



ANNO QUADRAGESIMO ET QUADRAGESIMO PRIMO

VICTORIÆ REGINÆ.

A.D. 1877.

No. 78.

An Act to consolidate and amend the Laws relating to Patents for Inventions.

[Assented to, 21st December, 1877.]

WHEREAS it is expedient to amend the Law relating to the Preamble.
grant of Patents for Inventions in the Province of South
Australia—Be it therefore Enacted by the Governor of the Province
of South Australia, with the advice and consent of the Legislative
Council and House of Assembly of the said Province, in this
present Parliament assembled, as follows:

1. From and after the passing hereof “The Patent Act, 1859,” Repeal.
being Act No. 18 of 1859, and “The Provisional Registration of
Patents Act, 1875,” being Act No. 3 of 1875, are hereby repealed;
but this repeal shall not affect the validity of any letters of registra-
tion or any provisional registration granted, made, or entered under
the said repealed Acts or either of them, nor the rights, remedies, or
liabilities of any parties or persons in respect of any such letters of
registration, or of such provisional registration, nor affect or prevent
the grant of any letters of registration under “The Patent Act,
1859,” pursuant to any application therefor made before the passing
of this Act, but such application shall be proceeded with and granted,
and the letters of registration when granted shall have the same effect
as if this Act had not passed, provided that the applicant may at any
time before the granting of letters of registration to him, in pur-
suance of such application, apply for and obtain a patent under this
Act in place of such letters of registration, without any further pay-
ment than he shall have made under “The Patent Act, 1859.”

2. This Act may be cited for all purposes as “The Patent Act, Short Title.
1877.”

3. This

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Division of Act.

3. This Act is divided into seven Parts relating to the following subject matters:—

PART I.—Patent Office, sections 4 to 8 :

PART II.—Who may obtain Patents, sections 9 to 13 :

PART III.—How Patents obtained, sections 14 to 29 :

PART IV.—Effect, Conditions, and Extension of Patents, sections 30 to 37 :

PART V.—New Patents, Disclaimers, Alterations, and Confirmations, sections 38 to 45 :

PART VI.—Caveats ; and Revocation and Assignment of Patents, sections 46 to 52 :

PART VII.—Miscellaneous Provisions, sections 53 to 72.

PART I.

PART I.

PATENT OFFICE.

Establishment of Patent Office.

4. There shall be attached to the Department of the Chief Secretary, or to a branch of such Department, an office to be called the Patent Office, and the Commissioner of Patents under this Act, shall receive and have the custody of all applications papers, documents, models, machines, books, and records relating to patents, and shall receive all fees and perform all acts and things incidental to the grant, issue, or renewal of patents under this Act.

Seal of Patent Office to be received in evidence.

5. The Commissioner of Patents shall have a seal to be called "The Seal of the Patent Office," and such seal and any impression thereof shall be taken judicial notice of by all Courts, Judges, and Magistrates, tribunals, and persons authorized to receive evidence in the said Province, who shall receive in evidence any document bearing an impression of the said seal, and purporting to be a copy of or extract from any document or book deposited or kept in the said Patent Office under the provisions hereof, without the production of the original.

Commissioner.

6. The Under Secretary for the time being shall be Commissioner of Patents.

Governor may make rules and prescribe forms.

7. The Governor may from time to time, by Proclamation in the *Government Gazette*, make, prescribe, repeal, and alter such regulations and forms as he shall deem necessary or expedient for the purposes of this Act.

Governor may appoint clerks and officers.

8. The Governor may from time to time appoint and remove such clerks and officers as he may deem expedient for carrying out

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out the purposes of this Act, and no Commissioner of Patents, nor any clerk or officer appointed as aforesaid shall, unless he shall be the original inventor or the legatee of the rights of the original inventor, buy, sell, acquire, or otherwise deal in any patent or right to a patent, and every purchase, sale, acquisition, or other dealing contrary to the provisions of this section shall be null and void.

PART II.

WHO MAY OBTAIN PATENTS.

9. The true and first inventor of 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 publicly used or offered for sale within the said Province prior to the date of the patent for the same, may, on petition to the Commissioner, and on complying with the requirements of this Act, obtain a patent under the hand of the Commissioner and the seal of the Patent Office for the sole making, using, exercising, and vending of any such art, machine, manufacture, or composition of matter, or improvement within the said Province.

10. An inventor shall not be entitled to a patent for his invention if a patent or other similar privilege therefor shall have been in existence in any country other than the said Province, and shall have expired before a patent shall be granted to him under this Act; and whenever a patent or other similar privilege in any other country than the said Province in respect of any invention is in existence, at the time when a patent is granted for the same invention under this Act, such last-named patent shall not confer any rights for any period beyond the earliest date at which the patent or other similar privilege in such other country shall expire.

11. A patent may be granted by the Commissioner to any person to whom any inventor, entitled to obtain a patent, has assigned or bequeathed the right of obtaining it, or in default of such assignment or bequest, to the executor or administrator of any deceased inventor.

12. A patent may be granted under this Act in respect of any improvement on or modification of any previously patented or registered invention, but shall not be deemed to confer any right to make, use, exercise, or vend such last-named invention.

13. Where several persons shall make a joint application for a patent it shall be granted to them jointly, and any assignment from one or more of them to the other or others, or to any other person, shall be registered like any other assignment of a patent.

PART II.

Who may obtain patents.
Power to issue patents.

Inventions in respect of which foreign patents have been obtained.

Inventor's representatives may obtain patent.

Patent for improvement on patented invention.

Patents to several persons jointly.

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PART III.

How patents
obtained.

Petition for patent.

Petition for patent to
be accompanied by
specification.Requisites of
specification.

PART III.

HOW PATENTS OBTAINED.

14. Every petition for a patent shall be addressed to the Commissioner, and shall be accompanied by a declaration by the inventor if he be alive, whether he shall be the applicant or not, stating that he verily believes he is the true and first inventor of the invention for which the patent is sought, and by a declaration by the applicant that the several allegations in the petition contained are true; and if the inventor be dead that the applicant verily believes that the person whose assignee, legatee, executor, or administrator he is was the true and first inventor of the invention for which he seeks the patent.

15. The petition shall contain the name or title of the invention, and shall state an address within the City of Adelaide, to which notices in respect of such petition may be sent, and shall be accompanied by a specification in duplicate of the invention for which the patent is sought. The petition and specification shall be filed in the Patent Office, and the day of such filing shall be recorded at the said office, and endorsed on the petition, and a certificate thereof, under the seal of the Patent Office, given to the applicant, or his agent, and thereupon, except in case of application for a patent by any person to whom the Commissioner shall have already refused to grant a patent for an invention substantially the same as that for which such application for a patent is made, and subject to the provisions hereinafter contained, the invention shall be protected under this Act for the term of six months next after such filing, and the applicant shall during such term have the like powers, rights, and privileges as would have been conferred upon him by a patent for such invention issued under this Act, and duly sealed, as of the day of such filing: Provided that in case the specification be too large or insufficient, the Commissioner may, during the said term of six months, and before the grant of the patent, allow or require the specification to be amended, or another and sufficient specification to be filed in lieu thereof, and every such amended or new specification shall have the same force and effect as if it had been filed in its amended or new form on the day of the filing of the original specification.

16. Every such specification shall correctly and fully describe and ascertain the nature and principle of the invention, and in what manner it is to be made, used, worked, or performed, and shall be signed by the inventor if he be alive, and if not by the applicant, which signature shall be attested by two witnesses, who shall specify when and where the same was signed; and in any case where the invention admits of a model or drawing, illustration or explanation by means of drawings, the specification shall contain or be accompanied by a model or by drawings in duplicate, showing clearly all parts of the invention, which drawings, if not comprised in the specification, shall be signed and attested in the same manner as the specification:

Provided

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PART III.

Provided that in any case the Commissioner may in his discretion dispense with any such drawings.

17. The Commissioner shall cause to be published in the *Government Gazette* a notice that the applicant has applied for a patent in respect of the specified invention, giving the name or title thereof, and stating that the specification thereof may be inspected at the Patent Office; and that any person may within one month, or within such longer period not exceeding three months to be specified in such notice as the Commissioner may determine, object to the grant of the patent by lodging at the Patent Office notice in writing, stating his name and address, and the nature and grounds of his objection, and also an address within the City of Adelaide, to which notices in respect of such objection or of the application for the patent may be sent.

Commissioner to publish notice in *Gazette*.

18. The applicant shall within one week after the filing of his petition, cause notice to be given by advertisement to be inserted three times in at least two of the daily newspapers published in Adelaide, stating that he has applied for a patent for the invention, giving its title or name, and stating that the specification may be inspected at the Patent Office.

Applicant to publish notice.

19. If there shall be no objection lodged within the period limited for that purpose by the notice in the *Government Gazette*, the Commissioner shall on the expiration of such period, determine upon the application for the patent, and no person shall be entitled to object to such application.

If no objections lodged Commissioner to grant patent.

20. If during the period limited as aforesaid any objection to the grant of the patent shall have been duly lodged in the Patent Office under the provisions of this Act, the Commissioner shall immediately on the expiration of such period, send through the General Post Office or otherwise, to the applicant and to every objector at the respective addresses given as hereinbefore prescribed for that purpose, a notice in writing that he will, at a time and place to be specified in the notice, such time to be not less than ten nor more than thirty days from the time of posting or otherwise sending such notice, attend to hear and determine upon the application and the objections.

If objections lodged Commissioner to give notice.

21. The Commissioner shall, at the request of the applicant or of any objector, issue summonses under the seal of the Patent Office, for the attendance of witnesses, and every witness so summoned shall be bound to attend at the time and place mentioned in such summons on being paid his expenses according to the scale for the time being allowed to witnesses on trials in Local Courts, and to continue in attendance until the matter shall be disposed of, and to produce any documents which he shall by any such summons be required to produce, if they are in his possession, power, custody, or control.

Commissioner may summon witnesses.

22. Any

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PART III.

Penalty for non-attendance of witness.

22. Any witness neglecting to attend, or to continue to attend, or to produce any documents in accordance with such summons, shall be liable to a penalty of Twenty Pounds, in addition to the costs of service of the summons upon him, and the amount paid him for expenses, which penalty, costs, and amount may be recovered by the person on whose behalf such summons shall be issued by information before any two Justices of the Peace, in a summary way, together with the costs of, and incidental to, and resulting from, such information.

Commissioner to determine application.

23. At the time and place appointed the Commissioner shall attend and hear the applicant and the objectors either personally or by their respective solicitors or agents; and any evidence adduced either by declaration or *vivá voce* in support of the application and objections respectively, and may adjourn or postpone any such hearing, and shall at such hearing or some adjournment or postponement thereof either grant, or in his discretion refuse, the application for the patent.

Cost of application or objection.

24. The Commissioner may by writing under his hand order the applicant or any objector to pay to any objector or to the applicant such costs of and attending the application or objection as the Commissioner shall think fit, and every such order may be made a Rule of the Supreme Court.

Commissioner may refer to examiners.

25. The Commissioner may, at any time, if he shall think fit, refer any petition for a patent, whether opposed or not to one or more competent person or persons, to be appointed by him to examine and consider the matters stated in such petition, and to report thereon to the Commissioner for his information; and the applicant for such patent shall, prior to such reference, pay to the Commissioner such sum not exceeding Ten Pounds, as the Commissioner shall in each case direct, such sum to be paid by the Commissioner to the person or persons so appointed as aforesaid, as a recompense for his or their trouble.

Determination of Commissioner final.

26. The determination of the Commissioner upon any such application shall be final, but any applicant whose application has been refused, may, on giving not less than four weeks' previous notice in the *Government Gazette* of his intention so to do, make one or more fresh applications for a patent in respect of the same invention.

When patent to issue.

27. When the Commissioner has determined to grant a patent, he shall, upon payment of the proper fee, cause the same to be sealed and issued accordingly; but except as hereinafter mentioned no patent shall be sealed after the expiration of the six months' term of protection conferred under this Act by reason of the filing of the petition and specification, nor unless the applicant shall pay the fee for the sealing of the patent within ten days after the Commissioner has sent to the applicant notice of his intention to grant the same: Provided that where the sealing of any patent shall have been

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been delayed by reason of opposition to the grant thereof, such patent may be sealed at such time as the Commissioner shall direct.

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28 When the sealing of the patent has been delayed from accident and not from the neglect or wilful default of the applicant, then the patent may be sealed at such time not being more than one month after the expiration of the six months' term of protection hereinbefore referred to as the Governor shall direct—and where the applicant for the patent dies during the continuance of such protection, the patent may be granted to his executors or administrators during the continuance of such protection or at any time within three months after the death of the applicant, notwithstanding the expiration of the term of such protection, and the patent so granted shall be of the like force and effect as if it had been granted to the applicant during the continuance of such protection.

Patent may issue after prescribed time in certain cases.

29. Every patent to be issued in pursuance of this Act shall be signed and sealed and bear date as of the day of the filing of the petition and specification as aforesaid, and shall be of the same force and validity as if it had been signed and sealed on the day of which it is expressed to be signed and sealed and bear date; and after any patent shall have been signed and sealed, it shall not be necessary or material to inquire or ascertain whether any advertisement or notice directed by this Act shall have been published, given, or sent as herein directed.

Patent to relate back to filing of petition.

PART IV.

PART IV.

EFFECT, CONDITIONS, AND EXTENSION OF PATENTS.

30. Every patent granted under this Act shall be in duplicate, and shall contain the title or name of the invention, with a reference to the specification, and shall be in the form in the Schedule A hereto or as near thereto as the circumstances will permit, and shall, subject to the provisions of this Act and to all such restrictions, conditions, and provisoes as the Commissioner shall deem necessary or expedient and shall insert in such patent, confer upon the patentee, his executors, administrators, and assigns for the term of fourteen years and for such further term not exceeding seven years, as the Governor may grant under section 37 of this Act, the sole right of making, using, exercising, and vending such invention: Provided that no patent shall be construed to prohibit the subsequent use or sale of any article once lawfully obtained.

Rights conferred by patent.

31. One duplicate part of every patent issued under this Act, shall be delivered to the patentee or his agent, and the other duplicate part shall be filed in the Patent Office.

Duplicate patent to be filed.

32. Nothing herein contained shall extend to abridge or affect the prerogative of the Crown in relation to granting or withholding the grant of any patent or letters patent; and it shall be lawful

Prerogative of Crown preserved.

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lawful for the Governor to direct the Commissioner to grant or withhold the grant of any patent or letters patent as aforesaid, or to direct the insertion in any patent issued under this Act of any restrictions, conditions, or provisoes which the Governor may think fit, in addition to, or in substitution for, any restrictions, conditions, or provisoes which would otherwise be inserted therein under this Act; and it shall also be lawful for the Governor to direct any specification filed under this Act, and in respect of the invention described in which no patent shall at the time of such direction have been granted to be cancelled, and thereupon the protection obtained by the filing of such specification shall cease.

Conditions of patent.

33. All patents granted under this Act shall be made subject to the condition that the same shall be void if at any time during the term thereby granted it shall appear that the grant of the patent was contrary to law or prejudicial or inconvenient to the general public, or that the said invention was not a new and useful art, machine, manufacture, or composition of matter, or a new and useful improvement on any art, machine, manufacture, or composition of matter, or that the said invention had been publicly used or offered for sale within the said Province prior to the date of such patent, or that the patentee was not the true and first inventor of the patented invention; or if the patent shall have been granted to him as assignee, legatee, executor, or administrator, then that he was not the assignee, legatee, executor, or administrator as the case may be of the true and first inventor of the patented invention, or if the specification does not correctly and fully describe and ascertain the nature and principle of the invention, and in what manner it is to be made, used, worked, or performed.

Patent to cease on nonpayment of fees.

34. All patents under this Act shall also be made subject to the condition that the same shall be void, and that the rights and privileges thereby granted shall cease and determine at the expiration of three years from the date thereof, unless the patentee, his executors, administrators, or assigns shall pay, at the Patent Office, the sum of Five Pounds before the expiration of such three years from the date thereof, and at the expiration of seven years from the date thereof, unless the patentee, his executors, administrators, or assigns shall pay, at the Patent Office, the sum of Five Pounds before the expiration of such seven years.

Patented invention may be used in foreign vessel.

35. No patent for any invention granted after the passing of this Act shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of South Australia or its dependencies, or in any of the waters within the jurisdiction of any of the Courts of the said Province where such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from the said Province or its dependencies: Provided that this enactment shall not extend to the ships or vessels

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vessels of any foreign state of which the laws authorize subjects of such foreign state having patents or the like privileges for the exclusive use or exercise of inventions within its territories to prevent or interfere with the use of such inventions in British ships or vessels, or in or about the navigation of British ships or vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its Courts where such inventions are not so used for the manufacture of goods or commodities to be vended within or exported from the territories of such foreign state.

PART IV.

36. The Government may use any invention patented under this Act, paying to the patentee such sum for the use thereof as shall be agreed upon between the Government and the patentee, or, in case of dispute, such sum as may be fixed by two arbitrators, one of whom shall be appointed by the Government and one by the patentee; or, in case of disagreement between the arbitrators, by an umpire to be named by them before entering upon the consideration of the matter referred to them.

Government may use patented invention.

37. The Governor, on petition by any patentee, or his executors, administrators, or assigns, presented at least six months before the expiration of any patent, and on being satisfied that the patentee, his executors, administrators, or assigns have been unable to obtain due remuneration for the expense and labor of perfecting the invention the subject of the patent may, by order under his hand to be filed in the Patent Office, grant an extension of the term of such patent for any time not exceeding seven years from the expiration of the term for which the patent was originally granted: Provided that the Governor may require such petition to be advertised in such manner as he shall think fit, and may hear any person desirous of opposing such extension.

Governor may extend term of patent.

PART V.

NEW PATENTS, DISCLAIMERS, ALTERATIONS, AND CONFIRMATIONS.

PART V.

38. Whenever any patent shall be deemed defective or inoperative by reason of insufficient description or specification, or by reason of the patentee having claimed as new more than he had a right to claim, the Commissioner may, upon petition by the patentee, and upon being satisfied that the error arose from inadvertance, accident, or mistake, without any fraudulent intention, and upon the surrender of such patent and payment of the fee for that purpose specified in the Schedule B hereto, and the filing of an amended description and specification, to be filed in the like manner as hereinbefore provided with respect to applications for patents, grant to the patentee, his executors, administrators, or assigns a new patent for the same invention, for any part or the whole of the then unexpired term for which the original patent was granted.

In certain cases of error, &c., Commissioner may grant new patent.

39. Any patentee, his executors, administrators, or assigns may, on payment of the fee for that purpose specified in the Schedule B

Disclaimer or memorandum of alteration may be filed.

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to this Act, and on obtaining the leave of the Commissioner, file in the Patent Office a disclaimer of any part, either of the title or the specification of the invention in respect of which he is the patentee, or the executor, administrator, or assignee of the patentee, stating the reasons for such disclaimer, or a memorandum of any alteration in such title or specification, not being such disclaimer or alteration as shall extend the exclusive right granted by the patent. Such disclaimer or memorandum of alteration shall be attached to the patent or specification filed in the Patent Office, and a memorandum thereof shall be entered upon the patent in the possession of the patentee, his executors, administrators, or assigns, and thereupon such disclaimer or memorandum of alteration shall be deemed and taken to be part of the patent or specification in all Courts in the said Province: Provided that no such disclaimer or alteration shall, except in proceedings by *scire facias*, be receivable in evidence to support any patent in any action or suit pending at the time that such disclaimer or alteration was filed, or brought in respect of any infringement of any patent committed prior to the filing of such disclaimer or memorandum of alteration; but in every such action or suit, except as aforesaid, the original title and specification alone shall be given in evidence and deemed to be the title and specification of the invention for which the patent shall have been granted.

Commissioner may require notices to be given.

40. The Commissioner may require any patentee, his executors, administrators, or assigns, applying for a new patent, or for leave to file a disclaimer or memorandum of alteration, to give such notices by advertisement or otherwise of his application as the Commissioner shall think fit, and may hear any person in opposition to such application. The filing of any disclaimer or memorandum of alteration in pursuance of the leave of the Commissioner obtained under the last preceding section shall, except in cases of fraud, be conclusive as to the right of the party to file such disclaimer or memorandum of alteration under this Act, and no objection shall be made in any proceeding upon or touching such patent, specification, disclaimer, or memorandum of alteration on the ground that the party filing such disclaimer or memorandum of alteration had not sufficient authority in that behalf.

Mode of obtaining confirmation of invalid patent.

41. If in any suit or action it shall be proved, or specially found by the verdict of a jury, that any person who shall have obtained a patent for any invention or supposed invention was not the first inventor thereof or of some part thereof, by reason of some other person having invented the same, or some part thereof, before the date of such patent, or if such patentee, his executors, administrators, or assigns, shall discover that some other person had unknown to such patentee invented the same, or some part thereof, before the date of such patent, such patentee, his executors, administrators, or assigns may petition the Governor to confirm the said patent, or to grant a new patent in respect of such invention; and it shall be lawful for the Governor to refer the consideration of the said petition

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tion to Commissioners to be appointed for that purpose in the manner hereinafter mentioned.

PART V.

42. The Governor may issue to three or more persons, of whom one shall be a Judge of the Supreme Court, a Commission reciting such petition, and requiring and authorizing such persons, or any three of them, of whom the said Judge shall be one, to meet at some time, not being less than two months from the publication of the said Commission in the *Government Gazette*, and at some place to be respectively fixed in the said Commission, and then and there to consider the said petition, and to report to the Governor whether such confirmation should or should not be made.

Appointment of Commissioners.

43. Six weeks at least before the time named in the said Commission for the consideration of any such petition as aforesaid, the petitioner shall cause to be published twice in the *Government Gazette*, and three times in some daily newspaper published in Adelaide, an advertisement of the contents of the said Commission; and any person having an interest in opposing the said petition shall be at liberty to enter a caveat against the same at the office of the Commissioner of Patents at any time not being less than one week before the time named in the said Commission for the execution thereof.

Notice of Commission to be published.

Caveat may be entered.

44. At the time and place fixed in the said Commission for that purpose, the Commissioners shall meet and proceed to consider such petition, and the petitioner shall be heard in person, or by his solicitor, or agent, and may call witnesses to prove his case as stated in such petition, and the publication of the said last-mentioned advertisement as required by this Act; and the persons entering caveats shall likewise be heard in person or by their solicitors, or agents and may also call witnesses; and all witnesses shall be examined upon oath or affirmation (which oath or affirmation such Commissioners as aforesaid are hereby authorized and required to administer); and thereupon, and upon hearing and inquiry of the whole matter, such Commissioners, upon being satisfied that such patentee as aforesaid believed himself to be the first and original inventor, and being satisfied that the invention, or part thereof, has not been publicly and generally used, or offered for sale within the said Province prior to the date of such patent, may report to the Governor their opinion that the prayer of such petition ought to be complied with; whereupon the Governor may, if he shall think fit, grant such prayer; and the confirmed or new patent (as the case may be) shall thereupon be available at law and in equity to give to such petitioner the sole right of making, using, exercising, and vending such invention as against all persons whomsoever, anything hereinbefore contained to the contrary notwithstanding: Provided that any person party to any former suit or action touching the first patent shall be entitled to have notice in writing of the time and place fixed as aforesaid for the first meeting of the said Commissioners to consider the said petition; and

Commissioners to hear all parties and report.

after

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after any such report shall have been made, it shall not be material or necessary to inquire or ascertain whether any such advertisement as last aforesaid has or has not been published, or whether any such notice as last aforesaid has or has not been given in the manner hereinbefore directed.

Where patent only partly assigned.

45. When a patentee, his executors, administrators, or assigns shall have assigned a part only of his or their interest in any patent, no petition or application under any of the preceding sections numbered respectively 37, 38, 39, and 41 shall be allowed unless joined in by all persons having any legal interest in the patent.

PART VI.

PART VI.

CAVEATS AND REVOCATION AND ASSIGNMENT OF PATENTS.

Caveat may be filed.

46. Any intending applicant for a patent may file in the Patent Office, on payment of the fee specified for that purpose in the Schedule B hereto, a document to be signed by him and containing a description of any invention claimed by him as his own (with or without plans at his option), and giving an address within the City of Adelaide to which any notice by the next following clause required to be sent to him may be addressed; such document, which shall be called a caveat, may be amended by the caveator at any time within one year from the filing thereof, and shall, until the expiration of such year, be preserved in secrecy in the Patent Office, the Commissioner being at liberty, however, to furnish copies of the same to the caveator on payment of the proper charges for such copies.

In certain cases Commissioner to send notice.

47. If at any time before the expiration of one year from the filing of any caveat an application shall be made by any person other than the caveator for a patent for any invention, and the Commissioner shall consider that the granting of such application may interfere with or affect the right of the caveator to obtain a patent for the invention described in the caveat, the Commissioner shall forthwith send notice thereof through the General Post Office to the caveator at the address given by him for that purpose.

Patent may be revoked by Governor.

48. Every patent shall be liable to be revoked by the Governor upon the application of any person after the expiration of three years from the granting thereof, if it shall be made to appear to the Governor that neither the patentee nor his assignee or licensee has, before the time of such application used the patented invention to a reasonable extent for the public benefit: Provided that the Governor may in his absolute discretion refuse any such application upon such terms and conditions as he may see fit.

Proceedings to revoke patent.

49. The Supreme Court of the said Province shall have jurisdiction to revoke and cancel any patent issued under this Act, upon

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PART VI.

upon a writ of *scire facias*, issued out of the said Court; and in case any person having an interest in such patent shall not reside in the said Province at the time of the issue of such writ, it shall be sufficient as against such person to file such writ in the office of the Supreme Court, and serve notice of such filing at his last known place of business or residence within the said Province (if any), and if no such place can be found, then to give notice of such filing by advertisement, or otherwise, as the said Court may in each case direct.

50. Any person desiring to impeach a patent issued under this Act, may obtain from the Patent Office a copy of the patent, and of the petition, declaration, specification, and drawings thereunto relating, certified under the seal of the Patent Office and the hand of the Commissioner, and may file the same in the office of the said Supreme Court to be held of record therein.

Patent may be filed in the Supreme Court.

51. A certificate of the judgment voiding any patent, shall be filed in the Patent Office by the prosecutor on the suit of *scire facias*, and shall be noted on the duplicate patent in the Patent Office, and thereupon the patent shall be and be held to have been void, and of no effect from the time of the grant thereof.

Certificate of judgment to be filed.

52. Every patent shall be assignable either as to the whole interest of the patentee, his executors, administrators, or assigns or as to any part of such interest by instrument in writing under the hand of the assignor or his agent thereunto authorized in writing; and every such assignment shall be in duplicate, and shall be registered by deposit of one duplicate part in the Patent Office. Every assignment shall be deemed null and void against any subsequent assignment for valuable consideration, unless such prior assignment shall be registered before the registration of the subsequent assignment.

Assignment of patent.

PART VII.

MISCELLANEOUS PROVISIONS.

PART VII.

53. All patents, specifications, drawings, models, disclaimers, and other papers except caveats filed in the Patent Office, shall be open to the inspection of the public, subject to such regulations as the Governor may make in that behalf.

Patents, &c., to be open to public inspection.

54. The fees mentioned in Schedule B to this Act shall be paid in respect of the several matters and things therein respectively referred to. Such fees shall form part of the General Revenue of the said Province, and be paid, applied, and disposed of accordingly.

Fees.

55. No patent or other instrument under this Act shall be invalidated by any clerical error in the framing or copying thereof, but any such error may be corrected by or under the authority of the Commissioner.

Commissioner may correct clerical errors.

56. In

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PART VII.

Lost patent.

56. In case any patent be lost or destroyed, any person entitled to such patent may obtain from the Patent Office, on payment of the proper fee, a copy of such lost or destroyed patent, to be certified under seal of the Patent Office.

Declarations, before whom to be made.

57. Every declaration under this Act may be made before the Commissioner or any Justice of the Peace or Notary Public in South Australia; or if the declaration shall be made out of the said Province, then before any person who, in the country in which the declaration is made, shall be authorized to administer an oath.

Licensed Patent Agents.

58. It shall be lawful for the Commissioner, with the sanction of the Governor, to license fit and proper persons to be Patent Agents for transacting business under the provisions of this Act, and upon proof to his satisfaction of the malfeasance or incapacity of any such licensed Patent Agent, or on non-payment of any annual fee for any such licence, as prescribed by Schedule B hereto, and with such sanction as aforesaid, to revoke any such licence. Before granting any such licence, the Commissioner shall receive bond from the person to be licensed in the sum of Five Hundred Pounds, with two sureties each in the sum of Two Hundred and Fifty Pounds, conditioned that such person shall duly and faithfully act in the capacity of a licensed Patent Agent, in accordance with the provisions of this Act, and shall also administer to such person the oath following :—

I, A B, do solemnly swear that I will faithfully and to the best of my ability execute and perform all such business or duties as may be entrusted to, or imposed upon, me as a licensed Patent Agent—So HELP ME GOD.

Certificate of correctness.

59. The Commissioner shall not receive any petition, disclaimer, memorandum of alteration, caveat, assignment, or other instrument under this Act, unless there shall be endorsed thereon a certificate that the same is correct for the purposes of this Act, signed by the applicant or the principal party filing such instrument, or by his solicitor, or by a Patent Agent licensed under this Act, or by a land broker licensed under the provisions of the "Real Property Act of 1861," or any Act substituted therefor; and any person who shall falsely and negligently certify to the correctness of any such instrument, shall incur a penalty therefor not exceeding Fifty Pounds, to be recovered by any person before two or more Justices of the Peace in a summary manner.

Penalty for false and negligent certificate.

In actions for infringement, particulars of breaches and objections to be delivered.

60. In any action for the infringement of a patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant on pleading thereto shall deliver with his pleas, and the prosecutor in any proceedings by *scire facias* to revoke and cancel any patent, shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action, or of the suggestions of the said declaration in the proceedings by *scire facias* respectively;

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tively; and at the trial of such action or proceeding by *scire facias*, no evidence shall be allowed to be given in support of any alleged infringement, or of any objection impeaching the validity of such patent which shall not be contained in the particulars delivered as aforesaid: Provided always that the place or places at or in which and in what manner the invention is alleged to have been used or offered for sale in the said Province prior to the date of the patent shall be stated in such particulars: Provided also that it shall and may be lawful for any Judge at Chambers to allow such plaintiff, or defendant, or prosecutor respectively, to amend the particulars delivered as aforesaid upon such terms as to such Judge shall seem fit: Provided also that at the trial of any proceedings by *scire facias* to revoke and cancel a patent, the defendant shall be entitled to begin and to give evidence in support of such patent; and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such patent, the defendant shall be entitled to the reply.

61. In taxing the costs in any action commenced after the passing of this Act for infringing any patent, regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the Judge before whom the case shall be tried, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the particulars of objections and breaches as well as the counts in the declaration, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the Judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause; and it shall be lawful for the Judge before whom any such action shall be tried, to certify on the record that the validity of the patent in the declaration mentioned came in question; and the record with such certificate being given in evidence in any suit or action for infringing the said patent, or in any proceeding by *scire facias* to revoke and cancel the patent, shall entitle the plaintiff in any such suit or action, or the defendant in any such proceeding by *scire facias* on obtaining a decree, decretal order, or final judgment, to his full costs, charges, and expenses, to be taxed as between attorney and client, unless the Judge making such decree or order, or the Judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full costs.

Particulars to be regarded in taxing costs.

62. There shall be kept at the Patent Office a book or books to be called the "Register of Patents" wherein shall be entered and recorded in chronological order, all patents granted under this Act, the deposit and filing of specifications, disclaimers, and memoranda of alterations filed in respect of patents, all amendments in specifications and patents, all assignments, confirmations, and extensions of patents, the expiry, determination, vacating, revoking, or cancelling of patents, with the dates thereof respectively, and all other matters

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matters and things affecting the validity of patents as the Governor may direct; and such register or a copy thereof shall be open at all convenient times to the inspection of the public, subject to such regulations as the Governor may make in that behalf.

Register of proprietors to be kept.

63. There shall also be kept at the Patent Office a book or books entitled "The Register of Proprietors," wherein shall be entered every assignment of a patent, or of any share or interest therein, every licence under a patent, and the place or district to which such licence relates, with the name or names of every person having by assignment any patent, or any share or interest in any patent, or, having any licence, the date of his or their acquiring such patent, share, interest, or licence, and any other matter or thing relating to or affecting the proprietorship in such patent or licence; and a copy of any entry in such book, certified under the seal of the Patent Office, shall be given to any person requiring the same, and shall be *prima facie* evidence of the proprietorship or assignment of such patent, or share or interest therein, or licence as therein expressed: Provided always, that until such entry shall have been made the grantee or grantees of the patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such patent, and of all the licences and privileges thereby given and granted, and such register, or a copy thereof, shall be open to public inspection, subject to such regulations as the Governor may make.

Expungement, &c., of entries in register.

64. If any person shall deem himself aggrieved by any entry made under color of this Act in any such register as aforesaid, he may apply to the Supreme Court, or any Judge thereof, for an order that such entry may be expunged, vacated, or varied, and such Court or Judge may thereupon make such order as to the expunging, vacating, or varying of such entry, and as to the costs of such application, as to such Court or Judge shall seem fit; and the officer having the custody of such register shall, on the production of any such order, expunge, vacate, or vary such entry in accordance with the order.

Falsification or forgery of entry.

65. If any person shall wilfully make or cause to be made any false entry in any such register, or shall wilfully make, or forge, or cause to be made or forged any writing falsely purporting to be a copy of any entry in any such register, or shall produce, or tender, or cause to be produced or tendered in evidence, any such writing, or any such false entry, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding five years.

Punishment on false oath or declaration.

66. Every person who shall make any false oath or declaration under this Act shall be guilty of a misdemeanor, and shall on conviction be liable to imprisonment with or without hard labor, for any period not exceeding five years.

Penalty for unauthorized use of name of patentee, &c.

67. If any person shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark upon anything made, used, or sold
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by him for which he has not or shall not have obtained a patent, the name or any imitation of the name of any other person who has or shall have obtained a patent for such thing without leave in writing of such patentee, his executors, administrators, or assigns, or if any person shall, upon such thing not having been purchased from the patentee, his executors, administrators, or assigns, or some person who purchased it from or under such patentee, his executors, administrators, or assigns, or not having had the licence or consent in writing of such patentee, his executors, administrators, or assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "Patent," the words "Letters Patent," or the words "By the Queen's Patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp mark or other device of the patentee, his executors, administrators, or assigns, or shall in any other manner imitate or counterfeit the stamp mark or other device of the patentee, his executors, administrators, or assigns, he shall for every such offence forfeit and pay the sum of One Hundred Pounds, one half to Her Majesty, Her heirs and successors, and the other half with full costs of suit to any person who shall sue for the said penalty by action of debt, or in a summary manner before any two Justices of the Peace of the said Province: Provided always that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "Patent" upon anything in respect of which the patent before obtained shall have expired or otherwise determined.

68. The proceedings before Justices shall be conducted as appointed by and shall be regulated under the Ordinance No. 6 of 1850, intituled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to summary convictions and orders." Proceedings before Justices.

69. In every case of the adjudication of a fine or pecuniary penalty or amends under this Act, and of the non-payment of such fine or pecuniary penalty or amends, any Justice of the Peace may commit the offender or person making default in payment to any gaol in the said Province for any time not exceeding three calendar months, the imprisonment to cease on payment of the sum and costs due; but this section shall not affect any remedy for the recovery of any fine or pecuniary penalty or amounts under the said Ordinance No. 6 of 1850, or any other Ordinance or Act. Non-payment of penalty.

70. There shall be an appeal from any order of Justices of the Peace, made under the provisions hereinbefore contained, or from any order of Justices of the Peace dismissing any information laid under this Act, or from any conviction by Justices for any offence against this Act, which appeal shall be to the Local Court of Adelaide of Full Jurisdiction only, and the proceedings in such appeal shall be conducted in manner appointed by the said Ordinance No. 6 of 1850, for appeals to Local Courts, but the Local Court of Adelaide Appeal.

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Adelaide aforesaid may make such order as to payment of costs of appeal as such Court shall think fit, although such costs may exceed Ten Pounds.

Local Court of Adelaide may state a case for opinion of Supreme Court.

71. It shall be lawful for the Local Court of Adelaide, upon the hearing of any appeal under the last preceding section, to state one or more special case or cases for the opinion of the Supreme Court, and the Supreme Court shall hear and decide such special case or cases, according to the practice of the Supreme Court on special cases; and the Supreme Court shall make such order as to the costs of any such special case as to the said Court shall appear just; and any two or more Justices, or the Local Court of Adelaide, shall make an order in respect of the matters referred to the Supreme Court, in conformity with the certificate of the said Supreme Court, or of any Judge thereof, which order of the Justices of the Peace or Local Court shall be enforced in manner provided by this Act, for the enforcement of orders of Justices of the Peace, and save as herein provided, no order or proceeding of Justices, or of any Local Court made under the authority of this Act, shall be appealed against or removed by *certiorari* or otherwise into the Supreme Court of the said Province.

Definition clause.

72. In the construction of this Act, the following expressions shall have the meanings hereby assigned to them, unless such meaning shall be repugnant to or inconsistent with the context—
 “Patent” shall mean Letters Patent granted under this Act:
 “Patentee” shall mean a person to whom a patent shall have been granted under this Act: “Commissioner” shall mean the Commissioner of Patents.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.

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SCHEDULE A.

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

Whereas _____, of _____, hath, by his petition, represented unto us that he is [*or* _____, of _____, is or was] the true and first inventor of a certain invention for _____, and that the same has not been publicly used or offered for sale within the Province of South Australia more than twelve months prior to the date of the said petition [and that the said _____ is the assignee, legatee, executor, or administrator, *as the case may be*, of the said _____], and hath, therefore, humbly prayed for Letters Patent for the sole making, using, exercising, and vending of the said invention within our said Province for the term of fourteen years, pursuant to "The Patent Act, 1877": And whereas the said _____ hath correctly and fully described and ascertained the nature and principle of the said invention, and in what manner the same is to be made, used, worked, or performed, by a specification, in writing under his hand, and has caused the same to be duly filed in the Patent Office of our said Province on the _____ day of _____ 18____: And we being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request: Know ye, therefore, that we of our especial grace, certain knowledge, and mere motion have given and granted, and by these presents for us, our heirs and successors, do give and grant unto the said _____, his executors, administrators, and assigns, our especial licence, full power, sole privilege, and authority, that he the said _____, his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as the said _____, his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter during the term of _____ years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our said Province, in such manner as to him the said _____, his executors, administrators, and assigns, or any of them, shall in his or their discretion seem meet; and that he the said _____, his executors, administrators, and assigns shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage from time to time coming, growing, accruing, and arising by reason of the said invention for and during the term of years herein mentioned, to have, hold, exercise, and enjoy the said licences, powers, privileges, and advantages hereinbefore granted, or mentioned to be granted to the said _____, his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from the _____ day of _____, A.D. _____, according to the statute in such case made and provided, and to the end that he, the said _____, his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do by these presents, for us, our heirs, and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever of what estate, quality, degree, name, or condition soever they be within our said Province, that neither they nor any of them at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly do make, use, exercise, or vend the said invention, or any part of the same so attained unto by the said _____, as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor make or cause to be made any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, deviser or devisers thereof, without the consent, licence, or agreement of the said _____, his executors, administrators, or assigns in writing, under his or their hands or seals, first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said _____, his executors, administrators, and assigns, according to law,

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for his and their damages thereby occasioned: And, moreover, we do by these presents, for us, our heirs, and successors, will and command all and singular the Justices of the Peace, sheriffs, bailiffs, constables, and all other officers and ministers of us, our heirs, and successors for the time being, that they or any of them do not nor shall at any time during the said term hereby granted, in anywise molest, trouble, or hinder the said _____, his executors, administrators, and assigns, or any of them, or his or their deputies, servants, or agents in or about the due and lawful use or exercise of the aforesaid invention, or anything relating thereto: Provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall appear that this our grant is contrary to law, or prejudicial or inconvenient to the general public, or that the said invention is not a new and useful art, machine, manufacture, or composition of matter, or a new and useful improvement on any art, machine, manufacture, or composition of matter, or that the said invention has been publicly used or offered for sale within our said Province prior to the date of these our letters patent, or that the said petitioner is not the true and first inventor thereof [or the assignee, legatee, executor, or administrator, *as the case may be*, of the true and first inventor thereof], or if the said specification, filed as aforesaid does not correctly and fully describe and ascertain the nature and principle of the said invention, and in what manner the same is to be made, used, worked, or performed, or if the said _____, his executors, administrators, or assigns shall not supply, or cause to be supplied for our service all such articles of the said invention as he or they shall be required to supply by the officers or commissioners administering the department of our service, for the use of which the same shall be required, in such manner, at such times, and at or upon such reasonable prices and terms as shall be settled for that purpose by the said officers or commissioners requiring the same, then and in any of the said cases, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof, in anywise notwithstanding: Provided also, that these our letters patent, or anything herein contained shall not extend or be construed to extend to give privilege unto the said _____, his executors, administrators, and assigns, or any of them to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised, unto whom our like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof, it being our will and pleasure that the said _____, his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions by them invented and found out according to the true intent and meaning of the same respective letters patent, and of these presents: Provided likewise, and these our letters patent are upon this express condition, that the same shall be void, and that the rights and privileges hereby granted shall cease and determine at the expiration of three years from the date hereof, unless the said _____, his executors, administrators, or assigns shall pay at the said Patent Office the sum of Five Pounds before the _____ day of _____, A.D. 18____, and further upon condition that the same letters patent shall be void, and the said rights and privileges cease and determine at the expiration of seven years from the date hereof, unless the said _____, his executors, administrators, or assigns, shall pay at the said Patent Office the sum of Five Pounds before the _____ day of _____, A.D. 18____: Provided that nothing herein contained shall prevent the granting of licences in the manner and for the considerations in and for which they may by law be granted; and lastly we do by these presents for us, our heirs, and successors, grant unto the said _____, his executors, administrators, and assigns, that these our letters patent or the filing thereof shall be in and by all things good, firm, valid, sufficient, and effectual in the law, according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favorable and beneficial sense, for the best advantage of the said _____, his executors, administrators, and assigns, as well in all our Courts of Record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in this our said Province, and amongst all and every the subjects of us, our heirs and successors, whatsoever and wheresoever. In witness whereof we have caused these our letters patent to be made patent this _____ day of _____, A.D. _____, and to be sealed with the seal of the said Patent Office, and bear date as of the said _____ day of _____, A.D. _____, in the _____ year of our reign.

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SCHEDULE B.

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

	£	s.	d.
On filing every petition.....	2	10	0
On grant of patent.....	2	10	0
On every patent before the expiration of three years from its date	5	0	0
And before the expiration of seven years ..	5	0	0
For taking any declaration	0	2	6
For every certificate of filing	0	2	6
On filing every amended or substituted specification.....	1	0	0
On lodging objections against grant of patent	0	10	6
On every summons to witnesses	0	5	0
On hearing of every opposed application	1	0	0
On filing duplicate patent.....	0	5	0
On extension of patent	20	0	0
On granting new patent under Part V.	10	0	0
On filing every disclaimer or memorandum of alteration ..	2	10	0
On confirmation of invalid patent	50	0	0
On filing caveat under Part VI.	1	0	0
On amending any caveat	0	10	6
For every office copy (including the seal) per folio of 72 words	0	0	6
On filing every certificate voiding a patent	0	5	0
On deposit of any assignment of patent	1	0	0
On every search, including inspection.....	0	2	6
Annual fee for licence to patent agent.....	5	0	0