

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ

The Legal Practitioners Act, 1898

(57th Vic., No. 12)

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SCHEDULE

No. 12

An Act to consolidate and amend the Law relating to the Admission of Practitioners in the Supreme Court, and to regulate their Conduct and their Remuneration in certain cases. *[Assented to 4th October, 1893.]*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as 'The Legal Practitioners Act, 1893,' and is divided into six Parts, as follows:—

PART I.—BARRISTERS' BOARD, SS. 4-8.

PART II.—ARTICLED CLERKS, SS. 9-13.

PART III.—ADMISSION OF PRACTITIONERS, SS. 14-19.

Preamble

Short title and division

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PART IV.—SUSPENSION AND STRIKING OFF ROLL, ss. 20–28.

PART V.—SOLICITORS' COSTS, ss. 29–45.

PART VI.—MISCELLANEOUS, ss. 46–53.

Repeal 2. From and after the passing of this Act, the Acts and Ordinances described in the Schedule to this Act shall be repealed to the extent mentioned in the third column of such Schedule.

Interpretation 3. In this Act, unless the context otherwise requires—
 'Practitioner' shall mean a person admitted and entitled to practise as a barrister, solicitor, attorney, and proctor of the Supreme Court of Western Australia, or in any one or more of these capacities.
 'Board' shall mean the Barristers' Board as hereinafter constituted.
 'Rules' shall mean the rules from time to time made and prescribed by the Board.

PART I

BARRISTERS' BOARD

Constitution of Barristers' Board 4. (1) For the purposes of this Act there shall be a board, to be called 'The Barristers' Board,' and such board shall consist of—

- (a) The Attorney General, who shall be *ex officio* chairman of the Board ;
- (b) The Solicitor General, or, if there be no Solicitor General, the Crown Solicitor ;
- (c) Every one of Her Majesty's counsel learned in the Law, residing and practising in the Colony, and not being a Judge of any Court in the said Colony ;
- (d) Five practitioners of at least three years' standing and practice in the Colony, to be nominated in the first instance by the other members of the Board, and hereafter to be annually elected by the practitioners on the roll of the Supreme Court residing and practising in the Colony, at such times and in such manner as prescribed by the rules.

(2) Any four members of the Board shall form a quorum. If any vacancy occurs among the elected members of the Board by death, resignation, or otherwise, or if five practitioners be not elected at any annual election as aforesaid, the Board may nominate one or more practitioners as may be required to complete the Board.

(3) In the absence of the Attorney General, the members present at any meeting may elect a chairman for such meeting. 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.

Board may sue
prosecute, and
defend

5. The board may, in its own name, by its secretary or any person thereunto authorised by the board in writing under the hand of the

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chairman, commence, carry on, prosecute, and defend any action, complaint, information, or proceeding whatsoever, both civil and criminal.

6. (1) The board may from time to time make and prescribe all such rules as to the board may seem meet,—

Power to make rules

- (a) For fixing the time and regulating the annual election of the five practitioners on the board.
- (b) For the examination from time to time of articed clerks and their conduct whilst under articles of clerkship.
- (c) For the admission, qualification, and examination of all candidates for admission as practitioners.
- (d) For regulating the investigation of charges of alleged misconduct of practitioners in connection with the practice of their profession, and for imposing conditions to be observed by applicants for re-admission and regulating such applications.
- (e) For regulating the meetings and proceedings of the board.
- (f) For generally carrying into effect the objects of this Act.

(2) All such rules may be from time to time amended or repealed, and others prescribed in lieu thereof or in addition thereto. And by such rules the board may impose and provide for the recovery of fines and penalties from any person or persons subject thereto, and may from time to time prescribe a scale of fees to be charged for or in respect of proceedings under this Act or the rules.

(3) All rules to be prescribed as aforesaid shall, where the nature of the case may require, state some maximum fine or penalty for any neglect or breach thereof respectively, provided that no such fine or penalty shall exceed Ten pounds.

7. All moneys received by the board under this Act or the rules shall be applied to the purposes of carrying out the provisions hereof and of the rules. Any sum remaining in the hands of the board on the thirtieth day of June in each year, beyond the sum of One hundred pounds, may be applied by the board for the purposes of the Law Library.

Application of moneys received by the board

8. The board shall have power to appoint and pay, and to dismiss, an examiner or examiners and a secretary and such other officers as the board may deem necessary for carrying out this Act and the rules, and all such persons shall hold office subject to the rules.

Board may appoint and pay officers

PART II

ARTICLED CLERKS

9. No person shall be articed to a practitioner unless and until such person has

Conditions for the articing of clerks

- (a) Satisfied the board that he is of good fame and character, and a natural born or naturalised British subject, of the age of sixteen years or upwards;

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(b) Passed to the satisfaction of the board such examination in general knowledge as may be required by the rules, and

(c) Paid to the board the sum of Twelve guineas.

Restrictions as to articulated clerks

10. No person shall be articulated to any practitioner who has not been admitted to the Supreme Court of the Colony for two years at least, nor shall any practitioner have articulated to him more than two articulated clerks at the same time, nor take, have, or retain any articulated clerk after such practitioner has been suspended from practice or struck off the rolls, or has ceased to practise on his own behalf in Western Australia.

Articles may be assigned in certain cases

11. If a practitioner to whom an articulated clerk is articulated shall, before the expiration of the term of such clerk's service, die, become lunatic, be suspended from practice, be struck off the rolls, or cease to practise in Western Australia on his own account, or for any other reason with the consent of the board, the said service may be continued under assignment of articles to, or fresh articles with, any other practitioner qualified to take and have an articulated clerk as aforesaid.

Articles to be under seal and registered

12. All articles of clerkship and every assignment of articles shall be under seal, and shall be registered as required by the rules; and service under any such articles or assignment shall not commence until the same are or is so registered.

Articled clerk not to be engaged in other employment without consent of board

13. No articulated clerk shall, without the written consent of the board, during his term of service under articles, hold any office or engage in any employment other than as *bonâ fide* articulated clerk to the practitioner to whom he is for the time being articulated, or his partner; and every articulated clerk shall, before being admitted as a practitioner, prove to the satisfaction of the board, by affidavit or otherwise, that this section has been duly complied with.

PART III

ADMISSION OF PRACTITIONERS

What persons may be admitted

14. No person shall hereafter be admitted a practitioner unless he is a natural born or naturalised British subject of the full age of twenty-one years, and

(a) Is a barrister admitted and entitled to practise in the High Court of Justice in England or Ireland, or

(b) Is a writer to the Signet in Scotland,

(c) Is a solicitor admitted and entitled to practise in the High Court of Justice in England or Ireland, or in the Supreme Court of Scotland, or

(d) Is a solicitor or attorney admitted and entitled to practise in the Superior Courts of Law in those of Her Majesty's Colonies or Dependencies where, in the opinion of the board,

(i.) The system of jurisprudence is founded on or assimilated to the common law and principles of equity as administered in England, and where

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- (II.) The like service as mentioned in the next subsection under articles of clerkship to a solicitor or attorney and an examination to test the qualification of candidates are or may be required previous to such admission, and where
- (III.) Practitioners of the Supreme Court of Western Australia are entitled to be admitted, or
- (e) Has actually and *bonâ fide* served under articles of clerkship to a practitioner as required by this Act, and has so served for the full term of five years, or in case such person has taken the degree of Bachelor of Law at any University recognised by the board in England or Ireland, or any of the Australian Colonies, including Tasmania and New Zealand, has so served for the full term of three years.
15. No person, however qualified in other respects, shall hereafter be admitted as a practitioner unless and until he has
- (a) For six calendar months immediately preceding his application for admission, resided within the Colony of Western Australia; and
- (b) Satisfied the board, and obtained from them a certificate that he is, in the opinion of the board, 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; and
- (c) Advertised notice of his intention to apply for admission in such manner and for such period as required by the rules; and
- (d) Paid to the board the sum of Thirty guineas; provided that this sub-section shall not apply to any articulated clerk, serving under articles duly executed before the passing of this Act, and registered as prescribed by the rules, nor to any person residing in the Colony at the time of the passing of this Act who has, prior thereto, notified to the board constituted by the Acts hereby repealed or any of them his intention of applying for admission, and is admitted a practitioner within twelve months thereafter.
16. Any person having reasonable grounds to object to the admission of any other person as a practitioner may be heard by himself or counsel, with or without witnesses, to oppose such admission: Provided that written notice, stating the grounds of such objection, shall be lodged in the Supreme Court seven days at least before the day on which the application for admission is made.
17. No person shall be admitted a practitioner except by the full Court.
18. Immediately after his admission every practitioner shall sign the Roll of Practitioners in the custody of the Registrar of the Supreme Court. The said roll shall, during office hours, be open to the inspection of any person without fee or reward, and a certificate as to any matter appearing in or by the said roll, under the hand of the Registrar of the Supreme Court shall be conclusive evidence thereof.

Further qualifications for admission

Objection to admission

Admission by full Court

Practitioners on admission to sign roll

Certificate of Registrar evidence

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Certificate of admission

19. Every practitioner shall be entitled to obtain from the Registrar of the Supreme Court a certificate of his admission, in such form as may be prescribed by the rules.

PART IV

SUSPENSION AND STRIKING OFF ROLL

Complaints against practitioner for misconduct

20. Any person (which term shall, in the remainder of this Act, include any company, partnership, or corporation) feeling aggrieved by reason of the alleged illegal or unprofessional conduct of any practitioner may, whether the matter complained of was committed or suffered before or after the passing of this Act, by himself or agent make complaint thereof in writing to the board.

Board may summon practitioner and investigate conduct

21. The board may summon before it any practitioner whose conduct is complained of, or whose conduct may appear to the board to require investigation, whether the board has received a complaint or not, and may inquire into the matter of such conduct; and the board may also summon the complainant (if any), and any person who, in the opinion of the board, can give evidence or produce documents touching the matter in question, or whom the complainant (if any) or the practitioner may desire to call as a witness.

Chairman may administer oath or affirmation

22. For the purposes of any such inquiry as aforesaid, the chairman of any meeting of the board may administer oaths or affirmations.

Effect of summons

23. Every summons issued by the board and signed by the secretary, or other authorised officer, shall have the same effect as a subpoena *ad test* or *duces tecum*, as the case may be, issued by the Supreme Court for the attendance of a witness for examination or production of documents in a civil action, and the obedience thereto or non-observance thereof shall be enforced and punished by a Judge in Chambers, in the same manner as in case of the disobedience or non-observance of a subpoena issued by the said Court.

Disobedience or non-observance how punishable

Board to report conduct to Court

24. If upon such inquiry the board shall be of opinion that the practitioner is guilty of any such conduct as aforesaid, it shall make and transmit a report thereon to the full Court, together with a copy of the evidence taken on the inquiry.

Report of board conclusive

Court to punish

25. If the board make a report as aforesaid to the full Court, such report shall be conclusive as to all facts and findings therein mentioned or contained. And the Court may, upon motion and upon reading such report, and without any further evidence, fine, suspend from practice, or strike off the roll such practitioner, and make such order as to the payment of costs by him as the Court may think fit.

Dismissal of complaint, costs and recovery thereof

26. If the board dismiss a complaint it may order the person making the same (if any) to pay to the practitioner whose conduct is impugned, the costs of and incidental thereto, to be taxed by the Master of the Supreme Court, for which costs the Master shall give his allocatur, and such order may be enforced and such costs recovered by execution or otherwise in the same manner as if the Master's allocatur were a judgment of the Supreme Court for the payment of a liquidated sum of the amount at which such costs are so taxed and allowed.

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27. Any order made by the Court under this Act for the payment of money, costs or otherwise, may be enforced by execution or attachment in the ordinary way, and on the non-payment, non-performance or non-observance thereof, by imprisonment as and for contempt of Court until the said order is fully observed and performed, notwithstanding the bankruptcy or insolvency of the practitioner.

Order of Court
how enforced

28. A practitioner struck off the roll or suspended from practice by order of the full Court shall not be entitled to practise within the meaning of this Act until he has been re-admitted, or until the period of his suspension has elapsed, as the case may be. Every application for re-admission shall be made to the full Court, provided that the Court shall have no jurisdiction to hear such application without the production of a certificate from the board that the rules relating to re-admissions have been complied with.

Deprivation of
practice in
certain cases

PART V

SOLICITORS' COSTS

29. A practitioner may make a written agreement with his client respecting the amount and manner of payment for the whole or any part or parts of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such practitioner, either by a gross sum or otherwise howsoever. Such an agreement shall exclude any future claim of the practitioner in respect of any services, fees, charges, or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such as are excepted by the agreement: Provided always, that the client who has entered into such agreement shall not be entitled to recover from any other person, under any order, judgment, or agreement for the payment of costs, any costs which are the subject of such first-mentioned written agreement beyond the amount payable by the client to the said practitioner under the same. And provided, also, that no such agreement shall exempt the practitioner from liability for negligence. Any such agreement may be reviewed by the Supreme Court or a Judge thereof upon application by petition or summons, and if in the opinion of the Court or Judge the same is unreasonable the amount payable may be reduced or the agreement cancelled and the costs taxed in the ordinary way, and the Court or Judge may also make such order as to the costs of and relating to such review, and the proceedings thereon, as to the said Court or Judge may seem fit.

Agreements as
to costs

30. Nothing in the last section contained shall prejudice or affect the Law Officers of the Crown or a practitioner acting for any person, corporation, or company on a fixed annual salary.

Saving in certain
cases

31. If after any such agreement as aforesaid and before the full performance thereof, the practitioner shall die, become incapable to act (unless such incapacity is caused by the practitioner being struck off the roll, or suspended from practice), or cease to practise in Western Australia, or the client shall die or change his solicitor, the agreement shall cease and be void, and the practitioner, or his executors, administrators, or assigns, shall be entitled to charge such

Avoidance of
agreement in
certain cases

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client, or his executors or administrators, for all services, fees, charges, or disbursements then performed, paid, or incurred, and such costs may be taxed and shall be dealt with as if such agreement had never been made.

Security for costs

32. A practitioner may take security from his client or any other person for his future services, fees, charges, or disbursements.

Act not to validate purchase of client's interest, nor agreement for payment only in event of success

33. Nothing in this Act contained shall be construed to give validity to any purchase by a practitioner of the interest or any part of the interest of his client in any suit, action, or other contentious proceeding to be brought or maintained, or to any agreement by a practitioner for payment only in the event of success in any suit, action, or other contentious proceeding.

Judges of Supreme Court and the board may make general order as to costs in certain classes of business

34. (1) The Judges of the Supreme Court and the board may from time to time make any such general order as to a majority of them seems fit for prescribing and regulating the maximum remuneration of practitioners in respect of any business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing and other business not being business in any action, suit, or proceeding or transacted in any Court and not being otherwise contentious business, and may revoke or alter any such order.

(2) No general order as aforesaid shall take effect unless and until it has been published in the 'Government Gazette' for one calendar month.

(3) As long as any general order as aforesaid is in operation, the taxation of bills of costs of practitioners, as between solicitor and client or party and party, shall be regulated thereby.

Signed bill of costs to be delivered before suit

35. No practitioner nor any executor, administrator, or assignee of any practitioner shall sue for the recovery of any services, fee, charges, or disbursements until a bill of the same, signed by such practitioner or executor, administrator, or assignee shall have been delivered to the party charged therewith, or his executors or administrators, or left at or sent by post addressed to him or them at his or their last known place of business or residence in Western Australia.

Party charged may give notice of intention to tax, and of items objected to

36. Except in cases where there is a written agreement as to costs, as hereinbefore provided, any person charged with or liable to pay a bill of costs as aforesaid, or his executors or administrators, may within one month from the delivery, leaving, or sending thereof as last aforesaid have the same taxed by the taxing master of the Supreme Court upon first giving to the practitioner, his executors or administrators or assignee, or leaving at or posting, addressed to his or their last known place of business or residence, a written notice of his or their intention to have the same taxed, and setting forth the item or items and amounts objected to.

If objections not allowed or amended bill delivered, party charged may

37. If within fourteen days after the giving or leaving or posting of such notice as aforesaid the practitioner, or his executors, administrators, or assignee, as the case may be, shall not admit and allow the said objections the person charged or liable to pay as aforesaid, or his executors or administrators, may, upon payment to the practitioner, his executors, administrators or assignee, of the admitted balance, obtain from the taxing master *ex parte* an appointment to tax the

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disputed items in said bill of costs. Provided that within the fourteen days aforesaid the practitioner, his executors, administrators, or assignee, may deliver an amended bill of costs, and in such case such amended bill shall be treated as and be in lieu of the original and be subject to all the provisions as to taxation herein contained, except this proviso.

38. Upon obtaining an appointment to tax as last aforesaid, two days' written notice thereof at least shall be left with or given or posted to the practitioner, his executors, administrators, or assignee, in manner aforesaid, and the taxing master shall proceed to tax the said bill. In the absence of the practitioner, his executors, administrators, or assignee, the taxing master may proceed to such taxation *ex parte* upon proof satisfactory of the due service as aforesaid of the notice of such appointment. Taxation

39. The costs of and incidental to such taxation shall be taxed and ascertained by the said taxing master, and shall be paid and borne as follows:—If one-sixth in amount of the items objected are disallowed, the practitioner, his executors, administrators, or assignee shall pay the costs, but in every other case the same shall be paid by the party requiring taxation, his executors or administrators. Costs of taxation

40. The master shall certify in writing the amount at which he allows the said bill of costs and the costs of and incidental to such taxation, and such certificate or certificates shall be binding and conclusive on both parties, and shall bear interest, and may be enforced by either party against the person liable to pay in the same manner in every respect by execution, attachment, or otherwise, as if it were a judgment of the Supreme Court for the payment of the amount therein mentioned. Master's
aliquot;
interest; amount
how recovered

41. Such taxation may be reviewed before a Judge in Chambers as provided and allowed by the rules of the Supreme Court for the time being in cases of taxations under those rules, and the order or orders so made shall be enforceable in the same manner as the certificate of the master under the last preceding section. Review of
taxation

42. Notwithstanding the expiration of one month as aforesaid, taxation of any bill of costs may, under special circumstances, upon a summons be ordered by a Judge in Chambers at any time before the expiration of three months after the delivery, posting, or leaving of such bill of costs as aforesaid. Judge may order
taxation under
special circum-
stances

43. In every case in which a practitioner shall be employed to prosecute or defend any suit, matter, or proceeding in any Court of Justice 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. Practitioner's
costs to be a first
charge on the
property
recovered or
preserved

44. In every case in which a practitioner acts as town agent, he Charging order

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Town agent
entitled to prior
charge

shall be entitled to apply on summons and obtain a charging order for his costs and expenses, in priority to the costs and expenses of the practitioner on whose behalf he acts as agent.

Practitioner may
charge interest
on moneys
disbursed

45. A practitioner shall be entitled to charge interest on all moneys disbursed by him in connection with litigious or other business, at the rate from time to time allowed on judgment debts.

PART VI

MISCELLANEOUS

Only practi-
tioners to act in
all legal pro-
ceedings in
Court

46. No person other than a practitioner shall in the name of himself or of any other person directly or indirectly sue out any writ or process, nor commence, carry on, solicit, defend, or appear in any action, suit, or other proceedings in any Court whatever of civil or criminal jurisdiction in Western Australia, nor act as a barrister, solicitor, attorney, or proctor of the Supreme Court of Western Australia in any cause, matter or suit, information or complaint, civil or criminal, wheresoever and before whomsoever the same is to be heard, tried, or determined, or under any commission for the examination within the Colony of witnesses, or others issued by any Court in or out of Western Australia: 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 thirty of 'The Small Debts Ordinance, 1863.'

Exception of
parties in
person

Only practi-
tioners to engage
in legal business

47. No person other than a practitioner shall directly or indirectly perform or carry out or be engaged in any work in connection with the administration of law, or draw or prepare any deed, instrument, or writing relating to or in any manner dealing with or affecting real or personal estate or any interest therein or any proceedings at law, civil or criminal, or in equity: Provided that nothing herein contained shall be construed to affect public officers acting in discharge of their official duty, or the paid or articled clerks of practitioners, or any person drawing or preparing any transfer under 'The Transfer of Land Act, 1893.'

Exception of
public officers

No liability in
certain cases

48. Nothing in the last preceding section contained shall extend to make any person liable to any penalty if such person satisfies the Court, Judge, or Justice, as the case may be, that he has not directly or indirectly been paid or remunerated or promised or expected pay or remuneration for the work or services so done.

Prohibition of
certain acts by
practitioner

49. No practitioner shall—

- (1) Act as agent for any person not being a duly qualified practitioner in or concerning any matter which it is herein provided shall be done for profit by a duly qualified practitioner only; or
- (2) Permit or suffer his name or the name of his firm to be made use of, in any manner whatever, in or concerning any such matter upon the account of any person other than a practitioner: or

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- (3) Do or permit or suffer to be done any act which enables or tends to enable such person to appear, act, or practise in any respect as a practitioner in any matter or proceeding, civil or criminal, before any Court; or
- (4) Share with any person other than a practitioner, or his executors or administrators, the whole or any part of the costs arising from or in connection with any act, matter, or thing which it is herein provided shall be done for profit by a practitioner only; or
- (5) Use the name of any person other than a practitioner or a deceased or retired partner in conjunction with his own, or hold himself forth as practising with any person other than a practitioner; or
- (6) In any manner employ or engage or permit or suffer to be employed or engaged in or about his office or affairs any person who has been or shall hereafter be struck off the roll of the Supreme Court or suspended from practice, until such person is re-admitted or such suspension is removed.

50. No person other than a practitioner shall in any manner hold himself out as or pretend to be or make or use any words or any name, title, addition or description implying or tending to the belief that he is a practitioner or is recognised by law as such.

No unqualified person to hold himself out as a practitioner

51. Every person who acts contrary to the terms of this Act, or any section or part thereof, or to any rule shall be guilty of a contempt of the Supreme Court, and may be punished accordingly by the said Court or a Judge thereof in Chambers on the motion of the board, and shall, whether any such motion has been made or not, on conviction forfeit and pay for every such offence the sum of Twenty pounds, or such less sum (if any) as mentioned in the rules.

Offences against this Act or the rules, how punishable

52. Except where otherwise expressly provided to the contrary by this Act or the rules, all offences, penalties, fines or fees under this Act or the said rules, and all orders for the payment of money or otherwise may be tried and determined, enforced, and recovered summarily before any two or more Justices of the Peace in Petty Sessions.

Prosecution of offences and recovery of penalties

53. Sections A, E, F, G, and H of 'The Shortening Ordinance, 1853,' shall be incorporated with and taken to form part of this Act to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

Shortening Ordinance

W. C. F. ROBINSON,
GOVERNOR.

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THE SCHEDULE REFERRED TO

Ordinance or Act	Title	Part Repealed
24 Vic., No. 15 .	'The Supreme Court Ordinance, 1861'	Section 16, and so much of section 31 as relates to the power of the Chief Justice to make rules and orders as to the fees and costs of practitioners
29 Vic., No. 9 .	An Ordinance to regulate the admission of Attorneys and Solicitors	The whole
45 Vic., No. 1 .	An Act to regulate the admission in certain cases of Barristers, etc.	The whole
50 Vic., No. 31 .	An Act to amend the Law regulating the admission of Barristers, etc.	The whole
53 Vic., No. 6 .	'The Barristers Board Act, 1889'	The whole