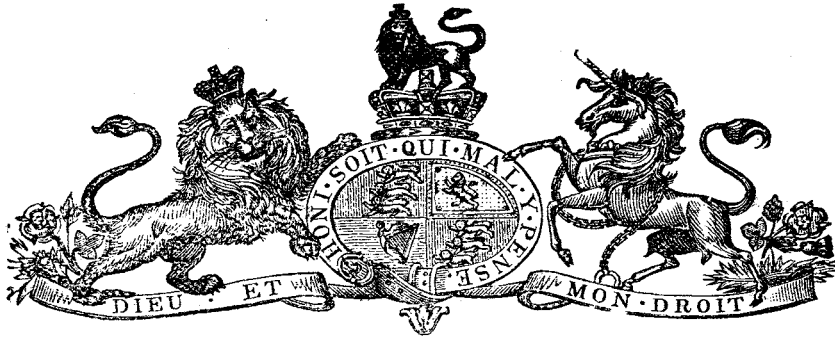


T A S M A N I A .



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A N N O S E X A G E S I M O

V I C T O R I Æ R E G I N Æ ,

N o . 4 3 .

Handwritten signature and date: 13 Nov 1896

AN ACT to consolidate and amend the Law A.D. 1896.
relating to Legal Practitioners.
[13 November, 1896.]

WHEREAS it is expedient and necessary that the Law in force in PREAMBLE.
this Colony relating to Legal Practitioners should be consolidated and
amended :

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, 1896,” Short title and commencement.
and shall come into force on and after the First day of *January*,
1897.

- 2** In this Act—
“Admission” means admission and enrolment as a Practitioner Interpretation.
of the Court :
“Admitted” means the act of being admitted and enrolled in
the said Court :
“Articled” means bound by contract in writing to serve as a
Clerk to a Practitioner :

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- “Articles” and “Articles of Clerkship” mean the contract by which any person is articulated :
- “Court” means the Supreme Court of *Tasmania*, or a Judge thereof sitting in Chambers :
- “Gazette” means *The Hobart Gazette* :
- “Judge” means a Judge of the said Court sitting in Chambers or otherwise :
- “The Judges” mean the Judges of the Supreme Court of *Tasmania*, or any two of such Judges acting together :
- “Law Society” means any Law Society for the time being incorporated under “The *Tasmanian* Law Societies Act, 1887” :
- “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, Attorney, Solicitor, and Proctor, or as a Barrister or Attorney or Solicitor or Proctor of the said Court under any Act hereby repealed or any previous Act :
- “Prescribed” means prescribed by Rules of Court to be made as in this Act provided :
- “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 are hereby repealed, save and except so far as relates to any matters or things done or any rights acquired or contracts entered into at any time before the commencement of this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 and contracts 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.

Where in any Act the several Acts hereby repealed are mentioned or referred to, this Act shall be deemed to be intended.

Division of Act.

4 This Act is divided into Five Parts, as follows :—

Part I.—Board of Examiners. Sects. 5 to 7.

Part II.—Articled Clerks. Sects. 8 to 15.

Part III.—Admission of Practitioners. Sects. 16 to 27.

Part IV.—Costs. Sects. 28 to 47.

Part V.—Miscellaneous. Sects. 48 to 57.

PART I.

BOARD OF EXAMINERS.

Board of Examiners.

5—(1.) For the purpose of conducting such examinations as may be prescribed under this Act, or any Acts hereby repealed, or by any rules made hereunder or thereunder, there shall be a Board to be called “The Board of Examiners,” and such Board 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

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members of the said Board, and the remaining members shall be appointed by the Judges, but at least five members of the Board including the *ex officio* members shall be practitioners. A.D. 1896.

(2.) The Judges may at any time revoke the appointment of any member.

(3.) Any vacancy occurring in the Board by the death, resignation, removal from *Hobart*, or revocation of the appointment of any member may be filled up by the Judges, and notice of every appointment shall be published in the *Gazette*.

(4.) The Attorney-General for the time being shall be the Chairman of such Board.

(5.) In the absence of the Attorney-General the members present at any meeting may elect a Chairman for such meeting.

(6.) Each member, including the Chairman, shall have one vote, and such Chairman shall, in case of an equality of votes, have a casting vote in addition to his ordinary vote; and all questions at any meeting of the Board shall be decided by a majority of the votes of the members present.

(7.) The persons appointed as Examiners under any Act hereby repealed and in office when this Act comes into operation, shall continue in office, and shall be deemed to have been appointed as the Board of Examiners under this Act, and shall be subject to its provisions.

6 The Board of Examiners shall hold such examinations as they may be directed to hold under this Act or any rules made hereunder. Such examinations shall be held at least once in every year; and the Board 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, and the hour and place at which, such examinations shall be held. Board of Examiners to hold examinations, and to notify time and place of examination.

7 Every candidate for admission as a practitioner shall give notice to the Board of Examiners of his intention to present himself for any examination at least Two months immediately preceding the first day appointed for such examination, and shall pay the fee mentioned in the First Part of Schedule (2.) hereto. Candidates to give notice.

PART II.

ARTICLED CLERKS.

8 No person shall be articted to a practitioner unless and until such person has— Conditions for the articling of clerks.

- i. Attained the age of Sixteen years and
- ii. Matriculated in the University of *Tasmania*, or passed the Senior Public Examination of that University in such subjects as may be prescribed, or passed such other examination as may be prescribed as equivalent.

9 No practitioner shall have articted to him more than Two articted clerks at the same time, nor take, have, or retain any articted clerk Restrictions as to articted clerks.

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A.D. 1896. at any time or for any period during which such practitioner 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.

Articles may be assigned.

10 Any articles of clerkship may, by mutual consent of the parties, be assigned to any other practitioner, and any such assignment shall be valid although the same may have been made before the passing of this Act.

If practitioner becomes bankrupt contract may be assigned.

11 If any practitioner to whom any clerk is articulated 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 may direct.

Proviso for death of master, &c.

12 If any practitioner to whom any clerk is articulated dies before the expiration of the term for which such person is so articulated, or discontinues, or ceases to practise in the said Court, or if the articles 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 articles 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 first articles, make up the period which he is required by this Act to serve; and service under such second or other articles in manner herein mentioned shall be deemed and taken to be good and effectual, subject to the provisions of this Act and the rules made hereunder.

Service with agent.

13 Any person articulated to a practitioner for any term herein 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 articulated for any part of the said term not exceeding Two years, either by virtue of any stipulation in such articles 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 articulated with the practitioner to whom he was so articulated.

Contracts or articles of clerkship to be filed in Supreme Court.

14 All 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, together with an affidavit verifying the due execution and true date thereof. There shall be filed with such articles such documentary evidence as the Registrar may require to prove that the person bound by such articles has passed the examination mentioned in the second sub-section of Section Eight of this Act; and the fees mentioned in the First Part of Schedule (2.) in respect thereof shall thereupon be paid by the person filing the same.

Schedule (2.)

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

Legal Practitioners.

15 Every articted clerk shall, during the whole term of service specified in such articles, continue and be actually employed by the practitioner to whom he shall be articted in the proper business, practice, and employment of a practitioner, save as in this Act is mentioned; and every articted clerk shall, before being admitted as a practitioner, prove to the satisfaction of the Court, by affidavit or otherwise, that this Section has been duly complied with.

A.D. 1896.

How clerks to be employed.

Provided, that nothing in this Section contained shall be held to prevent any person articted to serve as aforesaid performing for remuneration, and with the consent of the practitioner to whom he is articted 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.

See 23rd 24th 25th

PART III.

ADMISSION OF PRACTITIONERS.

16 The Court may, subject to such conditions as may be prescribed, admit as a practitioner without any examination:—

Certain persons may be admitted without any examination.

- i. A barrister admitted and entitled to practise in the High Court of Justice in *England* or *Ireland*;
- ii. An advocate or a writer to the signet in *Scotland*;
- iii. A solicitor admitted and entitled to practise in the High Court of Justice in *England* or *Ireland*, or in the Supreme Court of *Scotland*.

17 The Court may, subject to such conditions as may be prescribed, admit as a practitioner, without any examination, any person who has been admitted as a barrister, or as an attorney or solicitor, in any Supreme or superior Court of Law or Equity in those of Her Majesty's Colonies or Dependencies where, in the opinion of the Court—

Admission of barristers and attorneys of colonial Courts.

- i. The system of Jurisprudence is founded on or assimilated to the Common Law and principles of Equity as administered in *England*; and where
- ii. The like service as mentioned in Section Twenty under articles of clerkship to a solicitor or attorney, and the passing of an examination or examinations which is or are substantially equivalent to those prescribed under this Act or by the rules in force hereunder, to test the qualifications of candidates, are or may be required previous to such admission; and where
- iii. Practitioners of *Tasmania* are entitled to be admitted by virtue of their being Practitioners of *Tasmania*.

*W. Aust. Pro
Layette G. Mich
P.*

Provided that no person shall be admitted as a practitioner under this Section unless such person has been articted to an attorney or solicitor in such Colony or Dependency, 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 be articted in this Colony under the provisions of this Act: Provided also, that no person shall be admitted under this Section for any purpose other than that of practising in *Tasmania*.

Legal Practitioners.

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Notice of
intention of
application to be
published.

18 Every person who shall intend to apply for admission as a practitioner under either of the last two preceding Sections of this Act shall cause his name and place of abode, written in legible characters, to be affixed in the Registrar's Office for One month prior to application being made for his admission, and shall also cause notice of his intended application, and of the time at which the same is to be made, to be published twice in one of the public newspapers published in *Hobart*, and twice in one of the public newspapers published in *Launceston* at least One month, and not more than Three months before such application is made, and to be given to the Secretaries of every Law Society in *Tasmania*; and application for admission may be made to the Court during term time, or to any Judge of the Court at any time in the vacation; and such persons as apply in vacation shall be admitted under the order of the Judge: Provided that the Court shall be satisfied that such person is in every respect a person of good fame and character, and fit and proper to be so admitted, and has observed and complied with the provisions of this Act and the Rules made hereunder.

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

19 The Court may admit as Practitioners without being articled—
The Registrar of the Supreme Court :
The Clerk of the Supreme Court :
The Secretary to the Law Department :
The Clerk to the Solicitor-General.

Provided that—

- I. 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; and
- II. Have prior to their application for admission passed one of the examinations mentioned in Sub-section II. of Section Eight, and all the examinations prescribed for persons applying to be admitted under the next succeeding Section; and
- III. Have paid the fees payable by persons applying to be admitted under the next succeeding Section.

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 any Acts hereby repealed, nor shall any such persons be required to pass any examinations except those prescribed by such last mentioned Acts or the Rules made thereunder.

Admission of
articled clerks as
practitioners.

20 The Court may admit as a practitioner any person of the age of Twenty-one years or upwards who—

- I. (a) Has been articled as prescribed by this Act for and during the full term of Five years; or
- (b) If such person shall before applying to be admitted have taken the Degree of Bachelor of Arts in the University of *Tasmania* or in any University recognised by the University of *Tasmania*, and has been articled for and during the full term of Four years; or
- (c) If such person shall before applying to be admitted have taken the Degree of Bachelor of Laws in the University of *Tasmania* or in any University recognised by the

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University of *Tasmania*, and has been articled for and during the full term of Three years ; or A.D. 1896.

(d) If such person shall, before being articled, have taken the Degree of Bachelor of Laws in the University of *Tasmania*, or in any University recognised by the University of *Tasmania*, and has been articled for and during the full period of Two years ; and

- ii. Has passed the prescribed examination or examinations ; and
- iii. Has satisfied the Court that he is in every respect a person of good fame and character, and fit and proper to be so admitted, and has observed and complied with the provisions of this Act and the Rules in force hereunder ; and
- iv. Has advertised notice of his intention to apply for admission in such manner and for such period as may be prescribed ; and
- v. Has paid to the Registrar the fees mentioned in the Second Part of Schedule (2.) hereto.

Provided, that nothing herein contained shall prevent any person who has entered into articles prior to the passing of this Act from being admitted under the provisions of any Act in force at the time when such person entered into articles.

21 Any Law Society or any person having reasonable grounds to object to the admission of any person as a practitioner may appear before the Court and shall be entitled to be heard by counsel with or without witnesses to oppose such admission. Objection to admission.

Provided, that written notice stating the grounds of such objection shall be lodged with the Registrar seven days at least before the day on which the application for admission is made.

22 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 Court 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 articled as aforesaid, to present himself for examination under the provisions of this Act ; and upon passing such examinations and paying to the Registrar the fees prescribed in the Second Part of Schedule (2.), and otherwise complying with the provisions of this Act, excepting as aforesaid, may be admitted as a practitioner. Eligibility of certified conveyancers for admission as practitioners.

23 No person shall be admitted as a practitioner 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, and such contract if entered into shall be void. Registrar, &c. not to practise while in office.

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Oaths to be taken.

24 Every person applying to be admitted under this Act shall before his admission take and subscribe the oath set forth in the Schedule (3.), and the oath of allegiance set forth in "The Promissory Oaths Act, 1869."

Certificate of admission.

25 Every practitioner shall be entitled to obtain from the Registrar a certificate of his admission in such form as may be prescribed.

Registrar to issue Annual Certificate upon application.

26 On application made to him for that purpose by any practitioner whose name shall be on the Rolls of the Court as such respectively, and on payment to him of the fee mentioned in the Fourth Part of Schedule (2.), the Registrar of the Court shall issue an Annual Certificate to him under the seal of the Court in the form or to the like effect contained in the Schedule (4.), and every such certificate shall be in force until the 31st day of *December* next after the issue thereof.

Omission to take out Certificate.

27 Every person who, having been duly admitted as a practitioner, shall for a period exceeding Twelve months cease to obtain an Annual Certificate as in Section Twenty-six of this Act mentioned, and shall thereafter apply for such certificate, shall before being entitled to receive such certificate satisfy the Court as to the circumstances under which he has omitted to commence or has discontinued to practise, and as to his conduct and employment during the term of such omission or discontinuance.

*In the Decreeing
46 W.R. 242.
in making a Solicitor's Bill of Costs being
in respect of business done while the Sol. had no
certificate should be disallowed*

PART IV.

COSTS.

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

28 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 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 by 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.

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

29 Upon the application of the party chargeable by such bill within such month, it shall be lawful for the 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

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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 the 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.

A.D. 1896.

Taxation after
One month.

30 No such reference shall be directed upon an application made by the party chargeable with such bill after a verdict or judgment has been obtained or a writ of enquiry 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.

31 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 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.

Payment of costs
of taxation.

*Journal, Burrell
13/1/2 B. 14
the costs where as
arrangement
Tax in full complete
until allocated
Class. Hargreaves
2/2/1896 689*

32 A legal practitioner may take security from his client for his future fees, charges, and disbursements, to be ascertained by taxation or otherwise.

Security may be
taken for future
costs.

33 Upon every taxation of costs, fees, charges, or disbursements, the Taxing Officer may, subject to any rules hereafter to be prescribed, allow interest at such rate and from such time as he thinks just on moneys disbursed by the legal practitioner for his client, and to the client upon all moneys of the client in the hands of the legal practitioner and improperly retained by him.

Interest may be
allowed on
taxation in respect
of disbursements
and advances.

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Revival of order
for payment of
costs.

34 Whenever any decree or order shall have been made for payment of costs in any suit, and such suit shall afterwards become abated, it shall be lawful for any person interested under such decree or order to revive such suit, and thereupon to prosecute and enforce such decree or order, and so on from time to time as often as such abatement shall happen.

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

35 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.

36 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.

37 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.

38 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.

39 It shall be lawful for any Judge 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 appli-
cation of third
parties.

40 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,

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or assignee, to make such application for a reference for the taxation 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. 1896.

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.

41 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, 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, and it shall be lawful for the Court to make such order accordingly.

42 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.

43 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.

Legal Practitioners.

A.D. 1896.

Taxation of bill
after payment.

44 The payment of any such bill as aforesaid shall in no case preclude the Court or Judge to whom application is made from referring 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 tax-
ation to be final.Judgment may
be entered.

45 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 practitioner; 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.

Practitioner's
costs to be a first
charge on the pro-
perty recovered or
preserved.

46 In every case in which a practitioner shall be employed to prosecute or defend any suit, matter, or proceeding in any Court whatsoever, such practitioner shall be entitled to a first charge upon the property recovered or preserved, and such practitioner shall have a prior right to payment out of the same for the taxed costs, charges, and expenses as between solicitor and client of or in reference to such suit, matter, or proceeding; and the Court before which such suit, matter, or proceeding has been heard or is pending, or a Judge thereof in Chambers, may make *ex parte* such order or orders for taxation of and for raising and paying such costs, charges, and expenses out of the said property as to such Court or Judge shall appear just and proper.

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

47—(1.) 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

+51/2 44
in re *Barber*
to R. p 533
an. refer agreement to
Offic. to ascertain
if fair & reasonable

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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. A.D. 1896.

PART V.

MISCELLANEOUS.

48 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.

- i. 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 :
- ii. To regulate the proceedings and times of meeting of the Board of Examiners :
- iii. To prescribe the nature and mode of the examination or examinations which articled clerks must pass before they are entitled to be admitted :
- iv. To prescribe the books and subjects in which articled clerks shall be examined :
- v. To prescribe the conditions under which articled clerks or candidates may submit themselves for examination :
- vi. To prescribe the conditions under which the passing of any examination held by the University of *Tasmania*, or of any University recognised by the University of *Tasmania*, or of any subject or subjects in such examination, shall be deemed equivalent to the passing of any examination held by the Board of Examiners, or of any subject or subjects in such examination :
- vii. To prescribe the mode in which persons who have passed the examinations prescribed may be admitted :
- viii. For carrying out the objects of this Act in respect to all matters in this Act in connection with which the word "prescribed" occurs in any Section thereof, and 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

49 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, defend, or appear in 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 Court of Requests or Court of Mines 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.

No person to act as a practitioner unless admitted.

Provided that nothing herein contained shall prevent a party from appearing or defending in person as heretofore, nor to prevent any person from addressing the Court by leave under the provisions of Section One hundred and thirty-six of "The Small Debts Act, 1887," or any statutory amendment or modification thereof. 51 Vict. No. 23.

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A.D. 1896.

Penalty upon
person unlawfully
acting as
practitioner.

50 Every person who, contrary to the provisions of the next preceding Section, shall, either directly or indirectly, practise or act in *Tasmania* as a practitioner, and also every person who, not being duly admitted a practitioner, shall represent or hold himself out as or to be a practitioner, or make or claim to make any charge or demand whether as legal costs, expenses, or commissions, which he would only be entitled to make if a practitioner, shall for every such offence forfeit and pay a penalty or sum of not less than Ten Pounds and not more than One hundred Pounds; and upon the trial of any proceeding brought for the recovery of such penalty proof as to the defendant being duly admitted shall lie upon him.

Unqualified persons preparing deeds, &c. relating to realty or personalty liable to penalty.

51 Every person, not being duly admitted a practitioner, or not being a conveyancer duly certificated under this Act or any past or 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 real or personal property, or shall otherwise practice the business of a conveyancer, shall for every such offence forfeit and pay a penalty or sum of not less than Ten Pounds, and not more than One hundred Pounds.

Penalty upon
practitioner
practising without
Annual
Certificate.

52 Every person who, having been duly admitted a practitioner, shall practise or act in *Tasmania* as a practitioner without having obtained an Annual Certificate as in Section Twenty-six of this Act mentioned, shall forfeit and pay a penalty not exceeding Five Pounds for every day during which he shall so practise or act, and shall be incapable of maintaining any action or suit for the recovery of any costs, fees, or disbursements on account of or in relation to any act or proceeding done or taken by him as a practitioner during such time until he shall have taken out such Annual Certificate as aforesaid.

The penalty imposed by this Section shall be substituted for any penalty which may have been incurred by any practitioner for neglecting or failing to obtain his Annual Certificate before the passing of this Act.

Examined candidates to pay fees to Registrar.

53—(1.) Articled clerks who have passed the examination or examinations prescribed shall pay to the Registrar the fees mentioned in the Second Part of Schedule (2.) before any motion shall be made for their admission as practitioners; and such amount as may be necessary of such fees shall be appropriated by the Judges to defraying such expenses as may be incurred in the conduct of the examinations of articled clerks, and the balance, if any, shall be appropriated as mentioned in the next succeeding Section.

(2.) Every person applying to be admitted under this Act without undergoing any examination shall pay to the Registrar the fee mentioned in the Third Part of the Schedule (2.) before any motion shall be made for his admission as a practitioner.

Person or society may appeal to Court, and practitioners may be called upon to answer matters, &c.

54 Any person or society may appear before the Supreme Court, and shall be entitled to be heard by counsel upon an application for an order or rule to compel a practitioner to answer the matters or allegations contained in an affidavit, and may apply to the Court to make absolute any rule *nisi* which may have been granted by the Court in

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the matter of such application, and it shall be lawful for the Court to order the costs, charges, and expenses of such application to be paid by the practitioner against whom any such application is made, or was intended to be made, or by the person or society by or on whose behalf the application is made, or partly by the one and partly by the other of them. A.D. 1896.

55 All fees (except as hereinbefore appropriated) payable under this Act, and all penalties recovered under this Act, and the stamp duty (either under or above the sum of Twenty Shillings) payable upon any 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, 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 each such Society in proportion to the number of their respective members as ascertained and determined by the Registrar on the First day of *February* in the year in which the same become payable. Appropriation of fees and stamp duty.

56 Every person who has been admitted to practise in the Supreme Court as a barrister by virtue of Section Ten of "The Barristers and Attorneys Act, 1874," and Section Thirty-two of "The Legal Practitioners Act, 1888," shall be entitled to practise as a practitioner under this Act, and to have his name placed on the roll of the said Court as such. Persons admitted as barristers entitled to practise as practitioners.

57 All offences against this Act, and all penalties and sums of money imposed or made payable by this Act, shall be heard, determined, and recovered in such mode as may be prescribed by and before a Judge or in a summary way by and before a Police or Stipendiary Magistrate or Warden of a Municipality in the mode prescribed by *The Magistrates Summary Procedure Act*. Recovery of Penalties. 19 Vict. No. 8.

SCHEDULE.

(1.)

ACTS TO BE REPEALED.

Sect. 3.

<i>Date and No. of Act.</i>	<i>Title of Act.</i>
52 Vict. No. 35.	"The Legal Practitioners Act, 1888."
54 Vict. No. 26.	"The Legal Practitioners Act, 1890."
55 Vict. No. 48.	"An Act to further amend 'The Legal Practitioners Act, 1888.'"
59 Vict. No. 28.	"An Act to further amend 'The Legal Practitioners Act, 1888.'"

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A.D. 1896.

(2.)

First Part.

		£	s.	d.
Sect. 14.	Filing Articles of Clerkship.....	1	1	0
	Filing Assignment of Articles of Clerkship.....	0	10	6
Sect. 7.	With every Notice of Application to be examined.....	1	1	0

Second Part.

Sect. 53.	Enrolment Fee on motion for admission of an Articled Clerk as a Practitioner.....	15	15	0
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Third Part.

Sect. 53.	Enrolment Fee on motion for admission as a Practitioner without examination.....	21	0	0
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Fourth Part.

Sect. 26.	Every Annual Certificate.....	1	1	0
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Sect. 24.

(3.)

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.

Sect. 26.

(4.)

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 _____ 189 .

Registrar.