

T A S M A N I A

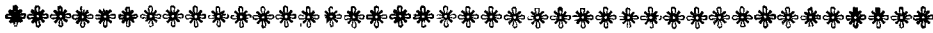


1888.

ANNO QUINQUAGESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 35.



AN ACT to consolidate and amend the Laws A.D. 1888.
relating to Barristers and Attorneys.
[24 October, 1888.]

WHEREAS it is expedient and necessary that the Laws in force in PREAMBLE.
this Colony relating to Barristers and Attorneys should be amended and
consolidated in one Act :

Be it therefore enacted by His Excellency the Governor of *Tasmania*,
by and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as “The Legal Practitioners Act, 1888.” Short Title.

2 In this Act—

“The Examiners” mean the Board of Examiners appointed Interpretation.
under this Act, or a quorum of such Board of Examiners :

“The Judges” mean the Judges of the Supreme Court of *Tas-*
mania acting together :

“Judge” means a Judge of the said Court sitting in Chambers
or otherwise :

“The Court” means the Supreme Court of *Tasmania* :

“Prescribed” means prescribed by Rules of Court to be made as
in this Act provided :

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“Gazette” means *The Hobart Gazette* :

“Practitioner” means a person duly admitted hereunder to act in the said Court as a Barrister, Attorney, Solicitor, and Proctor, or admitted as a Barrister or Attorney or Solicitor or Proctor of the said Court under any Act hereby repealed or any previous Act :

“Admitted” means the act of being admitted and enrolled in the said Court :

“Admission” means admission and enrolment in the said Court :

“Registrar” means the Registrar of the Supreme Court of *Tasmania*.

Repeal.

3 The Acts set forth in the Schedule (1.) are hereby repealed, save and except so far as relates to any matters or things done or any rights acquired at any time before the commencement of this Act, all which matters and things shall be and remain good, valid, and effectual, and all such rights shall remain in force to all intents and purposes whatsoever as if this Act had not passed, and also save and except as to the recovery of any penalty for any offence committed before the commencement hereof.

No person to act as a Practitioner unless admitted.

4 No person shall act as a Barrister or Attorney or Solicitor or Proctor in the Supreme Court, or as such Barrister or Attorney or Solicitor or Proctor sue out any writ or process, or commence, carry on, solicit, or defend any action, suit, or other proceeding in the name of any other person or in his own name in the said Court, or in any Court of Bankruptcy or of Requests, or Court of General or Quarter Sessions, or before any Justice or Justices of the Peace, unless such person has been duly admitted as a Practitioner under this Act or a previous Act.

Certain persons may be admitted without any examination.

5 The following persons may be admitted by the said Court as Practitioners therein without undergoing any examination in Literature or Law :—

Any person who has been admitted a Barrister-at-Law or Advocate in *Great Britain* or *Ireland* :

Any person who has been admitted a Writer, Attorney, or Solicitor in one of Her Majesty's Courts at *Westminster*, *Dublin*, or *Edinburgh* :

Any person admitted as a Proctor in some Ecclesiastical Court in *England*.

The mode in which and the conditions upon which any person shall be admitted under this Section shall be regulated as prescribed.

Admission of Barristers and Attorneys of Colonial Courts.

6 It shall be lawful for the Supreme Court of *Tasmania* or a Judge thereof, upon Motion, to admit to practise in the said Court as a Barrister, Attorney, Solicitor, and Proctor, any person who has been admitted as a Barrister, or as an Attorney and Solicitor, in any Supreme Court of Law and Equity in any of Her Majesty's Colonies or Dependencies where the system of Jurisprudence is founded on or assimilated to the Common Law and principles of Equity as administered in *England*, without such person undergoing any examination in Literature or Law : Provided that the Supreme Court of *Tasmania* or a Judge

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thereof shall be satisfied of the respectability of such person, and that he has been admitted as a Barrister, or as an Attorney or Solicitor, in any such Supreme Court in the said Colonies or Dependencies: Provided also, that no person shall be admitted as a Practitioner under this Act by virtue of his admission as an Attorney or Solicitor in any of Her Majesty's Colonies or Dependencies unless such person has been bound by contract in writing to serve as a Clerk to an Attorney or Solicitor in one of such of Her Majesty's Colonies or Dependencies as aforesaid, and has duly served therein as such Clerk for and during a term equal to the term for which such person would be required to serve under such contract in this Colony under the provisions of this Act.

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7 No person shall (save as hereinbefore provided) be capable of being admitted as a Practitioner in the said Court unless such person has been bound by contract in writing to serve as Clerk for and during the term of Five years to a practising Practitioner of the said Court, and has duly served under such contract for and during the said term, and also unless such person shall, after the expiration of such term (save as hereinafter provided), have been examined and sworn in manner hereinafter directed.

No person to be admitted unless he has served a clerkship of Five years, save as hereinafter provided.

No person under the age of Sixteen years shall be bound by contract in writing to serve as Clerk as aforesaid, and no person, other than those who may be admitted as Practitioners under this Act without being bound by contract to serve as aforesaid, shall be admitted to any examination prescribed by this Act if not bound by contract to serve as aforesaid.

8 No Practitioner shall have more than Two Clerks bound by contract to serve as aforesaid at one time, nor take or retain any such Clerk at any time or for any period during which he shall not actually carry on business as a Practitioner in the said Court, nor whilst such Practitioner shall be retained as a Clerk or Writer by any other Practitioner.

No Practitioner to have more than Two Clerks at one time, &c.

9 Every person bound by contract to serve as aforesaid shall, during the whole term of service specified in such contract, continue and be actually employed by the Practitioner to whom he shall be bound in the proper business, practice, and employment of a Practitioner of the said Court, save as in this Act is mentioned.

How Clerks to be employed.

Provided, that nothing in this Section contained shall be held to prevent any person bound by contract to serve as aforesaid performing for remuneration, and with the consent of the Practitioner to whom he is bound to serve as aforesaid, services of any kind for any person other than such Practitioner out of the usual hours during which he is required to serve such Practitioner.

10 Every person of the age of Twenty-three years and upwards who has taken the Degree of Bachelor of Arts or Laws in any University within Her Majesty's Dominions, and who has been bound by contract in writing to serve for Three years to a Practitioner carrying on business as a Practitioner in the said Court, and has duly served under such contract for and during the said term of Three years, after having taken one of the said Degrees shall, after the expiration of such term, upon passing the examination in Law prescribed, and complying with the provisions of this Act, be entitled to be admitted a Practitioner of the said Court.

Eligibility of Graduates for admission as Practitioners.

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Eligibility of
Associates of Arts
for admission as
Practitioners.

11 Every person of the age of Twenty-one years or upwards who has taken the Degree of Associate of Arts in this Colony, or proves to the satisfaction of the Examiners that he has passed at a *British* University one of the Examinations set forth in the Schedule (2.), and who has been bound by contract in writing to serve for Four years to a Practitioner carrying on business as a Practitioner in the said Court, and has duly served under such contract for and during the said term of Four years after having taken the said Degree or passed one of the Examinations mentioned in the said Schedule (2.), shall, after the expiration of such term, upon passing the examination in Law prescribed, and complying with the provisions of this Act, be entitled to be admitted as a Practitioner of the said Court.

Notice of
intention of
application to be
published.

12 Every person who shall intend to apply for admission as a Practitioner of the said Court under Sections Five and Six of this Act shall cause his name and place of abode, written in legible characters, to be affixed in the Registrar's Office during the first Fifteen days of one term, and shall also cause notice of his intended application to be published three several times during the same term in one of the public newspapers published in *Hobart*, and to be given to the Secretaries of the Northern and Southern Law Societies of *Tasmania* respectively; and application for admission may be made to the Court on the last sitting day of the term in which the said notice is given, or to any Judge of the Court at any time in the vacation following; and such persons as apply in vacation shall be admitted under the Order of the Judge: Provided, that when the Judges of the said Court or any of them shall be satisfied of the respectability of any person desirous of being admitted as a Practitioner of the said Court, whether by means of letters of introduction or otherwise, such Judges or Judge may, by an Order under their or his hand, or openly pronounced in Court, dispense with the preceding Rule.

Service of One
year with Agent.

13 Any person bound by contract in writing to serve as a Clerk to a Practitioner for any term hereinbefore mentioned, and who shall actually and *bonâ fide* be and continue as Clerk with, and as such be employed by, the *Hobart* Agent of the Practitioner to whom any such person is bound by contract as aforesaid, for any part of the said term not exceeding One year, either by virtue of any stipulation in such contract or with the permission of such Practitioner, may be examined and admitted under this Act in the same manner as if he had served the whole of the period for which he was bound with the Practitioner to whom he was so bound.

Admission of
Registrar and
Clerk of Supreme
Court, &c.

14 The following persons may be admitted as Practitioners without being bound to serve or serving as aforesaid:—

The Registrar and Clerk of the Supreme Court;

The Secretary to the Law Department;

The Clerk to the Solicitor-General;

if such persons have served in their respective offices for the term of Ten years, or partly in one of such offices and partly in another of such offices for the said term, either before or after the commencement of this Act.

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But such persons shall be required to undergo examinations in General Literature and Law, and to pay similar fees on admission to those payable by other candidates for admission as Practitioners. A.D. 1888.

Provided, that any of such persons who shall have taken the Degree of Associate of Arts in this Colony, or shall have passed any of the examinations mentioned in Schedule (2.), shall not be required to undergo examination in General Literature.

Provided also, that any of the persons aforesaid who were appointed to any of the said offices before the passing of this Act shall not be required to serve in their respective offices, or in any of them, for a longer term than they were required to serve therein by the Act hereby repealed before they may be admitted as Practitioners under this Act.

15 All Contracts or Articles of Clerkship, and any assignment thereof, entered into or made after the commencement of this Act, shall, within Three months from the date thereof respectively, be filed with the Registrar of the Court, together with an affidavit verifying the due execution and true date thereof, and the fees mentioned in the Schedule (3.) in respect thereof shall thereupon be paid by the person filing the same. Contracts or Articles of Clerkship to be filed in Supreme Court.

Any Contract or Articles, or any assignment thereof, not filed in accordance with the provisions of this Section, shall be void and of no effect.

16 Candidates for any examination preparatory to admission under this Act shall pay to the Registrar of the Court the fees mentioned in the First Part of the Schedule (3.) before being admitted to examination. Fees to be paid before examination.

17 No person shall be admitted as a Practitioner of the said Court during the period of his holding the office of Registrar of the said Court, or the office of Registrar of Deeds, or being a Commissioner of the said Court; and no person holding either of the said offices, or being such Commissioner, shall be capable of entering into any contract whatsoever whereby any person may be bound to serve the person holding either of the said offices or such Commissioner as articled Clerk in order to his admission as a Practitioner in the said Court, and such contract if entered into shall be void. Registrar, &c. not to practise while in office.

18 The Board of Examiners shall consist of not less than Seven persons, of whom Three shall form a quorum: the Attorney-General and Solicitor-General for the time being shall *ex officio* be Members of the said Board, and the remaining Members shall be nominated and appointed by the Judges, but at least Five Members of the Board including the *ex officio* members shall be Practitioners. Board of Examiners.

Any vacancy occurring in the Board by the death, resignation, or removal from *Hobart* of any member may be filled up by the Judges, and notice of every appointment shall be published in the *Gazette*. The Attorney-General for the time being shall be the Chairman of such Board.

19 The Judges may from time to time make Rules, and such Rules may vary, alter, or rescind, for the following purposes:— Judges to make Rules to regulate Examinations.

1. To prescribe the mode in which and the conditions under which persons who are not required by this Act to undergo any examination may be admitted:

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2. To regulate the proceedings and times of meeting of the Examiners :
3. To prescribe the books and subjects in General Literature and in Law in which candidates for admission shall be examined :
4. To prescribe the nature and mode of examination of candidates :
5. To prescribe the conditions under which candidates may submit themselves for examination :
6. To prescribe the mode in which candidates who have passed the examinations prescribed may be admitted :
7. Generally to provide for all matters necessary to give effect to the objects and intentions of this Act.

All such Rules shall be published in the *Gazette*, and shall remain in force until altered or rescinded by the like authority.

All Rules made by the Judges under any Act hereby repealed shall, until rescinded, be deemed to have been made under this Act.

Where term of service expires within Three months of period fixed for examination, candidates may be examined notwithstanding.

20 Whenever any of the Terms of service of Three years, Four years, and Five years respectively mentioned in this Act, or in any Act hereby repealed (whether the same Terms shall have commenced before or after the passing of this Act,) shall expire within Three calendar months after either of the periods to be fixed for examination of candidates by the Examiners in any year, then and in such case any person whose term of service will so expire shall be at liberty, upon complying with the Rules prescribed, to pass his examination in Law at the period fixed by the Examiners next preceding the expiration of any of the said Terms ; and at any time after the said Term of service has expired the person who has so passed his examination in Law may be admitted as a Practitioner of the said Court in the manner provided by the said Act.

Examiners to notify time and place of examination, which shall be open.

21 The Examiners shall, by notice under the hand of the Chairman published in the *Gazette*, and affixed to the doors of the buildings in which the Civil and Criminal Sittings of the Supreme Court are usually held in *Hobart* and *Launceston*, signify the days on which they will examine Candidates under this Act, and the hour and place at which such examinations shall be held ; which examinations shall be held at the least Once in every year.

Literary examination to take place at any time.

22 A Candidate for admission as a Practitioner of the said Court may at any time during the period of his Clerkship claim to be examined in General Literature, and shall not be compelled to serve his full time before such examination takes place, anything herein contained or prescribed to the contrary notwithstanding.

Associates of Arts to produce Certificate of examination in Latin, &c.

23 Every person who has taken the Degree of Associate of Arts, and who is a Candidate for admission under Section Eleven, shall produce to the Examiners a Certificate from the Secretary to the Council of Education that he has passed an examination in Latin and Pure Mathematics to the satisfaction of the Examiners for such Degree, and failing the production of such Certificate such Candidates shall be examined in General Literature as well as in Law.

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24 Nothing herein contained or prescribed shall be construed to require any Candidate for admission as a Practitioner of the said Court to give notice to the Examiners of his intention to present himself for Examination more than Three months immediately preceding the day appointed for such Examination, or to require any Candidate for admission as a Practitioner of the said Court to submit to examination in any matters or subjects other than Law, in any case where such Candidate shall produce satisfactory proof that he has obtained the Degree of Bachelor of Arts or Laws in any *British* University, or that he has passed the Examinations prescribed by the Statutes of such Universities for Candidates for such Degree in Arts or Laws.

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Graduates in Arts or Laws to be required to be examined in law only.

25—(1.) Candidates who have passed the Examinations prescribed shall pay to the Registrar of the said Court the Fees mentioned in the Second part of Schedule (3.) before any Motion shall be made for their admission as Practitioners of the said Court; and the amount of such Fees shall be appropriated by the Judges to defraying such expenses as may be incurred in the conduct of the Examinations of Candidates, or to such other purposes connected therewith as the Judges may order and direct.

Examined candidates to pay fees to Registrar of Supreme Court.

(2.) Every person applying to be admitted under this Act without undergoing any examination in Literature or Law shall pay to the Registrar of the Court the fee mentioned in the Third Part of the Schedule (3.) before any Motion shall be made for his admission as a Practitioner.

26 At any time, not being more than Three months after the date of any certificate granted by the Examiners, it shall be lawful for the Supreme Court, or a Judge thereof, upon the production of such certificate, and upon the affidavit of the person named therein that he has complied with the rules prescribed and has paid the fees mentioned in the Schedule (3.), and is the person named in such certificate, to order that such person shall, upon taking the oaths hereafter mentioned, be admitted as a Practitioner of the said Court.

Admission to practise.

27 Every person applying to be admitted under this Act shall, before his admission, take and subscribe the oath set forth in the Schedule (4.), and the oath of allegiance set forth in "The Promissory Oaths Act, 1869."

Oaths to be taken.

28 On application made to him for that purpose by any Practitioner whose name shall be on the Rolls of the Court as such respectively, the Registrar of the Court shall issue a Certificate to him under the Seal of the Court in the form or to the like effect contained in the Schedule (5.), and every such Certificate shall be in force until the 31st day of *December* next after the issue thereof; and such Practitioners shall pay the fees mentioned for such Certificate in the Fourth Part of the Schedule (3.)

Registrar of Court to issue Certificate upon application.

29 If any Practitioner to whom any clerk is bound by contract in writing as aforesaid becomes bankrupt, or if the affairs of such Practitioner are liquidated by arrangement, or if such Practitioner makes any composition with his creditors, the Court may, upon the application of such clerk, order such contract to be discharged, or assigned to such person upon such terms and in such manner as the Court directs.

If Practitioner becomes bankrupt contract may be assigned.

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Proviso for
death of master,
&c.

30 If any Practitioner to whom any person has been bound to serve as aforesaid dies before the expiration of the term for which such person is so bound, or discontinues, or ceases to practise in the said Court, or if the contract shall by mutual consent of the parties be cancelled, or in case such clerk is legally discharged before the expiration of such term by any rule or order of the Court, such clerk may in any of such cases be bound by another or other contracts in writing to serve as clerk to any other practising Practitioner of the said Court during the residue of the said term, or for such period as shall, together with the portion of the term which he has served under such contract as aforesaid, make up the period which he is required by this Act to serve as aforesaid; and service under such second or other contract in manner herein mentioned shall be deemed and taken to be good and effectual, subject to the provisions hereof, and the rules made hereunder with respect to the original contract.

Eligibility of
certified Convey-
ancers for
admission as
Practitioners.

31 Every person who holds a Conveyancer's Certificate under the provisions of any Act hereby repealed, or of any previous Act, and who proves to the satisfaction of the Examiners that he has been actually employed by a Practitioner in connection with his business as such Practitioner for a period of Seven years from the date of such Certificate, or has been employed as aforesaid partly by one Practitioner and partly by another Practitioner for the said period either before or after the passing of this Act, or that he has been the holder of such certificate for a continuous period of Twenty years, shall be entitled, without being bound by contract in writing to serve as aforesaid, to present himself for examination in Law under the provisions of this Act, and upon passing such examination and receiving a Certificate thereof from the Examiners and paying to the Registrar the Fees prescribed in the Second part of Schedule (3.), and otherwise complying with the provisions of this Act, excepting as aforesaid, shall be entitled to be admitted as a Practitioner of the said Court.

Provisions of
Section 10 of 38
Vict. No. 14 to
be continued in
certain cases.

32 Notwithstanding anything to the contrary hereinbefore contained, every person who has given or who, before the Thirty-first day of *December* next ensuing, shall give notice of his intention to present himself for examination under Section Ten of "The Barristers and Attorneys Act, 1874," hereby repealed, shall be entitled to be examined in General Literature and Law, in accordance with the provisions of that Act, not later than the First day of *February* in the year 1891, and upon passing such examinations and otherwise complying with the provisions of that Act, and paying the Fees prescribed by the Second part of Schedule (3.) to this Act, shall be entitled to claim the full benefit of the said Tenth Section of the said Act in the same manner as if this Act had not been passed.

Certain persons
not entitled to
Certificate.

33 No person attainted of any treason or felony, or convicted of any crime that is infamous, shall be entitled to a Certificate under this Act, anything herein contained to the contrary notwithstanding.

Practitioner not
to commence an
action for fees till
One month after
delivery of bill.

34 No Practitioner, nor any executor, administrator, or assignee of any Practitioner, shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such Practitioner until the expiration of One month after such Practitioner, or the executor, administrator, or assignee of such Practitioner, shall have delivered unto the party to be charged therewith, either in

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person or sent by the post (duly stamped) to, or left for him at his place of business or usual or last known place of abode, a bill of such fees, charges, and disbursements, which bill shall either be signed by such Practitioner, (or, in case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee of such Practitioner, or be enclosed in or accompanied by a letter, signed in like manner, referring to such bill. A.D. 1888.

35 Upon the application of the party chargeable by such bill within such month, it shall be lawful for the Supreme Court, or a Judge thereof, whether such bill shall contain any charges for business transacted in the said Court or not, to refer such bill and the demand of such Practitioner, or such executor, administrator, or assignee thereupon to be taxed and settled by the Taxing Officer of the Court without any money being brought into Court; and the Court or Judge making such reference shall restrain such Practitioner, or the executor, administrator, or assignee of such Practitioner, from commencing any action or suit touching such demand pending such reference; and in case no such application is made within such month as aforesaid, then it shall be lawful for such reference to be made either upon the application of the Practitioner, or the executor, administrator, or assignee of such Practitioner whose bill has been delivered as aforesaid, or upon the application of the party chargeable by such bill, with such directions and subject to such conditions as the Court or Judge thinks proper; and such Court or Judge may restrain such Practitioner, or the executor, administrator, or assignee of such Practitioner, from commencing or prosecuting any action or suit touching such demand pending such reference, upon such terms as shall be thought proper.

Reference of bills, whether relating to business transacted in Court or not, for taxation.

Taxation after One month.

36 No such reference shall be directed upon an application made by the party chargeable with such bill after a verdict has been obtained or a writ of inquiry executed in any action for the recovery of the demand of such Practitioner, or the executor, administrator, or assignee of such Practitioner, or after the expiration of Twelve months after such bill has been delivered as aforesaid, except under special circumstances, to be proved to the satisfaction of the Court or Judge to whom application for such reference is made; and upon every such reference, if either the Practitioner, or the executor, administrator, or assignee of the Practitioner whose bill has been delivered, or the party chargeable with such bill, having due notice, refuses or neglects to attend such taxation, the Taxing Officer may proceed to tax and settle such bill and demand *ex parte*.

Taxation after Twelve months under special circumstances.

37 In case any such reference is made upon the application of the party chargeable with such bill, or of such Practitioner, or the executor, administrator, or assignee of such Practitioner, and the party chargeable with such bill attends upon such taxation, the costs of such reference shall, except as hereinafter provided for, be paid according to the event of such taxation; that is to say, if such bill when taxed is less by a sixth part than the bill delivered, then such Practitioner, or the executor, administrator, or assignee of such Practitioner, shall pay such costs; and if such bill when taxed is not less by a sixth part than the bill delivered, then the party chargeable with such bill making such application or so attending shall pay such costs; and every order to be made for

Payment of costs of taxation.

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such reference shall direct the Taxing Officer to tax the costs of such reference to be so paid as aforesaid, and to certify what (upon such reference) shall be found to be due to or from such Practitioner, or the executor, administrator, or assignee of such Practitioner, in respect of such bill and demand, and of the costs of such reference if payable.

Costs to be estimated by skill and labour, not by length of document.

38 In taxing any bill for preparing any deed, agreement, or other legal document it shall be lawful for the Taxing Officer, and he is hereby required in estimating the proper sum to be charged for such transaction, to consider not the length of such deed, agreement, or other document, but only the skill and labour employed and the responsibility incurred in the preparation thereof, and in the investigation where such shall have taken place of the title to the property conveyed or affected by any such deed, agreement, or document.

Special certificate.

39 The Taxing Officer shall in all cases be at liberty to certify specially any circumstances relating to such bill or taxation, and the Court or Judge may thereupon make such order as such Court or Judge thinks right respecting the payment of the costs of such taxation. Where such reference is made when the same is not authorised to be made except under special circumstances, as hereinbefore provided, then the Court or Judge shall be at liberty to give any special directions relative to the costs of such reference.

Court may order Practitioner to render his bill, and to deliver up deeds, &c.

40 It shall be lawful for the said Court or Judge, in the same case in which they are respectively authorised to refer a bill which has been delivered as aforesaid, to make an order for the delivery by any Practitioner, or the executor, administrator, or assignee of any Practitioner, of such bill as aforesaid, and for the delivery up of deeds, documents, or papers in his possession, custody, or power, or otherwise touching the same.

Evidence of delivery of bill.

41 It shall not in any case be necessary in the first instance for such Practitioner, or the executor, administrator, or assignee of such Practitioner, in proving a compliance with this Act, to prove the contents of the bill he may have delivered, but it shall be sufficient to prove that a bill of fees, charges, or disbursements signed or enclosed in or accompanied by such letter as aforesaid was delivered in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered was not such a bill as constituted a *bonâ fide* compliance with this Act.

Power for Judge to authorise action before expiration of month.

42 It shall be lawful for any Judge of the said Court to authorise a Practitioner to commence an action or suit for the recovery of his fees, charges, or disbursements against the party chargeable therewith, although One month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of such Judge that there is probable cause for believing that such party is about to quit *Tasmania*.

Bills may be taxed upon the application of third parties.

43 Where any person not the party chargeable with any bill within the meaning of the provisions hereinbefore contained, is liable to pay or has paid such bill either to the Practitioner, his executor, administrator, or assignee, or to the party chargeable with such bill as aforesaid, it shall be lawful for such person, his executor, administrator, or assignee, to make such application for a reference for the taxation

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and settlement of such bill as the party chargeable therewith might himself make; and the same reference and order shall be made thereupon, and the same course pursued in all respects, as if such application was made by the party chargeable with such bill as aforesaid. A.D. 1888.

In case such application is made when under the provisions herein contained a reference is not authorised to be made except under special circumstances, it shall be lawful for the Court or Judge to whom such application is made to take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party so chargeable with the said bill as aforesaid if he were the party making the application.

44 It shall be lawful in any case in which a trustee, executor, or administrator has become chargeable with any such bill as aforesaid for a Judge of the said Court, if in his discretion he thinks fit, upon the application of a party interested in the property out of which such trustee, executor, or administrator may have paid or be entitled to pay such bill, to refer the same and such Practitioner's, or executor's, administrator's or assignee's demand thereupon to be taxed and settled by the Taxing Officer of the Court with such directions and subject to such conditions as such Judge thinks fit, who may make such order for the payment of what may be found due, and of the costs of such reference to or by such Practitioner, or the executor, administrator, or assignee of such Practitioner, by or to the party making such application, having regard to the provisions herein contained relative to applications for the like purpose by the party chargeable with such bill, so far as the same shall be applicable to such cases; and in exercising such discretion the said Judge may take into consideration the extent and nature of the interest of the party making the application. Judge may direct taxation of bills chargeable on executors, &c.

Where any money is directed to be paid by such Practitioner, or the executor, administrator, or assignee of such Practitioner, it shall be lawful for such Judge, if he thinks fit, to order the same, or any part thereof, to be paid to such trustee, executor, or administrator so chargeable with such bill instead of being paid to the party making such application; and when the party making such application pays any money to such Practitioner, or the executor, administrator, or assignee of such Practitioner, in respect of such bill, he shall have the same right to be paid by such trustee, executor, or administrator so chargeable with such bill as such Practitioner, or the executor, administrator, or assignee of such Practitioner, had.

45 For the purpose of any such reference upon the application of the person not being the party chargeable within the provisions aforesaid, or of a party interested as aforesaid, it shall be lawful for such Court or Judge to order any such Practitioner, or the executor, administrator, or assignee of any such Practitioner, to deliver to the party making such application a copy of such bill, upon payment of the costs of such copy. Copy of bill to be delivered to person making application for reference for taxation.

46 No bill which has been previously taxed and settled shall be again referred unless, under special circumstances, the Court or Judge to whom application is made thinks fit to direct a re-taxation thereof. No re-taxation.

47 The payment of any such bill as aforesaid shall in no case preclude the Court or Judge to whom application is made from referring Taxation of bill after payment.

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such bill for taxation, if the special circumstances of the case shall, in the opinion of such Court or Judge, appear to require the same, upon such terms and conditions and subject to such directions as to such Court or Judge seems right, provided the application for such reference be made within Twelve calendar months after payment.

Applications for taxing bill of costs how to be made. Certificate of taxation to be final. Judgment may be entered.

48 All applications made hereunder to refer any bill to be taxed and settled, and for the delivery of such bill, and delivering up deeds, documents, and papers, shall be made in the matter of such Attorney; and upon the taxation and settlement of any such bill, the certificate of the Taxing Officer shall (unless set aside or altered by order, decree, or rule of Court) be final and conclusive as to the amount thereof; and it shall be lawful for such Court or Judge to order judgment to be entered up for the amount certified to be due and directed to be paid with costs, unless the retainer shall be disputed, or to make such other order thereon as such Court or Judge deems proper.

Power for Practitioner and client to agree on form and amount of remuneration.

49—(1.) Notwithstanding anything hereinafter contained, it shall be competent for a practitioner to make an agreement with his client, and for a client to make an agreement with a practitioner, for the remuneration of the practitioner, to such amount and in such manner as the practitioner and the client think fit, by a gross sum, and it shall be competent for the practitioner to accept from the client, and for the client to give to the practitioner, remuneration accordingly.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the practitioner and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the practitioner in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on, or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a practitioner; and if, under any order for taxation of costs, such agreement being relied upon by the practitioner shall be objected to by the client as unfair or unreasonable, the Taxing Officer of the Court may enquire into the facts and certify the same to the Court, and if upon such certificate it shall appear to the Court or Judge that just cause has been shown either for cancelling the agreement or for reducing the amount payable under the same, the Court or Judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or Judge may seem fit.

Appropriation of Fees and Stamp Duty.

50 All fees (except as hereinbefore appropriated) payable under this Act, and the Stamp Duty (either under or above the sum of Twenty Shillings) payable upon any Contract or Articles of Clerkship, and any assignment thereof, shall, anything contained in Sections Five and Eleven of "The Stamp Duties Act, 1882," to the contrary notwithstanding, be paid to the Registrar of the Supreme Court, and shall once in every month be paid over by him to, and shall be appropriated to the use of, any Law Society or Law Societies for the time being incorporated under "The *Tasmanian* Law Societies Act, 1887," and if there be more than one Law Society then to and to the use of

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each such Society in proportion to the number of their respective Members as ascertained and determined by the Registrar on the First day of *January* in every year. A.D. 1888.

51 Every person who, not being duly admitted a Practitioner of the said Court, or who, without having obtained a Certificate as in Section Twenty-eight of this Act mentioned, shall, either directly or indirectly, practise or act in *Tasmania* as a Practitioner, shall for every such offence forfeit and pay a penalty or sum of One hundred Pounds, which penalty may be sued for and recovered by action of debt in the Supreme Court by any person who sues for the same; and one moiety of such penalty when recovered shall be to the use of Her Majesty, and the other moiety to the use of the person suing for the same; and upon the trial of any action brought for the recovery of such penalty proof as to the defendant being duly admitted shall lie upon him. Penalty upon person unlawfully acting as Practitioner.

52 Every person not being duly admitted a Practitioner, or not being a certificated Conveyancer, under any Act hereby repealed or any future Act, who shall for fee or reward (given or to be given) prepare or assist in preparing any deed whatsoever, or any will or testament or any instrument in writing purporting to create or convey any estate or interest legal or equitable, either originally or in execution of any power, in any lands, tenements, or hereditaments, or shall otherwise practise the business of a Conveyancer, shall for every such offence forfeit and pay a penalty or sum of Twenty Pounds. Unqualified persons preparing deeds, &c. relating to land liable to penalty.

53 Every offence against the last preceding Section shall be heard and determined in a summary way by and before any two Justices of the Peace in the mode prescribed by *The Magistrates Summary Procedure Act*; and the burden of proof as to his being duly admitted or certificated as aforesaid shall be on the defendant; and any person aggrieved by any conviction under this Act may appeal therefrom in the mode provided by *The Appeals Regulation Act*. Recovery of penalties.

SCHEDULE.

(1.)

ACTS TO BE REPEALED.

Sect. 3.

<i>Date and Number of Act.</i>	<i>Title of Act.</i>
38 Vict. No. 14.	"The Barristers and Attorneys Act, 1874."
39 Vict. No. 7.	"The Barristers and Attorneys Amendment Act, 1875."
46 Vict. No. 39.	"The Barristers and Attorneys Amendment Act, 1882."
51 Vict. No. 24.	"The Barristers and Attorneys Act Amendment Act, 1887."

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(2.)

EXAMINATIONS at British Universities referred to in Section 11 of this Act.

University of Oxford.....	}	Responsions.
		Senior Middle Class Examination.
University of Cambridge	}	Senior Local Examination.
		Previous Examination.
University of Dublin.....	}	Senior Middle Class Examination.
		Senior Local Examination.
University of London.....	}	Senior Freshmen Examination.
		Matriculation Examination.
University of Durham.....	}	Examination of Students in Arts in their First and Second Years.
Queen's University in Ireland		Examination of Students in Arts in their First and Second Years.
University of Sydney.....	}	Examination of Students in Arts in their First and Second Years.
University of Melbourne		Examination of Students in Arts in their First and Second Years.

(3.)

First Part.

		£	s.	d.
Sect. 15 & 16.	Filing Articles of Clerkship	1	1	0
	Filing Assignment of Articles of Clerkship	0	10	6
	With every Notice of Application to be examined in General Literature .	1	1	0
	With every Notice of Application to be examined in Law	1	1	0

Second Part.

Sect. 26.	Enrolment Fee on motion for admission as a Practitioner	15	15	0
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Third Part.

Sect. 26.	Enrolment Fee on motion for admission as a Practitioner without examination in Literature or Law	21	0	0
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Fourth Part.

Sect. 28.	Every Annual Certificate	1	1	0
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(4.)

Sect. 27. I, *A.B.*, do swear [*or solemnly affirm, as the case may be*] that I will truly and honestly demean myself in the practice of a Practitioner of the Supreme Court of *Tasmania*, according to the best of my knowledge and ability.

So help me God.

(5.)

Sect. 28. IN THE SUPREME COURT }
OF TASMANIA. }

I HEREBY certify that _____, Esquire, is on the Roll of the Supreme Court of Tasmania as a Practitioner of the said Court, and is entitled to practise as such until the 31st day of *December* next.

Dated at *Hobart* this _____ day of _____ 188 .

Registrar.