
No. II.

AN ACT to enable the Governor to grant a Patent to Arthur Guyon Purchas and James Ninnis for an Invention for the Preparation of various Fibres.

PURCHAS AND
NINNIS FLAX
PATENT.

[28th September, 1860.]

WHEREAS Arthur Guyon Purchas, of Onehunga, in the Province of Auckland, Clerk, and James Ninnis, of the same place, Mining Engineer, claim to have discovered or to be in possession of an invention for the preparation of the fibre of the *Phormium tenax* and other plants for manufacturing purposes, and it is expedient to enable the Governor to grant Letters Patent for securing to them the sole use benefit and advantage of the said invention as hereinafter mentioned:

Preamble.

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

1. The Short Title of this Act shall be “*The Purchas and Ninnis Flax Patent Act, 1860.*” Short Title.

2. In the construction of this Act the word “Person” shall include Bodies Corporate and Companies as well as individuals, unless the context be repugnant thereto. Interpretation.

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Governor to appoint Commissioners to investigate and report on invention.

3. As soon as may be after the passing of this Act the Governor may, by writing under his hand, appoint not less than three nor more than six persons to be Commissioners, whose duty shall be to inquire and report to the Governor upon the questions and in manner hereinafter mentioned.

Act of the majority binding.

4. Any act of the majority of the Commissioners, or of the majority of the survivors of them, shall be the act of the Commissioners.

Petition description &c. of invention to be presented.

5. At any time within three months from the passing of this Act the said Arthur Guyon Purchas and James Ninnis may leave at the office of the Colonial Secretary a petition addressed to the Governor, representing that they are in the possession of an invention for the preparation of the fibre of the *Phormium tenax* and other plants for manufacturing purposes, which they conceive will be of great public utility; that they are the true and first inventors thereof, and that the same is not in use by any other person to the best of their knowledge and belief; and stating clearly and succinctly the object to be attained by the said invention, and praying that Letters Patent may be granted to them for the exclusive use thereof in the Colony of New Zealand; and they shall deposit with such petition a written specification signed by them of their said invention, and of the manner and process of making constructing and using the same, in such terms, avoiding unnecessary prolixity, as to enable any person skilled in the scheme or manufacture to which it appertains or with which it is most nearly connected, to make construct and use the same; and in case of any machine, a statement of the principle and the several modes in which they have contemplated the application of that principle or character by which it may be distinguished from other inventions, and shall in the said specification particularly point out and specify the improvement or combination which they claim as their own invention or discovery. They shall also send a drawing and written references thereto, if the nature of the case admits of drawings, and specimens of the produce or manufactured article resulting from the invention. They shall also send a declaration made before some Justice of the Peace that they are, as they believe, the first and true originators or discoverers of the said invention.

Interim protection for invention.

6. After the delivery of the said petition and deposit of the said specification descriptions and other matters as aforesaid, the said Arthur Guyon Purchas and James Ninnis shall have, during the term of twelve months thence next ensuing, the like protection rights powers and privileges as could be conferred upon them by Letters Patent for the said invention issued under this Act; and during the continuance of such protection rights powers and privileges under this provision, such invention may be used and published without prejudice to any Letters Patent to be granted for the same.

To be advertised.

7. The Colonial Secretary shall cause such provisional protection to be advertised in the *New Zealand Gazette* and in one newspaper (if such there be) published in each Province of New Zealand.

Notice of application to be advertised.

8. As soon as may be after the delivery of the said petition and deposit of the said specification descriptions and other matters as aforesaid, the Colonial Secretary shall cause notice of such application to be inserted in the *Government Gazette*, and shall thereby require any person who may conceive that he would be prejudiced by the granting of Letters Patent for the said invention, to send to the Colonial Secretary, within four months of the said publication, a statement in writing setting forth the grounds of such objection, subscribed with his proper name and address.

Objections to be

9. After the expiration of such last-mentioned period the Colonial Secretary

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Secretary shall refer all such objections which he may have received, together with the original petition and other documents mentioned in section five, to the Commissioners.

referred to Commissioners.

10. The Commissioners shall then appoint a time and place for investigating the said petition and hearing the objections (if any), and shall give notice thereof in the *Government Gazette*, and shall forthwith send a copy of such *Gazette* by post addressed to each objector.

Commissioners to appoint hearing.

11. The Commissioners may adjourn their sittings from time to time.

May adjourn.

12. The said Arthur Guyon Purchas and James Ninnis may appear before the said Commissioners, by themselves, their counsel, and witnesses, in support of their petition, and any such objector may appear in like manner in opposition thereto: Provided always that any such objector shall, previously to being heard, deposit with the Commissioners the sum of twenty pounds.

Parties may appear.

13. The Commissioners shall thereupon investigate the said matter, and shall be at liberty to call to their aid such scientific or other witnesses as they may think fit, and may cause to be paid to such witnesses by the said Arthur Guyon Purchas and James Ninnis such remuneration as they may direct.

Commissioners to hear.

14. The Commissioners shall report to the Governor whether the said Arthur Guyon Purchas and James Ninnis were the true and first inventors of the said invention, and whether the same is likely to be of public utility, and whether any Letters Patent or instrument in the nature of Letters Patent have or has been issued or granted therefor, and whether in their opinion Letters Patent as aforesaid should be issued therefor to the said Arthur Guyon Purchas and James Ninnis.

Commissioners to report.

15. If any such objection as aforesaid shall be sustained, the specifications drawings and other matters shall be returned to the said Arthur Guyon Purchas and James Ninnis, and the sum of twenty pounds shall be paid by them to the Colonial Treasurer, to be applied as ordinary revenue, and the deposits shall be returned to the several objectors.

Proceedings if objections sustained.

16. It shall be lawful for the Commissioners if they see fit, by writing under their hands, to determine the amount of the costs of any hearing or inquiry upon any such objection, and to order by and to whom such costs shall be paid; and if any such costs are so ordered to be paid by any such objector, the said deposit of twenty pounds shall be applied thereto or in part liquidation thereof, and the balance (if any) returned to the objector.

Costs of inquiry.

17. If any costs so ordered to be paid as aforesaid be not paid within seven days after the date of such order, any such order may be made a rule of the Supreme Court.

Order for costs may be made a rule of Court.

18. The Commissioners shall, within the period of nine months from the passing of this Act, deliver their report, together with the said petition specification descriptions and drawings, and all objections and other papers and things which shall have come into their hands in consequence of or in relation to the said investigation, to the Colonial Secretary.

Report of Commissioners and other papers to be delivered to Colonial Secretary.

19. In case the Commissioners shall report that Letters Patent should be issued to the said Arthur Guyon Purchas and James Ninnis, the Governor may direct that such Letters Patent shall be issued by the Colonial Secretary or other proper officer.

If Commissioners report favourably, Governor may direct issue of Letters Patent.

20. The said Arthur Guyon Purchas and James Ninnis shall, within one month after the issuing of such direction, pay to the Colonial Treasurer and obtain a receipt for the sum of twenty pounds, to be applied as ordinary revenue of the Colony.

Fee for adjudication.

21. The

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Letters Patent to issue.

21. The Colonial Secretary or other proper officer, upon such direction as aforesaid, and production to him of the said receipt of the Colonial Treasurer, shall forthwith cause Letters Patent to be prepared in the form in the Schedule hereunto annexed, and the Governor may sign the same and cause the Public Seal of the Colony to be affixed thereto, and deliver the same to the said Arthur Guyon Purchas and James Ninnis, their agent or legal representative, and the said Letters Patent shall be operative from the time of such delivery.

Assignment of Patent and record thereof.

22. Such Letters Patent shall be assignable in law either as to the whole interest or any undivided part thereof, or as to any part of the said invention, by deed, which assignment, and also any grant or conveyance of the exclusive right thereunder to make and use, and to grant to others the right to make and use, the thing patented therein or any part thereof, shall be recorded in the office of the Colonial Secretary within six months from the execution thereof, upon payment by the assignee or grantee to the Colonial Treasurer of the sum of five pounds to be applied as aforesaid.

Injunction &c.

23. In any action in the Supreme Court for the infringement of such Letters Patent it shall be lawful for the Court, as well in its common law as in its equity jurisdiction, or for any Judge of the Court, on the application of the plaintiff or the defendant respectively, to make such order for an injunction inspection or account, or to give such direction respecting such action injunction inspection or account, and the proceedings therein respectively, as to such Court or Judge shall seem fit.

Patent may be repealed by *scire facias*.

24. Such Letters Patent may be repealed by writ of *scire facias* for the same causes and in the same manner as any grants of the Crown are liable to be repealed.

Specification &c. to be enrolled.

25. From and after the commencement of protection under section six, all persons whosoever shall have access to the said specification statement description and drawings, and also any corrected or additional specification or description as hereinafter mentioned (if any) to be permanently kept in his office,* and all persons whosoever may have access thereto, and may inspect and may have copies of or extracts from the same upon payment of reasonable expenses, and such copies or extracts and copies or extracts of or from the record of the said Letters Patent, certified by the Colonial Secretary to be true copies or extracts, shall be received as evidence of the contents of the said Letters Patent specification or other things respectively in all proceedings whatsoever.

**Sic.*

Specification may be corrected.

26. If during the term of such Letters Patent they shall be found to be inoperative or invalid by reason of a defective or insufficient description or specification, or by reason of the said Arthur Guyon Purchas and James Ninnis claiming as their invention more than they have or shall have a right to claim as new, and if the error shall arise by accident inadvertency or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Governor, upon the surrender of such Letters Patent and the payment to the Colonial Treasurer of the sum of ten pounds, to cause new Letters Patent to be issued to the said Arthur Guyon Purchas and James Ninnis for the same invention for the residue then unexpired of the said term in accordance with their corrected description and specification; and in case of their death, or of any assignment by them, a similar right shall vest in their executors, administrators, or assigns; and the Letters Patent so re-issued, together with the corrected description and specification, shall have the same effect and operation in law on the trial of all actions commenced for causes subsequently accruing, as though the same had been originally filed

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or deposited in such corrected form before the issuing out of the original Letters Patent; and whenever the said Arthur Guyon Purchas and James Ninnis, or their assigns, shall be desirous of adding the specification and description of any new improvement of the said invention which shall be originated or discovered by them subsequently to the date of the Letters Patent to be issued under this Act, they may, like proceedings being had in all respects as in the case of original application, and on the further payment of twenty pounds in manner hereinbefore provided, have the same annexed to the original description and specification, and the Colonial Secretary shall certify on the margin of such annexed description and specification the time of its being annexed and recorded, and the same shall thereafter have the same effect in law to all intents and purposes as though it had been embraced in the original description and specification.

27. The said Arthur Guyon Purchas and James Ninnis, their executors, administrators, or assigns, may, if they think fit, enter with the Colonial Secretary a disclaimer of any part of the specification, stating the reason for such disclaimer, or may with such permission* enter a memorandum of any alteration in the said specification, not being such disclaimer or such alteration as shall extend the exclusive right granted by the said Letters Patent; and such disclaimer or memorandum being deposited with the Colonial Secretary shall be deemed and taken as part of such Letters Patent or such specification, and subject to the several incidents thereof in all Courts of Justice in the Colony: Provided that no such disclaimer or alteration shall be receivable as evidence in any action (save and except in any proceeding by *scire facias*) pending at the time when such disclaimer or alteration was enrolled, but in every such action the original specification alone shall be deemed and taken to be the specification of the invention for which Letters Patent shall have been granted.

Disclaimer may be entered.

*Sic.

28. The said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, shall have within the Colony, for a term of fourteen years next after the date of the said Letters Patent, the exclusive enjoyment and advantage in the said Colony of such invention, and such and the same protection and such and the same remedies at law and in equity against any person in the said Colony infringing the said Letters Patent, and generally such and the same rights powers and privileges throughout the said Colony with respect to the said invention, as any person to whom Letters Patent for a new invention have been granted under the Great Seal of England has by the law of England in and throughout the realm of England.

Effect of Patent.

29. Any of the penalties recoverable by any person holding Letters Patent under the Great Seal of England in any Court in Great Britain, under the Act of the Imperial Parliament passed in the Session of the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "*An Act to amend the Law touching Letters Patent for Inventions,*" for any unauthorized person using or imitating the name of any patentee, or using the word "Patent" or the like words, or counterfeiting the mark of any such patentee, may be recoverable and recovered in the Supreme Court by the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, for similar injuries to them or any of them.

Penalties of 5 and 6 Will. IV. c. 83, may be enforced.

30. If any person shall wilfully make or forge, or cause to be made or forged, any false writing or drawing purporting to be a copy of or extract from the said Letters Patent specification statement descriptions or drawings respectively, or shall produce or tender, or cause to be produced or tendered, in evidence any such writing or

Punishment for falsification of specification &c.

drawing knowing the same to be false or forged, he shall be guilty of a misdemeanour, and on conviction thereof shall be punished by fine and imprisonment, at the discretion of the Court, not exceeding two years and five hundred pounds respectively.

SCHEDULE.

His Excellency Governor and Commander-in-Chief in and over the Colony of New Zealand and its Dependencies, to all whom these presents shall come, greeting:

WHEREAS Arthur Guyon Purchas, of Onehunga, in the Province of Auckland, Clerk, and James Ninnis, of the same place, Mining Engineer, have by their petition humbly represented unto me that they are in possession of an invention for the preparation of the fibre of the *Phormium tenax* and other plants for manufacturing purposes, which they conceive will be of great public utility; that they are the true and first inventors thereof, and that the same is not in use by any other person or persons to the best of their knowledge and belief; and the petitioners therefore humbly prayed that I would be pleased to grant unto them, their executors, administrators, and assigns, Letters Patent for the sole use benefit and advantage of their said invention within the Colony of New Zealand for the term of fourteen years, pursuant to "*The Purchas and Ninnis Flax Patent Act, 1860*:" And whereas the said Arthur Guyon Purchas and James Ninnis have particularly described the nature of the said invention, and in what manner the same is to be performed, by instruments, in writing, in the manner prescribed by the said Act.

Now know ye that I, the said _____, the Governor as aforesaid, in pursuance and exercise of the power and authority for this purpose given to me under and by virtue of the said Act, do hereby grant unto the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, the sole privilege and special license, full power and authority, that they the said Arthur Guyon Purchas and James Ninnis, their 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 they the said Arthur Guyon Purchas and James Ninnis, their 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 the said invention within the said Colony in such manner as to them the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, or any of them, shall seem meet: And that they the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, shall and may lawfully have and enjoy the whole profit benefit commodity and advantage from time to time 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 licenses powers privileges and advantages hereinbefore granted unto the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, for during and until the full end and term of fourteen years from the date of these presents next immediately ensuing: And to the end that the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention as hereinbefore declared, I do by these presents advise all and every person and persons, bodies politic and corporate, in the said Colony, of what estate quality degree name and condition soever they be within the said Colony, that neither they or 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 or put in practice the said invention or any part of the same so attained unto by the said Arthur Guyon Purchas and James Ninnis as aforesaid, nor in any wise 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 license or agreement of the said Arthur Guyon Purchas and James Ninnis, their executors, administrators or assigns, in writing under his or their hands and seals first had and obtained in that behalf, lest by so doing they make themselves answerable to the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, according to law, for his and their damages thereby occasioned: Provided always and these Letters Patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear unto Her Majesty Queen Victoria, her heirs or successors, or to the Governor of the said Colony, that this grant is contrary to law or prejudicial or inconvenient to her subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof, or that the said Arthur Guyon Purchas and James Ninnis are not the true and first inventors, these Letters Patent shall forthwith cease determine and be utterly void to all intents and purposes: Provided also that these Letters Patent, or anything herein contained, shall not extend or be construed to extend to give privilege to the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which

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which hath heretofore been found out or invented by any other person, and publicly used or exercised, unto whom Letters Patent or privileges have been already granted for the sole use exercise and benefit thereof: And lastly, I do by these presents grant unto the said Arthur Guyon Purchas and James Ninnis, their executors, administrators, and assigns, that these Letters Patent shall be in and by all things good firm valid sufficient and effectual in the law according to the true intent and meaning thereof, notwithstanding the not full and certain describing herein of the nature or quality of the said invention, or of the materials thereunto conducing and belonging.

In witness whereof, I have hereto subscribed my name, and have caused these Letters Patent to be sealed with the Public Seal of the Colony of New Zealand, this
day of , one thousand eight hundred and .
