. 72. *And be it further enacted*, That the Commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs.

SEC. 73. *And be it further enacted*, That patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

SEC. 74. *And be it further enacted*, That patentees of designs issued prior to March two, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries, issued prior to the second day of March, eighteen hundred and sixty-one.

SEC. 75. *And be it further enacted*, That the following shall be the rates of fees in design cases :

For three years and six months, ten dollars.

For seven years, fifteen dollars.

For fourteen years, thirty dollars.

For all other cases in which fees are required, the same rates as in cases of inventions or discoveries.

SEC. 76. *And be it further enacted*, That all the regulations and provisions which apply to the obtaining or protection of patents for inventions or discoveries, not inconsistent with the provisions of this act, shall apply to patents for designs.

TRADE-MARKS.

SEC. 77. *And be it further enacted*, That any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements, to wit :

1st. By causing to be recorded in the Patent Office the names of the parties and their residences and places of business, who desire the protection of the trade-mark.

2d. The class of merchandise, and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated.

3d. A description of the trade-mark itself, with fac-similes thereof, and the mode in which it has been or is intended to be applied and used.

4th. The length of time, if any, during which the trade-mark has been used.

5th. The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

6th. The compliance with such regulations as may be prescribed by the commissioner of patents.

7th. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming

protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected.

SEC. 78. *And be it further enacted,* That such trade-mark shall remain in force for thirty years from the date of such registration, except in cases where such trade-mark is claimed for and applied to articles not manufactured in this country and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere; and during the period that it remains in force it shall entitle the person, firm, or corporation registering the same to the exclusive use thereof so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade-mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods: *Provided,* That six months prior to the expiration of said term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents, and the fee for such renewal shall be the same as for the original registration; certificate of such renewal shall be issued in the same manner as for the original registration, and such trade-mark shall remain in force for a further term of thirty years: *And provided further,* That nothing in this section shall be construed by any court as abridging or in any manner affecting unfavorably the claim of any person, firm, corporation, or company to any trade-mark after the expiration of the term for which such trade-mark was registered.

SEC. 79. *And be it further enacted,* That any person or corporation who shall reproduce, counterfeit, copy, or imitate any such recorded trade-mark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action in the case for damages for such wrongful use of said trade-mark, at the suit of the owner thereof, in any court of competent jurisdiction in the United States, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use. The Commissioner of Patents shall not receive and record any proposed trade-mark which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public: *Provided,* That this section shall not prevent the registry of any lawful trade-mark rightfully used at the time of the passage of this act.

SEC. 80. *And be it further enacted,* That the time of the receipt of any trade-mark at the Patent Office for registration shall be noted and recorded, and copies of the trade-mark and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the Patent Office, certified by the Commissioner, shall be evidence in any suit in which such trade-mark shall be brought in controversy.

SEC. 81. *And be it further enacted,* That the Commissioner of Patents is author-

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ized to make rules, regulations, and prescribe forms for the transfer of the right to the use of such trade-marks, conforming as nearly as practicable to the requirements of law respecting the transfer and transmission of copyrights.

SEC. 82. *And be it further enacted,* That any person who shall procure the registry of any trade-mark, or of himself as the owner thereof, or an entry respecting a trade-mark in the Patent Office under this act, by making any false or fraudulent representation, or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay damages in consequence of any such registry or entry to the person injured thereby, to be recovered in an action on the case before any court of competent jurisdiction within the United States.

SEC. 83. *And be it further enacted,* That nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity, which any party aggrieved by any wrongful use of any trade-mark might have had if this act had not been passed.

SEC. 84. *And be it further enacted,* That no action shall be maintained under the provisions of this act by any person claiming the exclusive right to any trade-mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade-mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

COPYRIGHTS.

SEC. 85. *And be it further enacted,* That all records and other things relating to copyrights, and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the Joint Committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights. The Librarian shall cause a seal to be provided for said office, with such device as the Joint Committee on the Library may approve, with which all records or papers issued from said office, and to be used in evidence, shall be authenticated. He shall also give an additional bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office. He shall also make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year. And the Librarian of Congress shall receive a yearly compensation of four thousand dollars, to commence when this act shall take effect.

SEC. 86. *And be it further enacted,* That any citizen of the United States, or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph, or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and his executors, administrators, or assigns, shall, upon complying with the provisions of this act, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others; and authors may reserve the right to dramatize or to translate their own works.

SEC. 87. *And be it further enacted,* That copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

SEC. 88. *And be it further enacted,* That the author, inventor, or designer, if he be still living and a citizen of the United States or resident therein, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

SEC. 89. *And be it further enacted,* That copyrights shall be assignable in law, by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

SEC. 90. *And be it further enacted.* That no person shall be entitled to a copyright unless he shall, before publication, deposit in the mail a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or model or design for a work of the fine arts, for which he desires a copyright, addressed to the Librarian of Congress, and, within ten days from the publication thereof, deposit in the mail two copies of such copyright, book or other article, or in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same, to be addressed to said Librarian of Congress, as hereinafter to be provided.

SEC. 91. *And be it further enacted,* That the Librarian of Congress shall record the name of such copyright book or other article forthwith in a book to be kept for that purpose, in the words following: "Library of Congress to wit: Be it remembered, that on the — day of —, anno Domini, —, A. B., of —, hath deposited in this office the title of a book (map, chart, or otherwise, as the case may be, or description of the article), the title or description of which is in the following words, to wit: (here insert the title or description) the right whereof he claims as author, originator (or proprietor, as the case may be), in conformity with the laws of the United States respecting copyrights. C. D., Librarian of Congress." And he shall give a copy of the title or description, under the seal of the Librarian of Congress, to said proprietor, whenever he shall require it.

SEC. 92. *And be it further enacted,* That for recording the title or description of any copyright book or other article, the Librarian of Congress shall receive, from the person claiming the same, fifty cents; and for every copy under seal actually given to such person or his assigns, fifty cents; and for recording any instrument of writing for the assignment of a copyright, fifteen cents for every one hundred words; and for every copy thereof, ten cents for every one hundred words, which moneys, so received, shall be paid into the treasury of the United States.

SEC. 93. *And be it further enacted,* That the proprietor of every copyright book or other article shall mail to the Librarian of Congress at Washington, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

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SEC. 94. *And be it further enacted,* That in default of such deposit in the post-office, said proprietor shall be liable to a penalty of twenty-five dollars, to be collected by the Librarian of Congress, in the name of the United States, in an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

SEC. 95. *And be it further enacted,* That any such copyright book or other article may be sent to the Librarian of Congress by mail, free of postage, provided the words "Copyright matter" are plainly written or printed on the outside of the package containing the same.

SEC. 96. *And be it further enacted,* That the postmaster to whom such copyright book, title or other article is delivered shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination, without cost to the proprietor.

SEC. 97. *And be it further enacted,* That no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof, by inserting in the several copies of every edition published, on the title page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of Congress, in the year ———, by A. B., in the office of the Librarian of Congress, at Washington."

SEC. 98. *And be it further enacted,* That if any person shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other articles herein named, for which he has not obtained a copyright, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action in any court of competent jurisdiction.

SEC. 99. *And be it further enacted,* That if any person, after the recording of the title of any book as herein provided, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, or import, or, knowing the same to be so printed, published or imported, shall sell or expose to sale any copy of such book, such offender shall forfeit every copy thereof to said proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

SEC. 100. *And be it further enacted,* That if any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as herein provided, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the said proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, pub-

ACT OF 1870, CHAP. 230.

lished, imported or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or which have by him been sold or exposed for sale; one moiety thereof to the proprietor and the other to the use of the United States, to be recovered by action in any court of competent jurisdiction.

SEC. 101. *And be it further enacted,* That any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, to be recovered by action in any court of competent jurisdiction; said damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

SEC. 102. *And be it further enacted,* That any person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained (if such author or proprietor be a citizen of the United States, or resident therein), shall be liable to said author or proprietor for all damages occasioned by such injury, to be recovered by action on the case in any court of competent jurisdiction.

SEC. 103. *And be it further enacted,* That nothing herein contained shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.

SEC. 104. *And be it further enacted,* That no action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

SEC. 105. *And be it further enacted,* That in all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

SEC. 106. *And be it further enacted,* That all actions, suits, controversies, and cases arising under the copyright laws of the United States shall be originally cognizable, as well in equity as at law, whether civil or penal in their nature, by the circuit courts of the United States, or any district court having the jurisdiction of a circuit court, or in the supreme court of the District of Columbia, or any Territory. And the court shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

SEC. 107. *And be it further enacted,* That a writ of error or appeal to the supreme court of the United States shall lie from all judgments and decrees of any court, in any action, suit, controversy, or case touching copyrights in the same manner and under the same circumstances as in other judgments and decrees of such courts, without regard to the sum or value in controversy.

SEC. 108. *And be it further enacted,* That in all recoveries under the copyright laws, either for damages, forfeitures, or penalties, full cost shall be allowed thereon.

SEC. 109. *And be it further enacted,* That all books, maps, charts, and other publications of every nature whatever, heretofore deposited in the Department of the Interior, according to the laws regulating copyrights, together with all the records of said department, and all records concerning the same which were removed by the Department of the Interior from the Department of

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State, shall be removed to and be under the control of the Librarian of Congress, who is hereby charged with all the duties pertaining to copyrights required by law.

SEC. 110. *And be it further enacted,* That the clerk of each of the district courts of the United States shall transmit forthwith to the Librarian of Congress all books, maps, prints, photograp[h]s, music, and other publications of every nature whatever, deposited in the said clerk's office, and not heretofore sent to the Department of the Interior, at Washington, together with all records of copyright in his possession, including the titles so recorded and the dates of record; *Provided,* That where there are duplicate copies of legal, scientific, or mechanical works, one copy of each may be deposited in the library of the Patent Office, for which a receipt shall be given by the Commissioner of Patents to the Librarian of Congress.

REPEALING CLAUSE AND SCHEDULE.

SEC. 111. *And be it further enacted,* That the acts and parts of acts set forth in the schedule of acts cited, hereto annexed, are hereby repealed, without reviving any acts or parts of acts repealed by any of said acts, or by any clause or provisions therein: *Provided, however,* That the repeal hereby enacted shall not affect, impair, or take away any right existing under any of said laws; but all actions and causes of action, both in law and in equity, which have arisen under any of said laws, may be commenced and prosecuted, and if already commenced may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting that the remedial provisions of this act shall be applicable to all suits and proceedings hereafter commenced: *And provided also,* That all applications for patents pending at the time of the passage of this act in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage thereof: *And provided further,* That all offences which are defined and punishable under any of said acts, and all penalties and forfeitures created thereby, and incurred before this act takes effect, may be prosecuted, sued for, and recovered, and such offences punished according to the provisions of said acts, which are continued in force for such purpose.

Schedule of statutes cited and repealed, as printed in the Statutes at Large, including such portions only of the appropriation bills referred to as are applicable to the Patent Office.

PATENTS.

- Act of July 4, 1836, chapter 357, volume 5, page 117.
- March 3, 1837, chapter 45, volume 5, page 191.
- March 3, 1839, chapter 88, volume 5, page 353.
- August 29, 1842, chapter 263, volume 5, page 543.
- August 6, 1846, chapter 90, volume 9, page 59.
- May 27, 1848, chapter 47, volume 9, page 231.
- March 3, 1849, chapter 108, volume 9, page 395.

Act of March 3, 1851, chapter 32, volume 9, page 617.
 August 30, 1852, chapter 107, volume 10, page 75.
 August 31, 1852, chapter 108, volume 10, page 76.
 March 3, 1853, chapter 97, volume 10, page 209.
 April 22, 1854, chapter 52, volume 10, page 276.
 March 3, 1855, chapter 175, volume 10, page 643.
 August 18, 1856, chapter 129, volume 11, page 81.
 March 3, 1859, chapter 80, volume 11, page 410.
 February 18, 1861, chapter 37, volume 12, page 130.
 March 2, 1861, chapter 88, volume 12, page 246.
 March 3, 1863, chapter 102, volume 12, page 796.
 June 25, 1864, chapter 159, volume 13, page 194.
 March 3, 1865, chapter 112, volume 13, page 533.
 June 27, 1866, chapter 143, volume 14, page 76.
 March 29, 1867, chapter 17, volume 15, page 10.
 July 20, 1868, chapter 177, volume 15, page 119.
 July 23, 1868, chapter 227, volume 15, page 168.
 March 3, 1869, chapter 121, volume 15, page 293.

COPYRIGHTS.

Act of February 15, 1819, chapter 19, volume 3, page 481.
 February 3, 1831, chapter 16, volume 4, page 436.
 June 30, 1834, chapter 157, volume 4, page 728.
 August 18, 1856, chapter 169, volume 11, page 138.
 February 5, 1859, chapter 22, volume 11, page 380.
 February 18, 1861, chapter 37, volume 12, page 130.
 March 3, 1865, chapter 126, volume 13, page 540.
 February 18, 1867, chapter 43, volume 14, page 395.
 Approved, July 8, 1870.

ACT OF 1871, CHAPTER 132.

(16 STAT. AT LARGE, 583.)

An Act to amend an Act, to revise, consolidate and amend the Statutes relating to patents and copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That that part of section 33, of an Act entitled "An Act to revise, consolidate, and amend the Statutes relating to patents and copyrights," Approved July eight, eighteen hundred and seventy, which requires that in case of application by assignee or assignees for Reissue of Letters Patent, the application shall be made, and the specification sworn to by the inventor or discoverer, if living, shall not be construed to apply to patents issued and assigned prior to July eight, eighteen hundred and seventy.

Approved, March 3, 1871.

JOINT RESOLUTION OF 1871, NO. 5—ACT OF 1871, CHAP. 5.

JOINT RESOLUTION OF 1871, NO. 5.

(16 STAT. AT LARGE, 590.)

Joint resolution providing for publishing specifications and drawings of Patent Office.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, that the publication of the abstracts of specifications, and of the engravings heretofore accompanying the annual report of the Commissioner of Patents be discontinued after the publication of that portion of the report for eighteen hundred and sixty-nine, for which the plates have already been prepared ; and that, in lieu thereof, the Commissioner be authorized to have printed, for gratuitous distribution, not to exceed one hundred and fifty copies of the complete specifications and drawings of each patent subsequently issued, together with suitable indexes to be issued from time to time, one copy to be placed for free public inspection in each Capitol of every State and Territory, one for the like purpose in the Clerk's office of the District Court of each judicial district of the United States, except when such offices are located in State or Territorial Capitols, and one in the library of Congress, which copies shall be taken and received in all courts as evidence of all matters therein contained, and shall be certified to under the hand of the Commissioner and seal of the Patent Office, and shall be taken and received in all courts as evidence ; said copies not to be taken from said depositories for any other purpose than to be used as evidence ; and the Commissioner of Patents is hereby authorized and directed to have printed such additional number of copies of specifications and drawings, certified as hereinbefore provided, at a price not to exceed the contract price for such drawings, for sale, as may be warranted by the actual demand for the same ; and the Commissioner is also hereby authorized to furnish a complete set of such specifications and drawings to any public library which will pay for binding the same into volumes to correspond with those in the Patent Office, and for the transportation of the same, and which shall also provide proper custody for the same, with convenient access for the public thereto, under such regulations as the Commissioner shall deem reasonable.

Approved January 11, 1871.

ACT OF 1871, CHAPTER 5.

(17 STAT. AT LARGE, 2.)

An Act to further regulate the publication of the specifications and drawings of the Patent Office.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that if, in the judgment of the Joint Committee on Printing, the provisions of the joint resolution providing for publishing specifications and drawings of the Patent Office, approved January 11, eighteen hundred and seventy-one, can be performed under the direction of the Commissioner of

Patents more advantageously than in the manner provided in said joint-resolution, it shall be so done, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe.

SEC. 2. That the price of the printed copies of specifications and drawings of patents, when uncertified, shall be determined by the Commissioner of Patents, ten cents being hereby fixed as the minimum, and fifty cents as the maximum price of the same; certified copies to be sold at the price fixed by the Patent Act of eighteen hundred and seventy.

Approved March 24, 1871.

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LAWS OF CANADA

RELATING TO

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LAWS OF CANADA

RELATING TO

PATENTS FOR INVENTIONS, COPYRIGHTS,

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ACT OF THE PARLIAMENT OF CANADA.

35TH VICTORIA.

CHAP. XXVI. AN ACT RESPECTING PATENTS OF INVENTION.

[Assented to 14th June, 1872.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PATENT OFFICE CONSTITUTED.

Sec. 1. [Minister of Agriculture to be Commissioner of Patents.] There shall be attached to the Department of Agriculture, as a branch thereof, an office to be called the Patent Office; and the Minister of Agriculture for the time being shall be the Commissioner of Patents; and it shall be the duty of the said Commissioner to receive all applications, fees, papers, documents and models for patents, and to perform all acts and things requisite to the

granting and issuing of patents of invention; and he shall have the charge and custody of the books, records, papers, models, machines, and other things belonging to the said office.

Sec. 2. [Seal; impressions thereof to be received in evidence.] The Commissioner shall cause a seal to be made for the purposes of this Act, and may cause to be sealed therewith patents and other instruments and copies proceeding from the Patent Office; and all courts, judges and other persons who-soever shall take notice of such seal, and receive impressions thereof in evidence, in like manner as impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof and without production of the originals, copies or extracts certified under the seal of the said office to be copies of or extracts from documents deposited in such office.

Sec. 3. [Commissioner to make rules.] The Commissioner may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms as may appear to him necessary and expedient for the purposes of this Act, and notice thereof shall be given in the *Canada Gazette*; and all documents, executed in conformity with the same, and accepted by the Commissioner, shall be held valid so far as relating to proceedings in the Patent Office.

Sec. 4. [Deputy Commissioner; Clerks. Employees not to be interested in Patents.] The Deputy of the Minister of Agriculture shall be the Deputy Commissioner of Patents of Invention; and the Governor in Council may, from time to time, appoint such clerks and officers under him as may be necessary for the purposes of this Act, and such clerks and officers shall hold office during pleasure. No officer or employee of the Patent Office shall buy, sell, or acquire, or traffic in an invention patent, or rights to patents therefor; and every such purchase and sale, and every assignment or transfer thereof, by or to any officer or employee as aforesaid, shall be utterly null and void. But this shall not apply to any original inventor, or to the acquisition by bequest.

Sec. 5. [Annual report. Publication of specifications.] The Commissioner shall cause a report to be prepared annually and laid before Parliament of the proceedings under this Act, and shall, from time to time, and at least once each year, publish in the *Canada Gazette* a list of patents granted, and may, with the approval of the Governor in Council, cause such specifications and drawings as may be deemed of interest, or essential parts thereof, to be printed from time to time for distribution or sale.

Amended by act, 1873, sec. 1, post.

WHO MAY OBTAIN PATENTS.

Sec. 6. [Invention patentable if not in public use in Canada, for more than one year.] Any person having invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his invention thereof, and not being in public use, or on sale for more than one year previous to his application, in Canada, with the consent or allowance of the inventor thereof, may, on a petition to that effect presented

to the Commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property therein; and the said patent shall be under the seal of the Patent Office and the signature of the Commissioner, or the signature of another member of the Privy Council, and shall be good and avail to the grantee, his executors, administrators, or assigns for the period mentioned in such patent; but no patent shall issue for an invention having an illicit object in view nor for any mere scientific principle or abstract theorem.

Sec. 7. [Inventions patented abroad, when patentable.] But an inventor shall not be entitled to a patent for his invention, if a patent therefor in any other country shall have been in existence in such country more than twelve months prior to the application for such patent in Canada; and if during such twelve months any person shall have commenced to manufacture in Canada the article for which such patent is afterward obtained, such person shall continue to have the right to manufacture and sell such article, notwithstanding such patent; and under any circumstances, where a foreign patent exists, the Canadian patent shall expire at the earliest date at which any foreign patent for the same invention expires.

Sec. 8. [Representatives of inventor may take patent.] The patent may be granted to any person to whom the inventor entitled under the sixth section to obtain a patent has assigned or bequeathed the right of obtaining the same, or in default of such assignment or bequest, to the executors or administrators or assigns of the deceased inventor.

Amended by act of 1873, sec. 2, post.

Sec. 9. [Patents for improvements on patented inventions.] Any person, who has invented any improvement on any patented invention, may obtain a patent for such improvement, but shall not thereby obtain the right of vending or using the original invention, nor shall the patent for the original invention confer the right of vending or using the patented improvement.

Sec. 10. [On joint applications, how to issue.] In cases of joint applications the patent shall be granted in the names of all the applicants; and in such cases any assignment from one of the said applicants or patentees to the other or to any person, shall be registered in like manner as other assignments.

Sec. 11. [Declaration of applicant.] Every inventor, before a patent can be obtained, shall make oath, or, when entitled by law to make an affirmation instead of an oath, shall make an affirmation, that he verily believes that he is, or, in case of the inventor being deceased, the applicant shall make oath or affirm that the person whose assignee or representative he is, was the inventor of the invention for which the patent is solicited, and that the several allegations in the petition contained are respectively true and correct. Such oath or affirmation may be made before any Justice of the Peace in Canada; but if the inventor or the applicant is not at the time in Canada the oath or affirmation may be made before any Minister Plenipotentiary, *charge d'affaires*, consul, vice-consul or consular agent, holding commission under the Government of the United Kingdom, or any Judge of the country in which the applicant happens at the time to be.

Amended by act of 1873, sec. 3 post.

Sec. 12. [Applicant to elect a domicile in Canada.] The petitioner for a patent shall for all the purposes of this Act elect his domicile at some known

and specified place in Canada and mention the same in his petition for a patent.

Sec. 13. [Particulars of application.] The applicant shall in his petition for a patent, insert the title or name of the invention, and shall with the petition, send in a specification in duplicate.

Sec. 14. [Specification and drawing.] The specification shall correctly and fully describe the mode or modes of operating contemplated by the inventor; and shall state clearly and distinctly the contrivances and things which he claims as new and for the use of which he claims an exclusive property and privilege; it shall bear the name of the place where it is made, the date, and be signed by the inventor if he be alive (and if not by the applicant), and two witnesses; in the case of a machine the specification shall fully explain the principle and the several modes in which it is intended to apply and work out the same; in the case of a machine, or in any other case where the invention admits of illustration by means of drawings, the applicant shall also with his application send in drawings in duplicate showing clearly all parts of the invention; and each drawing shall bear the signature of the applicant or of his attorney, and shall have written references corresponding with the specification; but the Commissioner may require further drawings or dispense with any of them, as he may see fit; one duplicate of the specification and of the drawings, if there are drawings, shall be annexed to the patent of which it forms an essential part, and the other duplicate shall remain deposited in the Patent Office.

Amended by act of 1873, sec. 4, post.

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

CONTENTS, DURATION, SURRENDER, RE-ISSUE OF PATENTS AND DISCLAIMERS.

Sec. 16. [Contents of patents.] Every patent granted under this Act shall contain the title or name of the invention, with a reference to the specification,—and shall grant to the patentee, his executors, administrators, and assigns, for the period therein mentioned from the granting of the same, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used, said invention, subject nevertheless to adjudication before any Court of competent jurisdiction.

Amended by act of 1873, sec. 5, post.

Sec. 17. [Duration of patents, and extension.] Patents of invention issued by the Patent Office shall be valid for a period of five, ten or fifteen years at the option of the applicant; but at or before the expiration of the said five or

ten years the holder thereof may obtain an extension of the patent for another period of five years, and after those second five years, may again obtain a further extension for another period of five years, not in any case to exceed a total period of fifteen years in all; and the instrument delivered by the Patent Office for such extension of time shall be in the form which may be from time to time adopted, to be attached, with reference, to the patent, and under the signature of the Commissioner, or of any other member of the Privy Council in case of absence of the Commissioner.

Sec. 18. [Patent or extension to be examined, by whom.] Every patent and instrument for the extension of time as aforesaid shall before it is signed by the Commissioner or any other member of the Privy Council, and before the seal hereinbefore mentioned is affixed to it, be examined by the Minister of Justice, who, if he finds it conformable to law shall certify accordingly, and such patent or instrument may then be signed and the seal affixed thereto, and being duly registered, shall avail to the grantee thereof.

Sec. 19. [Reissue of patent, when.] Whenever any patent shall be deemed defective or inoperative by reason of insufficient description or specification or by reason of the patentee claiming more than he had a right to claim as new, but at the same time it appears that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, the Commissioner may upon the surrender of such patent and the payment of the further fee hereinafter provided, cause a new patent, in accordance with an amended description and specification to be made by such patentee, to be issued to him for the same invention, for any part or the whole of the then unexpired residue of the period for which the original patent was or might have been, as hereinbefore directed, granted;—in case of the death of the original patentee or of his having assigned the patent, a like right shall vest in his assignee or legal representative. The new patent and the amended description and specification shall have the same effect in law on the trial of any action thereafter commenced for any cause subsequently accruing, as if the same had been originally filed in such corrected form before the issue of the original patent.

Amended by act of 1875, sec. 1, post.

Sec. 20. [Disclaimer, effect of.] Similarly, whenever by any mistake, accident or inadvertence, and without any willful intent to defraud or mislead the public, a patentee has made his specification too broad, claiming more than that of which he or the party through whom he claims was the first inventor, or has in the specification claimed that he or the party through whom he claims was the first inventor of any material or substantial part of the invention patented, of which he was not the first inventor, and to which he had no legal right—the patentee may, on payment of the fee hereinafter provided make disclaimer of such parts as he does not claim to hold by virtue of the patent or the assignment thereof. Such disclaimer shall be in writing, and in duplicate, and attested in the manner hereinbefore prescribed for a patent; one copy to be filed and recorded in the office of the Commissioner, the other copy to be attached to the patent, and made a part thereof by reference, and such disclaimer shall thereafter be taken and considered as part of the original specification. Such disclaimer shall not affect any action pending at the time of its being made, except in so far as may relate to the question of unreasonable neglect or delay in making it. In case of the death of the original

patentee, or of his having assigned the patent, a like right shall vest in his assigns or legal representatives respectively, any of whom may make disclaimer. The patent shall thereafter be deemed good and valid for so much of the invention as is truly the disclaimant's own, and not disclaimed, provided it be a material and substantial part of the invention, and definitely distinguished from other parts claimed without right; and the disclaimant shall be entitled to maintain a suit for such part accordingly.

ASSIGNMENT AND INFRINGEMENT OF PATENTS.

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

Sec. 22. [Patents assignable. Registry of.] Every patent for an invention, whensoever issued, shall be assignable in law either as to the whole interest or as to any part thereof, by any instrument in writing; but such assignment, and also every grant and conveyance of any exclusive right to make and use, and to grant to others the right to make and use, the invention patented, within and throughout Canada or any part thereof, shall be registered in the office of the Commissioner, in the manner from time to time adopted by the Commissioner of Patents for such registration; and every assignment affecting a patent for invention shall be deemed null and void against any subsequent assignee, unless such instrument is registered as hereinbefore prescribed, before the registering of the instrument under which such subsequent assignee may claim.

Sec. 23. [Remedy for infringement.] Every person who, without the consent in writing of the patentee, makes, constructs, or puts in practice any invention for which a patent has been obtained under this Act or any previous Act, or procures such invention from any person not authorized to make or use it by the patentee and uses it shall be liable to the patentee in an action of damages for so doing; and the judgment shall be enforced, and the damages and costs that may be adjudged shall be recovered in like manner as in other cases in the Court in which the action is brought.

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

circumstances, and to the same Court, as from other judgments or orders of the Court in which the order was made.

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

Sec. 26. [Defense.] The defendant in any such action, may specially plead as a matter of defense, any fact or default which, by this act or by law would render the patent void; and the Court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly.

NULLITY, IMPEACHMENT, AND AVOIDANCE OF PATENTS.

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

Sec. 28. 1. [Articles to be made in Canada. Not imported.] Every patent granted under this Act shall be subject and expressed to be subject to the condition that such patent and all the rights and privileges thereby granted shall cease and determine, and the patent shall be null and void, at the end of two years from the date thereof, unless the patentee, or his assignee or assignees, shall within that period have commenced, and shall, after such commencement, continuously carry on in Canada the construction or manufacture of the invention or discovery patented, in such manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada; and that such patent shall be void if, after the expiration of twelve months from the granting thereof, the patentee, or his assignee or assignees, for the whole or a part of his interest in the patent, imports or causes to be imported into Canada, the invention for which the patent is granted; and provided always, that in case disputes should arise as to whether a patent has or has not become null and void under the provisions of this section, such disputes shall be settled by the Minister of Agriculture or his deputy, whose decision shall be final.

2. [Extension of term for manufacture.] Whenever a patentee has been unable to carry on the construction or manufacture of his invention

within the two years hereinbefore mentioned, the Commissioner may grant to the patentee a further delay on his adducing proof to the satisfaction of the Commissioner that he was for reasons beyond his control prevented from complying with the same, but no such further delay shall be thus granted in any case in advance of the time hereinbefore prescribed.

Amended by act of 1875, sec. 2, post.

Sec. 29. [Impeachment of patent. Scire facias.] Any person desiring to impeach any patent issued under this Act, may obtain a sealed and certified copy of the patent and of the petition, affidavit, specification, and drawings, thereunto relating, and may have the same filed in the office of the Prothonotary or Clerk of the Superior Court for the Province of Quebec, or of the Court of Queen's Bench or Common Pleas for the Province of Ontario, or of the Supreme Court in the Province of Nova Scotia, or of the Court of Queen's Bench in the Province of New Brunswick, according to the domicile elected by the patentee as aforesaid, or in the Court of highest jurisdiction in the Province of Manitoba or British Columbia, which Courts shall adjudicate on the matter and decide as to costs. The patent and documents aforesaid shall then be held as of record in such Court, so that a writ of *scire facias*, under the seal of the Court, grounded upon such record, may issue for the repeal of the patent, for cause as aforesaid, if upon proceedings had upon the writ, in accordance with the meaning of this Act, the patent be adjudged to be void.

Sec. 30. [Judgment voiding patent, filed where.] A certificate of the judgment voiding any patent shall, at the request of any person or party filing it to be of record in the Patent Office, be entered on the margin of the enrolment of the Patent in the Office of the Commissioner, and the patent shall thereupon be and be held to have been void and of no effect, unless and until the judgment be reversed on appeal, as hereinafter provided.

Sec. 31. [Judgment subject to appeal.] The judgment declaring any patent void shall be subject to appeal to any Court of Appeal having appellate jurisdiction in other cases over the Court by which the same was rendered.

PATENTS ISSUED UNDER FORMER LAWS.

Sec 32. [Existing patents to remain in force.] All patents issued under any Act of the Legislature of the late Province of Canada or of Nova Scotia, or of New Brunswick, or of British Columbia, and all patents issued for the Provinces of Ontario and Quebec, under any Act of the late Province of Canada, and all patents issued under the "Patent Act of 1869," to the date of the coming into operation of the present Act, shall remain in force for the same term, and for the same extent of territory, as if the Act under which they were issued had not been repealed, but subject to the provisions of this Act in so far as applicable to them.

2. **[Extension of Provincial patents.]** And it shall be lawful for the Commissioner, upon the application of the patentee named in any such patent being the inventor of the subject-matter of the patent, if the subject-matter of the patent has not been known or used, nor with the consent of the patentee on sale in any of the other Provinces of the Dominion, to issue on pay-

ment of the proper fees in that behalf a patent under this Act extending such Provincial patent over the whole of the Dominion, for the remainder of the term mentioned in the Provincial patent.

Sec. 33. [Records of Provincial Patent Offices, where placed.] All the records of the Patent Offices of the late Province of Canada, and of the Provinces of Ontario and Quebec, or Nova Scotia and New Brunswick, and British Columbia, shall be handed over by the officers in charge of them to the Commissioner of Patents of invention, to form part of the records of the Patent Office for the purposes of this Act.

TARIFF OF FEES.

Sec. 34. [Tariff of fees.] The following fees shall be payable to the Commissioner, before an application for any of the purposes hereinafter mentioned shall be entertained; that is to say:

On petition for a patent for 5 years.	\$20 00
On petition for a patent for 10 years.	40 00
On petition for a patent for 15 years.	60 00
On petition for extension from 5 to 10 years.	20 00
On petition for extension from 10 to 15 years.	20 00
On petition for extension from 5 to 15 years.	40 00
On lodging a caveat.	5 00
On asking to register a judgment <i>pro tanto</i>	4 00
On asking to register an assignment.	2 00
On asking to attach a disclaimer to a patent.	2 00
On asking for a copy of patent with specification.	4 00
On petition to re-issue a patent after surrender, and on petition to extend a former patent to the Dominion, for every unexpired year of the duration of sub-patent, the fee shall be at the rate of.	4 00

On office copies of documents, not above mentioned, the following charges shall be made:

For every single or first folio of certified copy.	0 50
For every subsequent hundred words (fractions from and under fifty being not counted, and over fifty being counted for one hundred).	0 25

Sec. 35. [Copies of drawings.] For every copy of drawings, the party applying shall pay such sum as the Commissioner considers a fair remuneration for time and labor expended thereon by any officer of the department or person employed to perform such service.

Sec. 36. [Fees in full of all services.] The said fees shall be in full of all services performed under this Act, in any such case, by the Commissioner or any person employed in the Patent Office.

Sec. 37. [Fees, where applied.] All fees received under this act shall be paid over to the Receiver-General, and form part of the Consolidated Revenue Fund of Canada, except such sums as may be paid for copies of drawings when made by persons not receiving salaries in the Patent Office.

Sec. 38. [Return of fees, when.] No fee shall be made the subject of ex-

emption in favor of any person; and no fee, once paid, shall be returned to the person who paid it, except,—

1. When the invention is not susceptible of being patented;
2. When the petition for a patent is withdrawn;

And in every such case the Commissioner may return one half of the fee paid;

And in the case of withdrawal, a fresh application shall be necessary to revive the claim, as if no proceeding had taken place in the matter.

MISCELLANEOUS PROVISIONS.

Sec. 39. [Caveat may be filed. Duration of.] An intending applicant for a patent, who has not yet perfected his invention, and is in fear of being despoiled of his idea, may file in the Patent Office a description of his invention so far, with or without plans, at his own will; and the Commissioner, on reception of the fee hereinbefore prescribed, shall cause the said document to be preserved in secrecy, with the exception of delivering copies of the same whenever required by the said party or by any judicial tribunal—the secrecy of the document to cease when he obtains a patent for his invention; and such document shall be called a *caveat*: Provided always that if application shall be made by any other person for a patent for any invention with which such *caveat* may in any respect interfere, it shall be the duty of the Commissioner forthwith to give notice by mail to the person who has filed such *caveat*, and such person shall within three months after the date of mailing the notice, if he would avail himself of his *caveat*, file his petition and take the other steps necessary on an application for a patent; and if in the opinion of the Commissioner, the applications are interfering, like proceedings may be had in all respects as are by this Act provided in the case of interfering applications: Provided further, that unless the person filing any *caveat* shall within one year from the filing thereof have made application for a patent, the Commissioner of Patents shall be relieved from the obligation of giving notice, the *caveat* then remaining as a simple matter of proof as to novelty or priority of invention if needed.

Sec. 40. [Commissioner may refuse a patent.] The Commissioner may object to grant a patent in the following cases:

1. When he is of opinion that the alleged invention is not patentable in law;
2. When it appears to him that the invention is already in the possession of the public with the consent or allowance of the inventor;
3. When it appears to him that there is no novelty in the invention;
4. When it appears that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public;
5. When it appears that the invention has already been patented in Canada (or elsewhere, when the case is one within the seventh section of this Act), except, however, when the case is one in which the Commissioner has doubts as to whether the patentee or the applicant is the first inventor.

Sec. 41. [Ground of objection to be given applicant.] Whenever the Commissioner objects to grant a patent as aforesaid, he shall notify the applicant

to that effect, and shall state the ground or reason therefor with sufficient detail to enable the applicant to answer, if he can, the objection of the Commissioner.

Sec. 42. [Appeal to Governor in Council.] Every applicant who has failed to obtain a patent by reason of the objection of the Commissioner as aforesaid, may, at any time within six months after notice thereof has been addressed to him or his agent, appeal from the decision of the Commissioner to the Governor in Council.

Sec. 43. [Arbitration in case of interfering applications.] In case of interfering applications for any patent, the same shall be submitted to the arbitration of three skilled persons, one of whom shall be chosen by each of the applicants, and the third person shall be chosen by the Commissioner or by his deputy, or the person appointed to perform the duty of that office; and the decision or award of such arbitrators, or any two of them, delivered to the Commissioner in writing, and subscribed by them or any two of them, shall be final as far as respects the granting of the patent.

2. **[Appointment of arbitrators.]** If either of the applicants refuses or fails to choose an arbitrator, when required so to do by the Commissioner, the patent shall issue to the opposite party; and when there are more than two interfering applicants, and the parties applying do not all unite in appointing three arbitrators, the Commissioner or his deputy or person appointed to perform the duty of that officer, may appoint the three arbitrators for the purposes aforesaid.

3. **[Their oath of office.]** The arbitrators so named shall, before a judge of any court in any of the Provinces of Canada, subscribe to the following oath: "I, the undersigned (A. B.), being duly appointed an arbitrator under the authority of the forty-third section of the Patent Act of 1872, do hereby solemnly swear (*or affirm, as the case may be*), that I will well and truly perform the duty of such arbitrator on the interfering applications of (C. D. and E. F.) submitted to me."

4. **[Powers of arbitrators.]** The arbitrators, or any one of them, after having been so sworn, shall have the power of summoning before them any party or witness, and of requiring him to give evidence on oath, orally or in writing (or on solemn affirmation, if the person be entitled to affirm in civil matters), and to produce such documents and things as such arbitrators deem requisite to the full investigation of the matters into which they are appointed to examine, and shall then have the same power to enforce the attendance of such witnesses and to compel them to give evidence, as is vested in any court of law in civil cases, in the Province in which the arbitration is to be had; and any willfully false statement made by any such witness on oath or solemn affirmation, shall be deemed to be willful and corrupt perjury; but no such party or witness shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution.

5. **[Fees to arbitrators; by whom payable.]** The fees for the services of arbitrators shall be a matter of agreement between the said arbitrators and the parties, and shall be paid by the parties naming them, respectively, except those of the arbitrator or arbitrators when named by the Commissioner of Patents, which shall be paid by the applicants jointly.

Sec. 44. [Documents open to inspection.] All specifications, drawings,

models, disclaimers, judgments and other papers, except *caveats*, shall be open to the inspection of the public at the Patent Office, under such regulations as may be adopted in that behalf.

Sec. 45. [Clerical errors.] Clerical errors happening in the framing or copying of any instrument of the Patent Office, shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the Commissioner.

Sec. 46. [Patent, when may be replaced.] In case any Patent be destroyed or lost, others of the like tenor, date, and effect may be issued in lieu thereof on the party paying the fees hereinbefore prescribed for office copies of documents.

Sec. 47. [Use of patented invention in foreign vessels.] No patent shall extend to prevent the use of any invention in any foreign ship or vessel, where such invention is not so used for the manufacture of any goods to be vended within or exported from Canada.

Sec. 48. [Patent not to affect a previous purchaser.] Every person who before the issuing of a patent has purchased, constructed, or acquired any invention for which a patent has been obtained under this Act, shall have the right of using and vending to others the specific article, machine, manufacture or composition of matter patented, so purchased, constructed, or acquired before the issue of the patent therefor, without being liable to the patentee or his representatives for so doing; but the patent shall not be held invalid as regards other persons by reason of such purchase, construction or acquisition or use of the invention by the person first aforesaid, or by those to whom he may have sold the same, unless the same was purchased, constructed or acquired or used for a longer period than one year before the application for a patent therefor, which circumstance would then have the effect of making the invention one having become public and in public use.

Sec. 49. [Patented articles to be marked; penalty.] Every patentee under this Act, shall stamp or engrave on each patented article, sold or offered for sale by him, the year of the date of patent applying to such article, thus: "Patented 1872," or as the case may be; and any such patentee selling or offering for sale any such patented article not so marked, shall be liable to the punishment of a fine not to exceed one hundred dollars, and in default of the payment of such fine, to imprisonment not to exceed two months.

Amended by act of 1875, sec. 3, post.

Sec. 50. [Falsely marking thing as patented, a misdemeanor.] Whosoever writes, paints, prints, moulds, casts, carves, engraves, stamps, or otherwise marks upon anything made or sold by him, and for the sole making or selling of which he is not the patentee, the name or any imitation of the name of any patentee for the sole making or selling of such thing without the consent of such patentee—or without the consent of the patentee, writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything not purchased from the patentee, the words, "Patent," "Letters Patent," "Queen's Patent," "Patented," 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 whosoever puts to sale as patented, any article not patented in Canada, for the

purpose of deceiving the public,—shall be deemed guilty of a misdemeanor, and shall on conviction be punished therefor by fine, or by imprisonment, or both, in the discretion of the Court before which the conviction shall be had; but the fine shall not exceed two hundred dollars; nor shall the imprisonment exceed three months.

Sec. 51. [False entry or copy as to this Act to be a misdemeanor.] Any person willfully making or causing to be made any false entry in any register or book, or any false or altered copy of any document relating to the purposes of this Act, or who shall produce or tender any such false or altered document knowing the same to be such, shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

Sec. 52. [Repealed enactments.] Chapter thirty-four of the Consolidated Statutes of the late Province of Canada, respecting Patents for Inventions, Chapter one hundred and seventeen of the Revised Statutes of Nova Scotia (third series), Chapter one hundred and eighteen of the Revised Statutes of New Brunswick, and “The Patents Ordinance, 1867,” of British Columbia, “The Patent Act of 1869,” and any Act amending any of the said Acts or laws, or any other Act relating to Patents, are hereby repealed, in so far as they or any of them may be inconsistent with this Act, or make any provision in any matter provided for by this Act, except only as respects all rights acquired and penalties or liabilities incurred under the said laws or any of them before the coming into force of this Act, as to which they shall remain in force, and nothing in this Act contained shall affect any suit pending in any court of law or equity at the time of coming into force of this Act.

Sec. 53. [Short title.] In citing this Act it shall be sufficient to call it “The Patent Act of 1872.”

Sec. 54. [When act commences.] This Act shall commence and take effect on the first day of September, 1872.

36TH VICTORIA.

CHAP. 44. AN ACT TO AMEND “THE PATENT ACT OF 1872.”

[Assented to 23rd May, 1873.]

Whereas it is expedient to amend the several sections of “*The Patent Act of 1872*” hereinafter specified; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sec. 1. [Amendment of sec. 5, act 1872.] The words “in the *Canada Gazette*” in the fourth line of section five of “*The Patent Act of 1872*,” are hereby repealed.

Sec. 2. [Amendment of sec. 8, act 1872.] The word “assigns” in the last line of section eight of the said Act is hereby repealed, and the words “other legal representatives” substituted in lieu thereof.

Sec. 3. [Amendment of sec. 11, act 1872.] The following words are hereby inserted after the word “of” in the last line but one of section eleven of the

said Act: "a court of record or a public notary, or the mayor, or other chief magistrate of any city, borough, or town corporate in."

Sec. 4. [Addition to sec. 14, act 1872.] The following words are hereby added and inserted at the end of section fourteen of the said Act: "But the said Commissioner may in his discretion dispense with the said duplicate specification and drawing, and in lieu thereof cause copies of the specification and drawing in print or otherwise, to be attached to the Patent, of which they shall form an essential part."

Sec. 5. [Amendment of sec. 16, act 1872.] The said Act shall be amended by inserting the words "legal representatives" after the word "administrators," in the sixteenth section thereof.

Sec. 6. [Act, how interpreted.] This Act shall be read and interpreted as forming one and the same Act with the Act hereby amended.

38TH VICTORIA.

CHAP. 14. AN ACT STILL FURTHER TO AMEND "THE PATENT ACT OF 1872," AND TO EXTEND THE SAME, AS AMENDED, TO PRINCE EDWARD ISLAND.

[Assented to 8th April, 1875.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sec. 1. [Addition to sec. 19, act 1872.] The following words are hereby added to section nineteen of "*The Patent Act of 1872*," after the word "patent" in the last line thereof, that is to say, "and the Commissioner may entertain separate applications and cause patents to be issued for distinct and separate parts of the thing patented (upon payment of the fee for a re-issue for each of such re-issued patents)."

Sec. 2. [Amendment of sec. 28, act 1872.] The sub-section of section twenty-eighth of "*The Patent Act of 1872*" is hereby repealed, and the following sub-section is hereby substituted therefor, and shall be read as the sub-section of the twenty-eighth section of the said Act.

"2. Whenever a patentee has been unable to carry on the construction or manufacture of his invention within the two years hereinbefore mentioned, the Commissioner may at any time, not more than three months before the expiration of that period, grant to the patentee a further delay on his adducing proof to the satisfaction of the Commissioner that he was for reasons beyond his control prevented from complying with the above-mentioned condition."

Sec. 3. [Amendment of sec. 49, act 1872.] The forty-ninth section of "*The Patent Act of 1872*" is hereby repealed, and the following section is hereby substituted therefor, and shall be read as the forty-ninth section of the said Act:

"49. Every patentee under this Act, shall stamp or engrave on each patented article sold or offered for sale by him the year of the date of the patent

applying to such article, thus: "Patented 1872," or as the case may be; or when from the nature of the article this can not be done, by fixing to it, or to every package whereon one or more of such articles is or are enclosed, a label marked with a like notice; and any such patentee selling or offering for sale any such patented article not so marked, or not enclosed in a package so marked shall be liable to the punishment of a fine not to exceed one hundred dollars, and, in default of the payment of such fine, to imprisonment not to exceed two months."

Sec. 4. [Extension of provisions of act of 1872.] From and after the passing of this Act all and every the provisions of "*The Patent Act of 1872*," as amended by this Act, and of the Acts amending the same, shall have the same force and effect in Prince Edward Island as the same then respectively have in the other Provinces forming this Dominion; and every patent theretofore issued under the said Acts or any of them shall extend over the said Province for the remainder of the term mentioned therein.

Sec. 5. [Repeal of inconsistent enactments.] The following Acts of the General Assembly of Prince Edward Island are hereby repealed, that is to say: The Act passed in the seventh year of the reign of His late Majesty King William the Fourth, chapter twenty-one, intituled "*An Act for granting Patents for useful Inventions*;" the Act passed in the thirty-third year of her Majesty's reign, chapter twenty, intituled "*An Act to add to and amend the Act relating to Patents for useful Inventions*;" and the Act passed in the thirty-third year of Her Majesty's reign, chapter nineteen, intituled "*An Act to amend the Act relating to Patents for useful Inventions*,"—but in so far only as such Acts, or any of them, may be inconsistent with this Act, or make any provision in any matter provided for by this Act, except only as respects all rights acquired and penalties or liabilities incurred under the said Acts or any of them, before the coming into force of this Act, as to which the said Acts shall remain in force; and nothing in this Act contained shall affect any suit pending in any court of law or equity at the time of the coming into force of this Act.

PATENTS ISSUED UNDER FORMER LAWS.

Sec. 6. [Existing Provincial Patents to remain in force.] All patents issued under the said Acts of the General Assembly of Prince Edward Island, or any of them, to the date of the passing of this Act, shall remain in force in the said Province for the same term as if the Act or Acts under which such patents respectively were issued had not been repealed, but subject to all the provisions of this Act, in so far as such provisions, or any of them, may be applicable to such patents respectively.

2. **[Extension of Provincial Patents.]** And it shall be lawful for the Commissioner, upon the application of the patentee named in any such patent, being the inventor of the subject-matter of the patent, if the subject-matter of the patent has not been known or used, nor with the consent of the patentee on sale, in any of the other Provinces of the Dominion, to issue, on payment of the proper fees in that behalf, a patent under this Act extending such Provincial patent over the whole of the Dominion, for the remainder of the term mentioned in the Provincial patent.

Sec. 7. [Records of Patent Office of Prince Edward Island, where placed.] All the records of the Patent Office of the Province of Prince Edward Island shall be handed over by the officers in charge of them to the Commissioner of Patents of Invention, to form part of the records of the Patent Office for the purposes of the Act hereby amended and of the Acts amending the same and of this act.

Sec. 8. [Impeachment of patent.] Any person desiring to impeach any patent issued under "*The Patent Act of 1872*," as amended by subsequent Acts and by this Act, the petitioner for which has elected his domicile at any place in Prince Edward Island, may obtain a sealed and certified copy of the patent and of the petition, affidavit, specification, and drawings thereunto relating, and may have the same filed in the office of the Clerk of the Supreme Court of Judicature in that Province, which court shall adjudicate on the matter, and decide as to costs. The patent and documents aforesaid shall then be held as of record in such court, so that a writ of *scire facius* under the seal of the court grounded upon such record may issue for the repeal of the patent, for cause as aforesaid, if upon proceedings had upon the writ in accordance with the meaning of this Act, the patent be adjudged to be void.

Sec. 9. [Act to be one with former Acts. Short title.] This Act shall be read and construed as one Act with the Act hereby amended, and the two Acts amending the same; and the said four Acts may be cited together as "*The Patent Acts, 1872 to 1875.*"

TRADE-MARK AND DESIGN ACTS OF CANADA.

AN ACT RESPECTING TRADE-MARKS AND INDUSTRIAL DESIGNS.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sec. 1. [Minister of Agriculture to register trade-marks and designs.] The Minister of Agriculture shall cause to be kept in his office books to be denominated respectively the "*Trade-Mark Register*," and "*The Register of Industrial Designs*," in which any proprietor of a Trade-Mark or of a Design may have the same registered by depositing with the said Minister a drawing and description in duplicate of such Trade-Mark or Design, together with a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof; and the said Minister of Agriculture, on receipt of the fee hereinafter provided, shall cause the said Trade-Mark or Design to be examined, to ascertain whether it resembles any other Trade-Mark or Design already registered; and if he find that such Trade-Mark or Design is not identical with or does not so closely resemble as to be confounded with any other Trade-Mark or Design already registered, he shall register the same, and shall return to the proprietor thereof one copy of the drawing and description, with a certificate signed by the Minister or his Deputy, to the effect that the said Trade-Mark or Design has been duly registered in accordance with the provisions of this Act; and there shall be fur-

ther stated in such certificate the day, month, and year of the entry thereof, in the proper Register; and every such certificate shall be received in all courts of law or of equity in Canada, as evidence of the facts therein alleged, without proof of the signature.

Sec. 2. [Rules and forms, who may make.] The Minister of Agriculture may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations and adopt forms for the purposes of this Act, and such rules, regulations and forms circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act, and all documents executed according to the same and accepted by the Minister of Agriculture shall be held valid so far as relates to the official proceedings under this Act.

TRADE-MARKS.

Sec. 3. [What deemed trade-marks.] For the purposes of this Act all marks, names, brands, labels, packages or other business devices, which may be adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description by him manufactured, produced, compounded, packed or offered for sale, no matter how applied, whether to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatever containing the same, shall be considered and known as trade-marks, and may be registered for the exclusive use of the party registering the same in the manner hereinafter provided; and thereafter he shall have the exclusive right to use the same, to designate articles manufactured or sold by him, and for the purpose of this Act timber and lumber of any kind upon which labor has been expended by any person in his trade, business, occupation or calling shall be deemed a manufacture, product or article.

Sec. 4. [Trade-marks may be cancelled.] Any person having registered a trade-mark may petition for the cancellation of the same, and the Minister of Agriculture may cause, on receiving such petition, the said trade-mark to be so cancelled; and the same shall after such cancellation be considered as if it had never been registered under the name of the said party.

Sec. 5. [Registered trade-marks assignable.] Every Trade-Mark registered in the office of the Minister of Agriculture shall be assignable in law, and on the assignment being produced and the fee hereinafter provided being paid, the Minister of Agriculture shall cause the name of the assignee, with the date of the assignment and such other details as he may see fit, to be entered on the margin of the Register of Trade-Marks on the folio where such Trade-Mark is registered.

Sec. 6. [Conflicting claims to trade-mark, how dealt with.] If any person shall make application to register, as his own, any trade-mark, which has been already registered, the Minister of Agriculture shall cause all parties interested therein to be notified to appear, in person or by attorney, before him, with their witnesses, for the purpose of establishing which is the rightful owner of such trade-mark and after having heard the parties and their witnesses, the said Minister shall order such entry or cancellation, or both, to be made as he shall deem just; in the absence of the said Minister, his De-

puty may hear and determine the case and make such entry or cancellation or both, as to right and justice may appertain, and similarly, any error in Registering Trade-Marks or any oversight about conflicting registrations of Trade-Marks may be settled in the same manner.

Sec. 7. [Penalty for using another person's trade-mark.] If any person, other than the party who has registered the same, shall mark any goods or any article of any description whatever with any trade-mark registered under the provisions of this Act, or with any part of such trade-mark, whether by applying such trade-mark or any part thereof to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade-mark, or shall knowingly sell or offer for sale any article marked with such trade-mark, or with any part thereof, with the intent to deceive and to induce persons to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade-mark, he shall be guilty of a misdemeanor, and on conviction thereof, shall forfeit for each offense, a sum of not less than twenty dollars and not exceeding one hundred dollars, which amount shall be paid to the proprietor of such trade-mark together with the costs incurred in enforcing and recovering the same; provided always that every complaint under this section shall be made by the proprietor of such trade-mark, or by some one acting on his behalf and duly authorized thereto.

Sec. 8. [Penalty for registering another's trade-mark.] If any person shall knowingly and willfully register as his own any trade-mark, the property of a person not resident in Canada, he shall be guilty of a misdemeanor, and shall be subject and liable to the penalty mentioned in the preceding section; and the entry of every such trade-mark in the Trade-Marks Register shall be cancelled on receipt of a certificate signed by the Clerk of the Court, or the Justices of the Peace before whom the conviction was had, of any such conviction; and one-half of every such penalty shall be paid to the party prosecuting, and the other half to the Crown.

Sec. 9. [Penalty for using trade-marks of persons not resident in Canada.] If any person shall counterfeit or use the trade-mark of any person not resident of Canada, with intent to deceive the public and lead to the belief that the articles or packages so marked were manufactured or put up by the owner of such trade-mark, although the same is not registered in Canada, he shall, on conviction thereof, forfeit a sum not less than ten dollars nor more than fifty dollars for each offense, with costs, one-half of which penalty shall be paid to the complainant and the other half to the Crown.

Sec. 10. [Complaints for using trade-marks.] Complaints under either of the two next preceding sections may be brought by any party or person whatever, and the penalties mentioned in the three next preceding sections shall be enforced and recovered in the same manner, and subject to the same provisions as are provided in the sections of this Act respecting the registration and protection of designs.

Sec. 11. [Imitation of trade-mark forbidden.] The use of any trade-mark either identical with that of any manufacturer, producer, packer or vender, or so closely resembling it as to be calculated to be taken for it by ordinary purchasers, shall be held to be a use of such trade-mark.

Sec. 12. [Action for damages for using trade-mark.] Notwithstanding anything in the preceding sections contained, a suit may be maintained by any proprietor of a trade-mark against any person using his registered trade mark, or any fraudulent imitation thereof or selling articles bearing such trade-mark, or any such imitation thereof, or contained in packages being or purporting to be his, contrary to the provisions of this Act.

REGISTRATION OF DESIGNS.

Sec. 13. [Copyright of design, term of.] The Copyright acquired for an industrial design by the Registration of the same as aforesaid shall be valid for the term of five years.

Sec. 14. [Registration of design, how made.] Every design to be protected must be registered before publication; and, after Registration, the name of the proprietor, who must be a resident of Canada, shall appear upon the article to which his design applies; if the manufacture be a woven fabric, by printing upon one end; if another substance, at the edge or upon any convenient parts, the letters Rd., with the mention of the year of the Registration; the mark may be put upon the manufacture by making it on the material itself, or by attaching thereto a label containing the proper marks.

Sec. 15. [Proprietor of design.] The author of the design shall be considered the proprietor thereof, unless he has executed the design for another person, for a good or valuable consideration, in which case such other person shall be considered the proprietor, and shall alone be entitled to register it; but his right to the property shall only be co-extensive with the right which he may have acquired.

Sec. 16. [Designs assignable in law.] Every design shall be assignable in law, either as to the whole interest or any undivided part thereof, by an instrument in writing, which assignment shall be recorded in the office of the Minister of Agriculture, on payment of the fees hereinafter provided; and every proprietor of a design may grant and convey an exclusive right under any Copyright, to make, use and vend and to grant to others to make, use and vend such design within and throughout Canada or any part thereof, for the unexpired term thereof, or any part thereof; which exclusive grant and conveyance shall be called a license, and shall be recorded in the same manner and within the same delay as assignments.

Sec. 17. [No use of registered design without license.] During the existence of the right (whether it be of the entire or partial use of such design), no person shall, without the license in writing of the registered proprietor, apply such design, or a fraudulent imitation thereof, to the ornamenting of any article of manufacture, &c., for the purposes of sale, or publish, sell, or expose for sale or use any article of manufacture, &c., to which such design or fraudulent imitation thereof shall have been applied, under penalty of not less than twenty dollars, and not exceeding one hundred and twenty dollars, to the proprietor of the design, and costs—to be recovered by the registered proprietor or his assignee, by suit, in any court, having jurisdiction in suits of a like amount.

Sec. 18. [Penalty for marking an unregistered article as registered.] Every person placing the words "registered," or the letters "Rd.," upon any

unregistered article, or upon any article, the copyright of which has run out, or advertising the same for sale as a registered article, or unlawfully selling, publishing or exposing for sale such article, knowing the same to have been fraudulently stamped or that the copyright thereof has expired, shall forfeit for every offense a sum not less than four dollars and not exceeding thirty dollars, to be recovered in the same manner as penalties under the next preceding section, and that by any person whatever, who shall receive one-half the amount of the said last mentioned penalty, on the recovery of the amount which the offender may have been condemned to pay.

Sec. 19. [Action of damages for using design without license.] A suit may be maintained by the proprietor of any design for the damages he has sustained by the application or imitation of the design, for the purpose of sale, against any person so offending, he (the offender) knowing that the proprietor of the design had not given his consent to such application.

Sec. 20. [Proceedings against person fraudulently registering a design.] If any person, not being the lawful proprietor of a design, be registered as the proprietor thereof, the rightful owner may institute an action in the Superior Court in the Province of Quebec, in the Court of Queen's Bench in the Provinces of Ontario, and in the Supreme Court in the Provinces of Nova Scotia or New Brunswick, as the case may be, and the court having cognizance of such suit may, if it appear that the design has been registered in the name of a wrong person, either direct the registration to be cancelled, or that the name of the lawful proprietor shall be substituted for the name in the register, with costs in its discretion, and on application by the plaintiff supported by affidavit, it shall be lawful for any such court, pending such action or proceedings, at its discretion, to issue an order upon the defendant prohibiting the use of such design, pending such suit or proceedings, under pain of being held in contempt of such court.

Sec. 21. [Alteration in register on order of court.] The Minister of Agriculture, after due service of such order and payment of the fee hereinafter provided, shall cause such alteration to be made in the register as shall in said order be directed.

Sec. 22. [Limitation of actions.] All proceedings, under the preceding sections of this Act, shall be brought within twelve months from the commission of the offense, and not after; nor shall any of the clauses of this Act apply to protect any design which does not belong to a person resident within Canada, and is not applied to a subject-matter manufactured in Canada.

Sec. 23. [Certificate on copy returned to the owner.] On the copy returned to the person registering, a certificate shall be given, signed by the Minister or by his Deputy, that the design has been registered, the date of registration, the name of the registered proprietor, his address, the number of such design, and the number or letter employed to denote or correspond with the registration, which said certificate, in the absence of proof to the contrary, shall be sufficient proof of the design, of the name of the proprietor, of the registration, of the commencement and period of registry, of the person named as proprietor being proprietor, of the originality of the design, and of compliance with the provisions of this Act; and generally the writing so signed shall be received as evidence of the facts therein stated, without proof of the signature.

TRADE-MARK AND DESIGN ACTS OF CANADA.

GENERAL PROVISIONS.

Sec. 24. [Inspection of registers.] Any person may be allowed to inspect the Register of Trade-Marks and the Register of Industrial Designs; and the Minister may cause copies or representations of Trade-Marks or Industrial Designs to be delivered, on the applicant for the same paying the fee which shall be deemed sufficient for the purpose of having the same copied or represented.

Sec. 25. [What designs minister may refuse to register.] The Minister of Agriculture shall have power to refuse to register such designs as do not appear to him to be within the provisions of this Act, or when the design is contrary to public morality or order, subject, however, to appeal to the Governor, in Council.

Sec. 26. [Publication of titles of design.] The Minister of Agriculture shall, from time to time, cause to be published, in the *Canada Gazette*, the titles of the designs registered and the names and places of abode of the registered proprietors.

Sec. 27. [Clerical errors not to invalidate.] Clerical errors happening in the drawing up or copying of any instrument shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the Minister of Agriculture.

Sec. 28. [Table of fees; how applied.] The following fees shall be payable, to wit:

On every application to register a design or trade-mark, including certificate	\$5 00
For each certificate of registration not already provided for.	1 00
For each copy of any drawing, the reasonable expenses of preparing the same.	
For recording any assignment.	2 00

For office copies of documents or entries, not above mentioned, the following charges shall be exacted:

For every single or first folio.	\$0 50
For every subsequent hundred words (fractions from and under fifty being not counted, and over fifty being counted for one hundred).	0 25

All of which fees shall be paid over by the Minister of Agriculture to the Receiver General of Canada.

Sec. 29. [Repeal of former Acts.] The Act twenty-fourth Victoria, chapter twenty-first of the Statutes of the late Province of Canada, and the thirtieth Victoria, chapter thirty-first of the Province of New Brunswick, and all other Acts or parts of Acts inconsistent with the present Act, are hereby repealed as to any further registration or the granting of any new exclusive right under the provisions thereof; but all rights heretofore acquired by virtue of such provisions shall remain good and valid and assignable in law, and all penalties and forfeitures incurred or to be incurred under the same may be sued for and enforced, and all prosecutions commenced before the passing of this Act for any such penalties or forfeitures already incurred may be contin-

ued and completed, and entries and registrations under the said Acts respectively may be cancelled, as if the said Acts and parts of Acts had not been repealed.

Sec. 30. [Dep. Minister substituted for Sec'y of Registration and Statistics.] For all the purposes of the Act of Canada cited in the next preceding section of this Act, so far as the same remains in force after the passing of this Act, the deputy of the Minister of Agriculture shall be and is hereby substituted for the Secretary of the Board of Registration and Statistics mentioned in the said Act, and shall have all the powers and duties of these officers.

Sec. 31. [Short Title.] In citing this Act it shall be sufficient to call it "The Trade-Mark and Design Act of 1868."

COPYRIGHT ACT OF CANADA.

AN ACT RESPECTING COPYRIGHTS.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sec. 1. [Register of Copyrights.] The Minister of Agriculture shall cause to be kept in his office a book to be called the "Register of Copyrights," in which proprietors of literary, scientific, and artistical works or compositions, may have the same registered in accordance with the provisions of this Act.

Sec. 2. [Rules, &c., who to make.] The Minister of Agriculture may, from time to time, subject to the approval of the Governor, in Council, make such rules and regulations, and prescribe such forms, as may appear to him necessary and expedient for the purposes of this Act; such regulations and forms being circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act, and all documents, executed according the same and accepted by the said Minister of Agriculture, shall be held valid so far as relates to all official proceedings under this Act.

Sec. 3. [Who may have copyright.] Any person resident in Canada or any person being a British subject, and resident in Great Britain or Ireland, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statuary, sculpture or photograph, or who invents, designs, etches, engraves, or causes to be engraved, etched or made from his own design, any print or engraving, and the legal representatives of such persons shall have the sole right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific or artistical works or compositions, in whole or in part, and of allowing translations to be made of such literary works from one language into other languages for the term of twenty-eight years, from the time of recording the title thereof in the manner hereinafter directed; but no immoral or licentious, treasonable or seditious book or any other such literary, scientific or artistical work or composition shall be the subject of such registration or copyright.

Sec. 4. [Renewal of copyright.] If at the expiration of the aforesaid term, such author, or any of the authors, where the work has been originally composed and made by more than one person, be still living, and residing in Canada or in Great Britain or Ireland, or being dead, has left a widow or a child, or children living, the same exclusive right shall be continued to such author, or if dead, then to such widow and child or children (as the case may be), for the further term of fourteen years; but in such case within one year after the expiration of the first term, the title of the work secured shall be a second time recorded, and all other regulations herein required to be observed in regard to original copyrights shall be complied with in respect to such renewed copyright.

Sec. 5. [Record of renewal to be published.] In all cases of renewal of

Copyright under this Act, the author or proprietor shall within two months from the date of such renewal, cause a copy of the record thereof to be published once in the *Canada Gazette*.

Sec. 6. [Deposit of copies, where to be made.] No person shall be entitled to the benefit of this Act, unless he has deposited in the office of the Minister of Agriculture two copies of such book, map, chart, musical composition, photograph, print, cut, or engraving, and in case of paintings, drawings, statuary and sculptures, unless he has furnished a written description of such works of art, and the Minister of Agriculture shall cause the same to be recorded forthwith in a book to be kept for that purpose, in the manner prescribed by the rules and forms which may be made from time to time, as hereinbefore provided, for which record the person claiming such right as aforesaid, shall pay into the hands of the Minister of Agriculture one dollar, and the like sum for every copy actually given to such person or his legal representatives, and the sums so paid shall be paid over to the Receiver General to form part of the Consolidated Revenue of Canada.

Sec. 7. [Copy for library of parliament.] The Minister of Agriculture shall cause one of the two copies of such book, map, chart, musical composition, photograph, print, cut or engraving aforesaid, to be deposited in the Library of the Parliament of Canada.

Sec. 8. [Notice of copyright.] No person shall be entitled to the benefit of this Act, unless he gives information of the copyright being secured by causing to be inserted in the several copies of every edition published during the term secured on the title page, or the page immediately following, if it be a book, or if a map, chart, musical composition, print, cut, engraving or photograph, by causing to be impressed on the face thereof, or if a volume of maps, charts, music or engravings, upon the title or frontispiece thereof, the following words, that is to say: "Entered according to Act of Parliament of Canada, in the year _____ by A. B., in the office of the Minister of Agriculture." But as regards paintings, drawings, statuary and sculptures, the signature of the artist shall be deemed a sufficient notice of such proprietorship.

Sec. 9. [Publication to be in Canada.] To entitle any such literary production or engraving as is in this Act mentioned, being the work of any such person residing in Great Britain or Ireland, to the protection of this Act, the same shall be printed and published in Canada, and shall in addition to the words directed to be inserted by the last section of this Act, and immediately following thereafter, contain the name and place of abode or business in Canada of the printer and publisher thereof.

Sec. 10. [Penalty for infringement of copyright of books.] If any other person, after the recording of the title of any book according to this Act, within the term or terms herein limited, prints, publishes or imports, or causes to be printed, published or imported, any copy or any translation of such book without the consent of the person legally entitled to the copyright thereof, first had and obtained by deed duly executed, or, knowing the same to be so printed or imported, publishes, sells or exposes to sale or causes to be published, sold or exposed to sale any copy of such book without such consent in writing, such offender shall forfeit every copy of such book to the person then legally entitled to the copyright thereof; and shall forfeit and pay two dol-

lars, for every such copy which may be found in his possession, either printed or printing, published, imported or exposed to sale, contrary to the intent of this Act ; of which penalty one moiety shall be to the use of Her Majesty, and the other to the legal owner of such copyright, to be recovered in any court of competent jurisdiction.

Sec. 11. [Penalty for infringement of Copyright of painting, &c.] If any person, after the recording of any painting, drawing, statuary or sculpture work, within the term or terms limited by this Act, reproduces in any manner or causes to be reproduced, made or sold, in part or in the whole, copies of the said works of art, without the consent of the proprietor or proprietors, such offender or offenders, shall forfeit the plate or plates on which such reproduction has been made, and also every sheet thereof, so copied, printed or photographed to the proprietor or proprietors of the copyright thereof, and shall further forfeit two dollars for every sheet of the same reproduction so published or exposed to sale contrary to the true intent and meaning of this Act ; and one moiety of such forfeiture shall go to the proprietor or proprietors and the other moiety to the use of Her Majesty, and such forfeiture may be recovered in any court of competent jurisdiction.

Sec. 12. [Penalty for infringement of copyright of print, &c.] If any person after the recording of the title of any print, cut, or engraving, map, chart, musical composition or photograph, according to the provisions of this Act, within the term or terms limited by this Act, engraves, etches or works, sells or copies, or causes to be engraved, etched, or copied, made or sold, either in the whole or by varying, adding to or diminishing the main design, with intent to evade the law, or prints or imports for sale, or causes to be printed or imported for sale, any such map, chart, musical composition, print, cut or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained as aforesaid, or knowing the same to be so printed or imported without such consent, publishes, sells or exposes to sale or in any manner disposes of any such map, chart, musical composition, engraving, cut, photograph or print, without such consent, as aforesaid, such offender or offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, photograph or print has been copied, and also every sheet thereof, so copied or printed as aforesaid, to the proprietor or proprietors of the copyright thereof, and shall further forfeit two dollars for every sheet of such map, musical composition, print, cut or engraving which may be found in his or their possession, printed or published or exposed for sale, contrary to the true intent and meaning of this Act ; and one moiety of such forfeiture shall go to the proprietor or proprietors, and the other moiety to the use of Her Majesty, and such forfeiture may be recovered in any court of competent jurisdiction.

Sec. 13. [Temporary registration to secure copyright.] A literary work, intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical, may be the subject of registration within the meaning of the present Act, while it is so preliminarily published, provided that the title of the manuscript and a short analysis of the work are deposited in the office of the Minister of Agriculture, the registration fee be duly paid, and that every separate article so published is preceded by the words "Registered in accordance with the copyright Act of 1868 ;"

but the work when published in book or pamphlet form, shall be subject, besides, to the other requirements of this Act.

Sec. 14. [Copyright of scene or object.] Nothing herein contained, however, shall prejudice the right of any person to represent any scene or object, notwithstanding that there may be copyright in some other representation of such scene or object.

Sec. 15. [Copyright of work made for another.] Whenever the author of a literary, scientific or artistical work or composition which may be the subject of copyright, has executed the same for another person or has sold the same to another person for due consideration, such author shall not be entitled to obtain or to retain the proprietorship of such copyright which is by the said transaction virtually transferred to the purchaser, who may avail himself of such privilege, unless a reserve of the said privilege is specially made by the author or artist in a deed duly executed.

Sec. 16. [Damages for infringement of copyright.] If any person prints or publishes any manuscript whatever in Canada, or the same having been printed or published elsewhere, offers it or causes it to be offered for sale in Canada, without the consent of the author or legal proprietor first obtained, such author or proprietor being resident in Canada, or being a British subject resident in Great Britain or Ireland, such person shall be liable to the author or proprietor for all damages occasioned by such injury, to be recovered in any court of competent jurisdiction.

Sec. 17. [Penalty for falsely pretending to have copyright.] If any person prints, publishes or reproduces any book, map, chart, musical composition, print, cut or engraving, or other work of art or photograph and not having legally acquired the copyright thereof, inserts therein, or impresses thereon, that the same hath been entered according to this Act, or words purporting the same, every person so offending, shall incur a penalty not exceeding sixty dollars (one moiety thereof to the person who sues for the same, and the other moiety to the use of Her Majesty), to be recovered in any court of competent jurisdiction.

Sec. 18. [Limitation of actions.] No action or prosecution for the recovery of any penalty under this Act, shall be commenced more than two years after the cause of action arose.

Sec. 19. [Repeal of former Acts.] Chapter eighty-one of the Consolidated Statutes of the late Province of Canada, and chapter one hundred and sixteen of the Revised Statutes of Nova Scotia (third series), and all other Acts or parts of Acts, inconsistent with the provisions of the present Act, are hereby repealed, subject to the provisions of the next section.

Sec. 20. [Unexpired copyrights continued.] All copyrights heretofore acquired under the Acts or parts of Acts hereby repealed, shall, in respect to the unexpired terms thereof, continue unimpaired, and shall have the same force and effect as regards the Province or Provinces to which they now extend, and shall be assignable and renewable, and all penalties and forfeitures incurred and to be incurred under the same may be sued for and enforced, and all prosecutions commenced before the passing of this Act for any such penalties or forfeitures already incurred may be continued and completed as if such Acts were not repealed.

Sec. 21. [Short Title.] In citing this Act it shall be sufficient to call it "The copyright Act of 1868."

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