

## No. XXXIII.

### An Act to regulate the taxation of Attorneys' Bills of Costs and the practice of Conveyancing. [2nd October, 1847.]

ATTORNEYS' BILLS  
AND CONVEYANCING.

**W**HEREAS it is expedient that attorneys' bills of costs whether Preamble.  
for law equity criminal conveyancing or other business transacted by them as such attorneys should be liable to be taxed and that the practice of conveyancing should be regulated Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act no attorney nor any executor administrator or assignee of any attorney or the trustee of his estate shall commence or maintain any action or suit for the recovery of any fees charges or disbursements for any business done by such attorney until the expiration of one month after such attorney or executor administrator or assignee of such attorney shall have delivered unto the party to be charged therewith or sent by the post to or left for him at his counting-house office of business dwelling-house or last known place of abode a bill of such fees charges and disbursements and which bill shall be subscribed by such attorney in his proper handwriting (or in the case of partnership by any of the partners either with his own name or with the name and style of such partnership) or by the executor administrator or assignee of such attorney or the trustee of his estate and upon the application of the party chargeable by such bill within such month an appointment for taxation of the same may be obtained as of course and without order of a Judge from the Master in Equity in case the whole of the business contained in such bill shall have been transacted in the Supreme Court in its equitable Attorneys not to commence an action for fees until one month after delivery of bill of costs.  
Taxation of bills whether relating to business transacted in Court or not.  
jurisdiction

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jurisdiction or in any matter of lunacy or shall relate to conveyancing business from the Chief Commissioner of Insolvent Estates in case of the whole of such business contained in such bill shall have been transacted in the Supreme Court in its insolvency jurisdiction and from the Prothonotary of the Supreme Court in every other case including criminal business and though the business or part of the business contained in such bill shall not have been transacted in the Supreme Court and thereupon such bill and the demand of such attorney executor administrator or assignee shall be taxed and settled by such officer without any money being brought into Court and the Supreme Court or a Judge thereof shall restrain such attorney or executor administrator or assignee of such attorney or the trustee of his estate from commencing any action or suit touching such demand pending such taxation and the costs of such taxation shall as hereinafter provided be paid according to the event of such taxation.

Taxation after one month.

2. And be it enacted That in case no such application as aforesaid shall be made within such month as aforesaid then it shall be lawful for the Supreme Court or a Judge thereof either upon the application of the attorney or the executor administrator or assignee of the attorney or the trustee of his estate whose bill may have been so delivered sent or left 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 making such reference shall think proper to refer such bill and the demand of such attorney or executor administrator or assignee of such attorney or the trustee of his estate thereupon to be settled and taxed by such officer of the Court as aforesaid and in case any such reference as aforesaid shall be made on the application of the party chargeable by such bill then without any money being brought into Court and such Court or Judge may restrain such attorney or the executor administrator or assignee of such attorney or the trustee of his estate from commencing or prosecuting any action or suit touching such demand pending such reference upon such terms as shall be thought fit Provided always that no such reference as aforesaid shall be directed upon an application made by the party chargeable with such bill after a verdict shall have been obtained judgment signed or a writ of inquiry executed in any action for the recovery of the demand of such attorney or executor administrator or assignee of such attorney or the trustee of his estate or after the expiration of twelve months after such bill shall have been delivered sent or left as aforesaid except under special circumstances to be proved to the satisfaction of the Supreme Court or a Judge thereof to whom the application for such reference shall be made.

Taxation after twelve months under special circumstances.

Payment of costs of taxation.

3. And be it enacted That upon every such appointment or reference if either the attorney or executor administrator or assignee of the attorney or trustee of his estate whose bill shall have been delivered sent or left or the party chargeable with such bill having due notice shall refuse or neglect to attend such taxation the officer to whom such appointment or reference shall be made may proceed to tax and settle such bill and demand *ex parte* and in case any appointment or reference as aforesaid shall be obtained or made upon the application of the party chargeable with such bill or upon the application of such attorney or the executor administrator or assignee of such attorney or trustee of his estate and the party chargeable with such bill shall attend upon such taxation the costs of such appointment or reference shall except as hereinafter provided for be paid for according to the event of such taxation that is to say if such bill when taxed be less by a sixth part than the bill delivered sent or left then such attorney or executor administrator or assignee of such attorney or trustee

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trustee of his estate shall pay such costs and if such bill when taxed shall not be less by a sixth part than the bill delivered sent or left then the party chargeable with such bill making such application or so attending shall pay such costs and every order to be made for obtaining such appointment or such reference as aforesaid shall direct the officer to whom such reference shall be made to tax such costs of such appointment or reference to be so paid as aforesaid and to certify what upon such taxation shall be found to be due to or from such attorney or executor administrator or assignee of such attorney or trustee of his estate in respect of such bill or demand and of the costs of such appointment or reference (if payable) Provided always that such officer shall in all cases be at liberty to certify specially any circumstances relating to such bill or taxation and the Court or Judge shall in all cases be at liberty to make thereupon such order as such Court or Judge may think right respecting the payment of the costs of such taxation Provided also that where such reference as aforesaid shall be made as hereinbefore provided then the said Court or Judge shall be at liberty if it shall be thought fit to give any special directions relative to the costs of such reference And provided further that it shall be lawful for the said Court or Judge in any case to make such order for the delivery by any attorney or the executor administrator or assignee of any attorney or trustee of his estate of such bill as aforesaid and for the delivery up of deeds documents or papers in his custody possession or power or otherwise touching the same in the same manner as has heretofore been done as regards such attorney by such Court or Judge where any such business had been transacted in the Court.

Court may order attorney to deliver his bill and to deliver up deeds &c.

4. And be it enacted That it shall not in any case be necessary in the first instance for such attorney or the executor administrator or assignee of such attorney or trustee of his estate in proving a compliance with this Act to prove the contents of the bill he may have delivered sent or left but it shall be sufficient to prove that a bill of fees charges or disbursements subscribed in the manner aforesaid was delivered sent or left in manner aforesaid but nevertheless it shall be competent for the other party to shew that the bill so delivered sent or left was not such a bill as constituted a *bonâ fide* compliance with this Act Provided always that it shall be lawful for any Judge of the Supreme Court to authorize an attorney to commence an action or suit for the recovery of his fees charges or disbursements against the party chargeable therewith although one month shall not have expired from the delivery of a bill as aforesaid on proof to the satisfaction of the said Judge that there is probable cause for believing that such party is about to quit the said Colony.

Evidence of delivery of bill.

Power in Judge to authorize action before one month.

5. And be it enacted That in taxing any bill for preparing or drawing any deed contract case or other 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 the skill and labor properly employed and the expense and responsibility incurred in the preparation thereof.

Costs allowed according to skill and responsibility.

6. And be it enacted That where any person not the party chargeable with any such bill within the meaning of the provisions hereinbefore contained shall be liable to pay or shall have paid such bill either to the attorney his executor administrator or assignee or the trustee of his estate or to the party chargeable with such bill as aforesaid it shall be lawful for such person his executor administrator or assignee or the trustee of his estate 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

Bills may be taxed upon the application of third parties.

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respects as if such application was made by the party so chargeable with such bill as aforesaid. Provided always that in case such application is made when under the provision herein contained a reference is not authorized to be made except under special circumstances it shall be lawful for the Court or Judge to whom such application shall be 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 was the party making the application.

A Judge may direct taxation of bills chargeable on executors &c. upon application of a party interested.

7. And be it enacted That 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 Supreme Court if in his discretion he shall think 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 attorney's or executor's administrator's or assignee's demand or the demand of the trustee of his estate thereupon to be taxed and settled by the proper officer aforesaid with such directions and subject to such conditions as such Judge shall think fit for the payment of what may be found due and of the costs of such reference to or by such attorney or the executor administrator or assignee of such attorney or the trustee of his estate by or to the party making the 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 as aforesaid the said Judge may take into consideration the extent and nature of the interest of the party making such application. Provided always that where any money shall be so directed to be paid by such attorney or the executor administrator or assignee of such attorney or the trustee of his estate it shall be lawful for such Judge if he shall think 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 shall pay any money to such attorney or executor administrator or assignee of such attorney or the trustee of his estate 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 attorney or executor administrator or assignee of such attorney or the trustee of his estate had.

Delivery of bill to third parties.

8. And be it enacted That for the purpose of any such reference upon the application of the person not being the party chargeable within the meaning of the provisions of this Act as aforesaid or of a party interested as aforesaid it shall be lawful for the Supreme Court or a Judge thereof to order any such attorney or the executor administrator or assignee of any such attorney or the trustee of his estate to deliver to the party making such application a copy of such bill upon payment of the costs of such copy.

No re-taxation unless under special circumstances.

9. And be it enacted That no bill which shall have been previously taxed and settled either under an appointment or order of reference shall be again referred unless under special circumstances the Court or Judge to whom such application is made shall think fit to direct a re-taxation. Provided nevertheless that where a bill of costs shall have been taxed an order for review of the taxation may be made after rule or summons to shew cause by the Supreme Court or a Judge thereof and it shall be lawful for such Court or Judge in case they or he shall think fit thereupon to direct the proper officer aforesaid to review and correct such taxation instanter and whether the order applied for be granted or refused the costs of the application shall be in all cases in the discretion of the Court or Judge.

Taxation may be reviewed.

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10. And be it enacted That the payment of any such bill as aforesaid shall in no case preclude the Court or Judge 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 shall seem right Provided always that the application for such reference be made within twelve calendar months after payment.

Taxation of bill after payment.

11. And be it enacted That in all cases in which such bill shall have been referred to be taxed and settled by the Prothonotary of the Supreme Court such officer shall be at liberty to request the Chief Commissioner of Insolvent Estates or Master in Equity to assist him in taxing and settling any bill or any part of such bill and such officer so requested shall thereupon proceed to tax and settle the same and shall have the same powers in respect thereof as upon a reference to him and shall return the same with his opinion thereon to the Prothonotary.

Power of taxing officer to request other officer of Court to tax portions of bill.

12. And be it enacted That all applications made under this Act to refer any such bill as aforesaid to be taxed and settled and for the delivery of such bill and for the delivery up of deeds documents and papers shall be made in the matter of such attorney and that upon the taxation or re-taxation and settlement of any such bill the certificate of the officer by whom such bill shall have been taxed shall (unless set aside or altered by order decree or rule of Court) be final and conclusive as to the amount thereof and payment of the amount certified to be due and directed to be paid may be enforced according to the course and practice of the Supreme Court and it shall be lawful for such Court or a Judge thereof to order judgment to be entered up for such amount with costs unless the retainer shall be disputed or to make such other order thereon as such Judge shall deem proper.

Application for taxing bill of costs how to be made.

Certificate of taxation to be final.

Judgment may be entered up.

13. And be it enacted That from and after the first day of January next every person who shall for or in expectation of any fee gain or reward directly or indirectly draw or prepare any conveyance or other deed or instrument in writing relating to any real estate or any proceedings in Law or Equity (other than and except Barristers or Attorneys and Solicitors of the Supreme Court or Certificated Conveyancers as hereinafter mentioned and other than and except persons solely employed to engross any deed instrument or other proceeding not drawn or prepared by themselves and for their own account respectively and other than and except Public Officers drawing or preparing official instruments applicable to their respective offices and in the course of their duty) shall be deemed guilty of a contempt of the Supreme Court and shall and may be punished accordingly for every such offence upon the application of any person complaining thereof or shall for every such offence forfeit and pay the sum of twenty pounds to be sued for and recovered in a summary way before any two or more Justices of the Peace and in accordance with the provisions of an Act passed in the fifth year of His late Majesty King William the Fourth intituled "*An Act to regulate summary proceedings before Justices of the Peace.*"

Certain persons only to draw conveyances.

5 Wil. IV. No. 22.

14. And be it enacted That every person except a Barrister or Attorney and Solicitor of the Supreme Court who shall be desirous of practising as a conveyancer shall one month at least before making application as hereinafter mentioned give notice in such manner and form as the Judges of the Supreme Court shall direct of his intention to apply to the said Court for a certificate to practise as a conveyancer and any person having given such notice as aforesaid shall be at liberty to apply to the said Court touching his fitness to practise as a conveyancer and thereupon the Judges or one of them shall direct that the applicant shall be examined at the earliest convenient time by the Master in

Certificated conveyancers.

Notice.

Examination for certificated.

Equity

*Punishments in lieu of Transportation.*

Equity of the said Court (or such other one or two officers of the Court as the Judges may appoint to assist him) touching his the applicant's skill and knowledge in conveyancing as well as to his character for integrity and the said Master or his assistants shall be at liberty to put such questions to such applicant in respect to the matters aforesaid and to require such proof of his character as shall be deemed proper and if the said applicant shall be considered of competent ability and knowledge and a fit and proper person to practise as a conveyancer then the said Master shall and he is hereby empowered to grant a certificate to such applicant authorizing him to draw fill up and prepare any conveyance will deed bond lease or agreement for a lease or other contract whatsoever of or relating to any estate or property whether real or personal and every such certificate shall be enrolled in the office of the Registrar of the Supreme Court whereupon such applicant shall be deemed a certificated conveyancer and entitled to practise as such with power of appeal to the Court in case of refusal of such certificate by the Master as aforesaid.

Interpretation  
clause.

Port Phillip.

15. And be it enacted That for all the purposes of this Act the words "Supreme Court" "Court" "Judge" shall be construed to mean the Supreme Court holden at Sydney by and before the Judges of the said Court or a Judge thereof and at Port Phillip the Supreme Court holden at Melbourne by and before the Resident Judges there or the Resident Judge there the words "Master in Equity" shall be construed to extend and apply to the officer performing the duties of Master in Equity at Port Phillip or such other person as the Resident Judge there shall appoint for that purpose the words "Chief Commissioner of Insolvent Estates" shall be construed to extend and apply to the Commissioner of Insolvent Estates for the District of Port Phillip the words "Prothonotary or such other person as the Judges shall appoint" shall be construed to mean and apply to the Prothonotary of the Supreme Court holden at Port Phillip or such other person as the Resident Judge there shall appoint for that purpose and the word "Attorney" shall be taken to mean as well Attorney as Solicitor and Proctor the word "month" shall be taken to mean a calendar month and every word importing the singular number only shall extend and be applied to several persons matters or things as well as one person matter or thing and every word importing the masculine gender only shall extend and be applied to a female as well as a male and the word "party" or "person" shall include any body politic or corporate as well as an individual unless in any of the cases aforesaid there be something in the subject or context repugnant to such construction.

Number.

Gender.