

LAW PRACTITIONERS BILL, 1931.

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3	10

a Omitted as spent. b Repeal, omitted as spent.

1920, No. 80.

Section repealed.		Clause of Bill.
1	..	Short Title
2 <i>a</i>
3 <i>b</i>

1921, No. 8.

Section repealed.		Clause of Bill.
1	..	Short Title
2 12 (3)

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1930, No. 37.

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c First Schedule.

Hon. Sir Thomas Sidey.

LAW PRACTITIONERS.

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A BILL INTITULED

Title. AN ACT to consolidate and amend certain Enactments of the General Assembly relating to Law Practitioners.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :— 5

Short Title.

1. (1) This Act may be cited as the Law Practitioners Act, 1931.

Commencement.

(2) Except as provided in section *thirty-eight*, this Act shall come into force on the *first* day of *January*, nineteen hundred and *thirty-two*.

Act divided into Parts.

(3) This Act is divided into Parts, as follows :—

1908, No. 100, s. 1 (1), (3).

PART I.—Qualification, Examination, Admission, and Powers 10
of Barristers and Solicitors. (Sections 3 to 50.)

PART II.—Law Societies. (Sections 51 to 70.)

PART III.—Solicitors' Fidelity Guarantee Fund. (Sections 71 to 93.)

PART IV.—General. (Section 94.)

- 5 2. In this Act, if not inconsistent with the context,—
 - “Candidate” means any person, male or female, applying to be admitted as a barrister or a solicitor of the Court: Interpretation. 1908, No. 100, s. 2
 - “Court” means the Supreme Court:
 - “District” means the district of a District Law Society:
 - 10 “District Law Society” means a District Law Society constituted under this Act:
 - “Judge” means a Judge of the Supreme Court:
 - “Practitioner” means a barrister or solicitor of the Court:
 - 15 “Proposed district” means a district for which it is proposed to constitute a District Law Society under this Act:
 - “Registrar” means a Registrar of the Court:
 - “Roll” means any book, parchment, or paper on which the Registrar of the Court inscribes the names of persons admitted as barristers or solicitors of the Court.

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PART I.

QUALIFICATION, EXAMINATION, ADMISSION, AND POWERS OF BARRISTERS AND SOLICITORS.

BARRISTERS.

Qualification and Examination.

- 25 3. Every Registrar shall keep in his office a roll on which shall be inscribed the name of every person admitted as a barrister of the Court. Registrar to keep roll of barristers. Ibid., s. 3
- 4. (1) Subject to the provisions of section *five* hereof, every person, male or female, of the age of twenty-one years or upwards coming
 - 30 within any of the descriptions specified in the *next succeeding* subsection shall be qualified to be admitted and enrolled as a barrister of the Court. Qualifications of barristers. Ibid., ss. 4, 5 1930, No. 37, s. 3 (2)
 - (2) The descriptions referred to in the *last preceding* subsection are—
- 35 (a) Any person who has passed the prescribed examination in general knowledge and in law:
- (b) Any person who is a solicitor of the Court and has passed such additional examination as may be prescribed in general knowledge and in law:
- 40 (c) Any person who is admitted as a barrister in any superior or Supreme Court of any part of the British dominions other than New Zealand, and who has passed the prescribed examination in the law of New Zealand in so far as it differs from the law of England:
- 45 Provided that he shall not be required to pass any such examination if he has been in practice as a barrister in any part of the United Kingdom for not less than three years:

(d) Any person who has taken a degree in arts, science, or law in any university in any part of the British dominions other than New Zealand, and who has passed the prescribed examination in law :

Provided that if he has taken the degree of Bachelor of Laws in any such university, then he shall be required to pass only an examination in the law of New Zealand in so far as it differs from the law of England, and in the practice of law :

1908, No. 100, s. 5

(e) Any person who is a solicitor of the Court and for at least five years continuously next preceding the date of application has been in active practice as such solicitor or as managing clerk to a solicitor of the Court, and has himself been a solicitor of the Court during such period.

Interpretation.

(3) In the *last preceding* subsection the term "prescribed" means prescribed by the Senate of the University of New Zealand; and in paragraph (c) of that subsection the term "barrister" includes any advocate who is duly authorized to exercise the like functions as barristers in England are authorized to exercise.

University to examine candidates for admission as barristers.

1930, No. 37, s. 2

5. (1) The examination of candidates for admission as barristers of the Court shall be conducted by the University of New Zealand.

(2) The Senate of the University shall prescribe the nature and conditions of such examinations, and the educational and practical qualifications of candidates, and may also prescribe such courses of study and practical training and experience for such candidates as it thinks fit :

Provided that it shall not be competent for the Senate to require that any course of study or practical training shall be taken at a University college in New Zealand by any candidate who for the time being is resident more than ten miles from such college, or who, being engaged in qualifying for a profession, learning a trade, or earning a livelihood, is, in the opinion of the Minister of Education, thereby prevented from attending lectures.

(3) Except as provided in the *next succeeding* subsection, no person shall be admitted as a barrister of the Court or a Judge thereof is satisfied, by the production of a certificate signed by or on behalf of the Registrar of the University, that the candidate has completed the prescribed courses of study and of practical training and experience, that he has passed the prescribed examinations, and that he has otherwise complied with the requirements prescribed by the Senate of the University in accordance with this section.

Saving.

(4) Nothing in the foregoing provisions of this section shall apply with respect to—

(a) The admission as barristers of the Court of persons who on the first day of January, nineteen hundred and thirty-one (being the date of the commencement of the Law Practitioners Amendment Act, 1930), were qualified to be admitted as such ; or

(b) The admission as barristers of the Court of persons qualified to be admitted as such, without examination, as provided in the proviso to paragraph (c) of section *four* hereof, or in paragraph (e) of that section, or in section *thirty-nine* hereof.

(5) Any person of a class referred to in the *last preceding* subsection may be admitted as a barrister of the Court as if subsections *one to three* of this section had not been passed.

Admission and Powers, &c.

- 5 6. Upon application being made by any candidate in accordance with this Act and with any rules made under section *thirty-eight* hereof, the Court or a Judge thereof, if satisfied that such candidate is duly qualified and is of good character and a fit and proper person to be admitted, shall make an order admitting the candidate as a barrister
- 10 of the Court and directing that his name be placed upon the roll accordingly, and thereupon his name shall be so placed by the Registrar.
- 7. Barristers of the Court shall have all the powers, privileges, duties, and responsibilities that barristers have in England.
- 15 8. Any barrister shall be removable by the Court from the roll for reasonable cause, whensoever and wheresoever the same arises, in the manner hereinafter provided.
- 9. (1) No person shall act as a barrister in any Court whatever who is not at the time of his so acting a barrister on the roll.
- 20 (2) Every person so acting and not being on the roll shall be deemed to be guilty of a contempt of the Court in which he so acts, and may be punished accordingly, and shall also be liable to a fine not exceeding *fifty* pounds for every such offence.
- 10. No practising barrister of the rank of King's Counsel shall also practise as a solicitor, either alone or in partnership with any
- 25 other solicitor, and no certificate under section *thirty-nine* hereof shall be issued to any such barrister; but this provision shall not apply to any barrister in New Zealand holding the patent of King's Counsel on the twelfth day of October, nineteen hundred and fifteen (being the date of the passing of the Law Practitioners Amendment Act, 1915).

Admission and enrolment of barristers.
1908, No. 100, ss. 6, 7
1930, No. 37, s. 3 (3)

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1908, No. 100, s. 11

Barristers may be removed from roll.
Ibid., s. 12

No person to act as a barrister unless a barrister under this Act.
Ibid., s. 13

King's Counsel shall not practise as a solicitor.
1915, No. 71, s. 3

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SOLICITORS.

Qualification and Examination.

- 11. Every Registrar shall keep in his office a roll on which shall be inscribed the name of every person admitted as a solicitor of the Court.
- 35 12. (1) Subject to the provisions of section *thirteen* hereof, every person, male or female, of the age of twenty-one years or upwards coming within any of the descriptions specified in the *next succeeding* subsection shall be qualified to be admitted and enrolled as a solicitor of the Court.
- 40 (2) The descriptions referred to in the *last preceding* subsection are—
- (a) Any person who has passed the prescribed examination in general knowledge and in law:
- (b) Any person who is a barrister of the Court:
- 45 (c) Any person who is admitted as a solicitor in any superior or Supreme Court of any part of the British dominions other than New Zealand, and who has passed the prescribed examination in law, including the law of New Zealand in so far as it differs from the law of England:

Registrar to keep roll of solicitors.
1908, No. 100, s. 14

Qualifications of solicitors.
Ibid., s. 15
1921, No. 8, s. 2
1930, No. 37, s. 3 (4)

Provided that he shall not be required to pass any such examination if he has been in practice as a solicitor in any part of the United Kingdom for not less than three years :

- (d) Any person who has taken a degree in arts, science, or law in any university in any part of the British dominions other than New Zealand, and who has passed the prescribed examination in law : 5

Provided that if he has taken the degree of Bachelor of Laws in any such university, then he shall be required to pass only an examination in the law of New Zealand in so far as it differs from the law of England, and in the practice of law. 10

Interpretation.

(3) In the *last preceding* subsection the term "prescribed" means prescribed by the Senate of the University of New Zealand. In paragraph (c) of that subsection the term "solicitor" includes solicitor, attorney at law, and proctor in Great Britain and Ireland, and law agent enrolled pursuant to the provisions of the Law Agents (Scotland) Act, 1873, in Scotland; and includes solicitor, attorney, and every person in any other part of His Majesty's dominions who is duly authorized to exercise therein the like functions as a solicitor is authorized to exercise in England. 15 20

University to examine candidates for admission as solicitors.

1930, No. 37, s. 2

13. (1) The examination of candidates for admission as solicitors of the Court shall be conducted by the University of New Zealand.

(2) The Senate of the University shall prescribe the nature and conditions of such examinations, and the educational and practical qualifications of candidates, and may also prescribe such courses of study and practical training and experience for such candidates as it thinks fit : 25

Provided that it shall not be competent for the Senate to require that any course of study or practical training shall be taken at a University college in New Zealand by any candidate who for the time being is resident more than ten miles from such college, or who, being engaged in qualifying for a profession, learning a trade, or earning a livelihood, is, in the opinion of the Minister of Education, thereby prevented from attending lectures. 30 35

(3) Except as provided in the *next succeeding* subsection, no person shall be admitted as a solicitor of the Court unless the Court or a Judge thereof is satisfied, by the production of a certificate signed by or on behalf of the Registrar of the University, that the candidate has completed the prescribed courses of study and of practical training and experience, that he has passed the prescribed examinations, and that he has otherwise complied with the requirements prescribed by the Senate of the University in accordance with this section. 40

Saving.

(4) Nothing in the foregoing provisions of this section shall apply with respect to— 45

- (a) The admission as solicitors of the Court of persons who on the first day of January, nineteen hundred and thirty-one (being the date of the commencement of the Law Practitioners Amendment Act, 1930), were qualified to be admitted as such; or 50

(b) The admission as solicitors of the Court of persons qualified to be admitted as such, without examination, as provided in the proviso to paragraph (c) of section *twelve* hereof or in section *thirty-nine* hereof.

5 (5) Any person of a class referred to in the *last preceding* subsection may be admitted as a solicitor of the Court as if subsections *one to three* of this section had not been passed.

Admission.

10 14. Upon application being made by any candidate in accordance with this Act and with any rules made under section *thirty-eight* hereof, the Court or a Judge thereof, if satisfied that such candidate is duly qualified and is of good character and a fit and proper person to be admitted, shall administer or cause to be administered to him the oaths prescribed in the *next succeeding* section, and, after such
15 oaths have been taken, shall make an order admitting the candidate as a solicitor of the Court and directing that his name be placed upon the roll accordingly, and thereupon his name shall be so placed by the Registrar.

Admission and enrolment of solicitors. 1908, No. 100, ss. 16, 17 1930, No. 37, s. 3 (5)

20 15. Every person, before he is admitted and enrolled as a solicitor, shall take the oath of allegiance, and the oath following:—

Oath on admission. 1908, No. 100, s. 18

“ I, A. B., do swear that I will truly and honestly demean myself in the practice of a solicitor according to the best of my knowledge and ability.”

Disqualification from Practice, &c.

25 16. No person shall act as a solicitor in any Court whatever who is not at the time of his so acting a solicitor enrolled according to the provisions of this Act; and any person who offends against this provision shall be deemed to be guilty of a contempt of the Court in which he so acts, and may be punished accordingly, and shall also be
30 liable to a fine not exceeding *fifty* pounds for every such offence.

No person to act as a solicitor unless a solicitor under this Act. Ibid., s. 25

17. (1) No solicitor who is a prisoner in any prison shall, during his confinement in prison, sue out any writ or process, or commence or prosecute or defend any action in any Court, as a solicitor, in his own name or in the name of any solicitor.

No solicitor to commence or defend actions if a prisoner. Ibid., s. 22

35 (2) Any solicitor who offends against this section shall be deemed to be guilty of a contempt of the Court in which he so acts, and be punishable accordingly, on the application of any person complaining thereof; and shall also be incapable of maintaining, in his own name or in the name of any other solicitor, any action in any Court whatever
40 for the recovery of any fee, reward, or disbursement for or in respect of any business, matter, or thing done by him while such prisoner as aforesaid.

Offenders to be guilty of contempt, and incapable of recovering fees, &c.

18. If any solicitor—

45 (a) Wilfully and knowingly acts as agent in any action or matter in any Court whatever for any person who to his knowledge is not duly qualified and entitled to act as a solicitor, or permits or suffers his name to be made use of in any action upon the account or for the profit of any such person, or sends any process to such person, or does any other act to
50 enable such person to act in any respect as a solicitor in any action or matter in such Court; or

Solicitors not to act as agents for unqualified persons, or to employ persons suspended from practice. Ibid., s. 23

- (b) Knowingly employs or permits, without the sanction of the Supreme Court or of a Judge thereof, any person who to his knowledge is under suspension from practice, or has been struck off the roll of barristers or solicitors, to act as a clerk or otherwise in or about his business of a solicitor,— 5

he may be struck off the roll of solicitors, or may be suspended from practice for any period.

19. Every person shall be liable to a fine not exceeding *one hundred* pounds, or to imprisonment for a term not exceeding *one year*, who,—

- (a) Not being duly qualified and entitled to act as a solicitor, acts 10
in any respect as a solicitor in any action or matter in any Court in the name or through the agency of a solicitor entitled to practise; or
- (b) Being under suspension from practice as a barrister or solicitor, 15
or having been struck off the roll of barristers or solicitors, acts, without the sanction of the Supreme Court or of a Judge thereof, as a clerk or otherwise in or about the business of a solicitor.

Bills of Costs.

20. In sections *twenty-one* to *thirty-seven* of this Act (relating to 20
bills of costs) the term "solicitor" includes the executor, administrator, or assign of the solicitor; and the term "Judge" includes the Court.

21. A solicitor may in writing agree with a client (not being a 25
Native within the meaning of the Native Land Act, 1931) respecting the amount and manner of payment of fees or charges for the whole or any part of any past or future services, and of disbursements in respect of business done or to be done by such solicitor, either by a gross sum or by commission, percentage, or salary, or otherwise:

Provided that if the agreement appears to a Judge to be unfair and unreasonable he may reduce the amount agreed to be payable under 30
such agreement:

Provided also that the solicitor making such agreement shall not make any further charges than those mentioned in the agreement.

22. If any solicitor acts in any capacity or in any Court for any 35
Native within the meaning of the Native Land Act, 1931, whether as Native agent or solicitor, all charges made by him shall be liable to taxation and review by a Judge in a summary way, and shall be deemed to have been charges made for services rendered as a solicitor.

23. (1) No solicitor shall commence or maintain any action for the 40
recovery of any fees, charges, or disbursements for any business done by him until the expiration of one month after a bill of such fees, charges, and disbursements, signed by the solicitor (or, in the case of a partnership, by any of the partners with the name of such partnership), or enclosed in or accompanied by a letter signed in like manner referring to such bill, has been delivered to the party chargeable. 45

(2) Such delivery may be effected either by personal delivery to the party chargeable or by leaving the bill or letter for him at his place of business, or dwellinghouse, or last known place of abode, or by forwarding the same to him by post in a registered letter addressed to him as aforesaid. 50

Unqualified persons acting through agency of solicitors may be fined or imprisoned.

Cf. 1908, No. 100, s. 24

Definition of "solicitor" and "Judge."

Ibid., s. 41

Solicitors may make agreements as to charges.

Ibid., s. 26

Charges against Natives to be liable to taxation.

Ibid., s. 27

Solicitor not to commence action for costs till one month after delivery of the bill.

Ibid., s. 28

(3) Nothing in this section shall be deemed to repeal, annul, or limit the operation of any enactment wherein special provision is made as to solicitors' bills of costs.

24. Upon the application of the party chargeable by such bill within such month, whether the business contained in such bill or any part thereof has been transacted in any Court or not, a Judge may refer, on such terms as he thinks fit, such bill and the demand of such solicitor thereupon to be taxed and settled by the Registrar.

Reference of bill for taxation.
1908, No. 100, s. 28

25. (1) In case no such application is made within a month as aforesaid, then such reference may be made either upon the application of the solicitor whose bill is so delivered, or upon the application of the party chargeable by such bill, with such directions and subject to such conditions as the Judge making such reference thinks proper.

Taxation after one month.
Ibid., s. 30 (1), (2), (3)

(2) The Judge may restrain such solicitor from commencing or prosecuting any action touching such demand, pending such reference, upon such terms as he thinks fit.

(3) No such reference as aforesaid shall be directed on an application made by the party chargeable with such bill after a verdict or judgment has been obtained in any action for the recovery of the demand of such solicitor, 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 Judge to whom the application for such reference is made.

Taxation after twelve months under special circumstances.

26. Upon every such reference, if either the solicitor whose bill has been delivered, or the party chargeable with such bill, having due notice, refuses or neglects to attend such taxation, the officer to whom such reference is made may proceed to tax and settle such bill and demand *ex parte*.

Ex parte taxation.
Ibid., s. 30 (4)

(1) If any such reference is made on the application of the party chargeable, or on the application of such solicitor, and the party chargeable attends upon such taxation, the costs of such reference shall, except as hereinafter provided, 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 solicitor 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 shall pay such costs.

Payment of costs of taxation.
Ibid., s. 30 (5), (6), (7)

(2) Every order made for such reference as aforesaid shall direct the officer to whom such reference is made to tax the costs of such reference to be so paid as aforesaid, and to certify what, upon such reference, is found to be due to or from such solicitor in respect of such bill and demand, and of the costs of such reference if payable:

Form of order for taxation.

Provided that such officer shall in all cases be at liberty to certify specially any circumstances relating to such bill or taxation; and the Judge may make thereupon any such order as he thinks fit respecting the payment of the costs of such taxation.

Taxing officer's certificate.

(3) Where such reference is made, when the same is not authorized to be made except under special circumstances as hereinbefore provided, then the Judge may, if he thinks fit, give special directions relative to the costs of such reference.

Costs of special reference.

28. The Judge, in the same cases in which he is authorized to refer a bill which has been delivered as aforesaid, may make such order for delivery by the solicitor of such bill as aforesaid, and for the delivery-up

Judge may order solicitor to render his bill, and deliver up deeds, &c.

of deeds, documents, or papers in his possession, custody, or power, or otherwise touching the same, in the same manner as where any such business has been transacted in the Court.

Evidence of delivery
of bill.
1908, No. 100, s. 32

29. It shall not in any case be necessary in the first instance for any solicitor, 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 in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered in manner aforesaid: 5

Provided that it shall be competent for the other party to show that the bill so delivered was not such a bill as constituted a *bona fide* compliance with this Act. 10

Judge may authorize
action for charges,
&c., before
expiration of month.
Ibid., s. 33

30. A Judge may authorize a solicitor to commence an action 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 the Judge that there is probable cause for believing that such party is about to quit New Zealand. 15

Bills may be taxed
on application of
third parties.
Ibid., s. 34

31. Where any person, not the party chargeable with any such bill within the meaning of the provisions hereinbefore contained, is liable to pay or has paid such bill either to the solicitor or to the party chargeable with such bill as aforesaid, such person may 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 so chargeable with such bill as aforesaid: 20 25

Special circum-
stances to be taken
into consideration.

Provided that, in case such application is made when under the provisions herein contained a reference is not authorized to be made except under special circumstances, the Judge to whom such application is made may 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. 30

Judge may direct
taxation of bills
chargeable on
executors, trustees,
&c.
Ibid., s. 35

32. (1) Where a trustee, executor, or administrator has become chargeable with any such bill as aforesaid, a Judge, if in his discretion he thinks fit, on the application of a party interested in the property out of which such trustee, executor, or administrator has paid or is entitled to pay such bill, may refer the same, and such solicitor's demand thereon, to be taxed and settled by the Registrar, with such directions and subject to such conditions as such Judge thinks fit; and may make such order as he thinks fit for the payment of what may be found due, and of the costs of such reference, to or by such solicitor 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 are applicable to such cases. 35 40 45

Interest of parties
to be considered.

(2) In exercising such discretion as aforesaid the Judge may take into consideration the extent and nature of the interest of the party making the application. 50

(3) But where any money is so directed to be paid by such solicitor, a Judge, if he thinks fit, may 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 ;
 5 and where the party making the application pays any money to such solicitor 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 solicitor had.

Judge may direct to whom money shall be paid.

33. For the purpose of any such reference, upon the application
 10 of the person not being the party chargeable within the meaning of the provisions aforesaid, or of a party interested as aforesaid, the Judge may order any such solicitor 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 persons applying for reference for taxation.
 1908, No. 100, s. 36

34. No bill which has been previously taxed and settled shall be
 15 again referred unless, under special circumstances, the Judge to whom such application is made thinks fit to direct a retaxation thereof.

No retaxation.
 Ibid., s. 37

35. The payment of any such bill as aforesaid shall in no case preclude the Judge to whom application is made from referring such bill for taxation, if the special circumstances of the case, in the opinion
 20 of such Judge, appear to require the same, upon such terms and conditions and subject to such directions as to such Judge seem right :

Taxation of bill after payment.
 Ibid., s. 38

Provided the application for such reference is made within twelve months after payment.

36. (1) All applications under this Act to refer any such bill as
 25 aforesaid to be taxed and settled, and for the delivery of such bill, and for the delivering-up of deeds, documents, and papers, shall be made in the matter of such solicitor ; and upon the taxation and settlement of any such bill the certificate of the officer by whom such bill is taxed shall (unless set aside or altered by order or rule of Court) be final and
 30 conclusive as to the amount thereof.

Application for taxation.
 Ibid., s. 39
 Certificate to be final.

(2) Payment of the amount certified to be due and directed to be paid may be enforced according to the course of the Court ; and the Judge may order judgment to be entered up for such amount with costs, unless the retainer is disputed, or make such other order
 35 thereon as he deems proper.

Judgment may be entered.

37. (1) Notwithstanding anything contained in sections *twenty-three to thirty-six* hereof, any party chargeable with any such bill of costs may, within thirty days after receiving such bill, elect to refer such bill of costs to a Registrar or a Magistrate, who may reduce such
 40 bill of costs to such amount as he considers fair under the circumstances :

Bill of costs may be referred to Registrar or Magistrate for taxation.
 Ibid., s. 40

Provided that such party shall serve the solicitor concerned with a notice that he intends to take such action seven clear days before the day upon which the reference is proposed to be made.

45 (2) In considering the question of costs the Registrar or Magistrate may award to either party such costs of the reference as may be considered reasonable.

Costs of reference.

(3) The Governor-General may from time to time, by Order in Council, make regulations prescribing the fees payable in respect of
 50 any such reference or of any taxation thereon, and prescribing such other matters as may be deemed necessary or expedient for giving effect to the provisions of this section.

Regulations.

BARRISTERS AND SOLICITORS.

Rules as to Admission.

Judges may make rules in respect of the admission of barristers and solicitors.

1908, No. 100, ss. 9, 20
1930, No. 37, ss. 3 (1), 4

Saving.

Commencement.

38. (1) Notwithstanding anything to the contrary in the Judicature Amendment Act, 1930, the Judges or any three or more of them may from time to time make rules, not inconsistent with the provisions of this Act, in respect of the evidence of the qualifications, character, and fitness of candidates, and generally in respect of any matter relating to the admission of candidates as barristers or solicitors of the Court. 5

(2) All rules and regulations which originated under section nine or section twenty of the Law Practitioners Act, 1908, and were in force on the coming into operation of this section shall (in so far as they relate to the admission of candidates and not to legal education or the examination of candidates) enure for the purposes of this section as fully and effectually as if they had originated as rules made under this section, and accordingly shall, where necessary, be deemed to have so originated. 10 15

(3) This section shall be deemed to have come into force on the first day of January, nineteen hundred and thirty-one.

Reciprocal Admission.

Reciprocal admission of barristers and solicitors.

1908, No. 100, s. 42

39. (1) Where the Governor-General is satisfied—

(a) That the regulations respecting the admission of persons as barristers or solicitors of the superior Court in any part of the British dominions other than the United Kingdom are such as to secure that those persons possess proper qualifications and competency; and 20

(b) That by the law of that part of the British dominions barristers or solicitors of the Supreme Court of New Zealand will be entitled to admission as barristers or solicitors of the said superior Court on terms as favourable as those on which barristers or solicitors of that Court will under this Act be entitled to admission as barristers or solicitors of the Supreme Court of New Zealand,— 25 30

he may, by Order in Council, order that barristers or solicitors of the said superior Court who have been in practice before such Court for not less than three years shall, on giving due notice and the prescribed proof of their qualifications and good character, and on payment of the prescribed fees, but subject to any exceptions, conditions, and modifications specified in the Order, be admitted as barristers or solicitors of the Supreme Court of New Zealand without examination. 35

(2) Such Order may refer to barristers only, or to solicitors only, or to barristers and solicitors. 40

(3) Every such Order shall have full effect according to its tenor, and every person admitted thereunder shall be deemed to have been duly admitted under this Act.

(4) The Governor-General may by the same or any subsequent Order provide for all matters authorized by this section to be prescribed, and for all matters necessary for giving effect to the Order and to this section. 45

Conveyancing.

Barristers and solicitors only to act as conveyancers. Ibid., s. 43

40. Except in the case of a person duly acting under and within the authority of a license duly granted and in force under the Land Transfer Act, 1915, or any other Act, every person who, not being a 50

barrister or solicitor of the Court, acts as a conveyancer is liable for every such offence to a fine not exceeding *fifty* pounds.

Certificates.

5 41. (1) No barrister shall act as such unless he has obtained from the Court a certificate which is then in force to the effect that he is on the roll of the Court as a barrister thereof.

No barrister to act as such unless he has certificate. 1908, No. 100, s. 44

(2) Any barrister who offends against this provision shall be deemed guilty of a contempt of Court, and shall be liable to a fine not exceeding *fifty* pounds.

10 42. (1) No solicitor shall act as such unless he has obtained from the Court a certificate which is then in force to the effect that he is on the roll of the Court as a solicitor thereof.

No solicitor to act as such unless he has certificate. Ibid., s. 45

(2) Any solicitor who offends against this provision shall be deemed guilty of a contempt of Court, and shall be liable to a fine not exceeding *fifty* pounds.

15 43. Subject to the payment of the prescribed fees and levies (if any) under this Part and Part III of this Act, any Registrar, on application made to him for that purpose by any barrister or solicitor whose name is on the rolls of the Court as such respectively, shall issue to him 20 a certificate under the seal of the Court accordingly; and any such certificate shall be in force from the thirty-first day of January next after the issue thereof till the thirty-first day of January following, or, if the person applying for the same so requires, until the thirty-first day of January only next following the issue thereof.

Registrar on application shall issue certificate. Ibid., s. 46 1930, No. 37, s. 5 (2)

Fees.

25 44. The several sums of money mentioned in the *First* Schedule hereto shall be taken and received as fees for the matters therein specified.

Fees payable on admission and for annual certificates. 1908, No. 100, s. 48

30 45. (1) Subject to the *next succeeding* subsection, every District Law Society shall be entitled to all fees payable and received under this Part of this Act within its district.

Application of fees. Ibid., s. 51 (1) 1913, No. 72, s. 3 1915, No. 71, s. 2

(2) Where a fee of *four* pounds *four* shillings is payable under this Part of this Act in respect of any annual certificate, such fee shall be apportioned as follows:—

35 (a) The District Law Society shall be entitled to the sum of *three* pounds *three* shillings:

(b) The New Zealand Law Society shall be entitled to the sum of *ten* shillings:

(c) The New Zealand Council of Law Reporting shall be entitled to the sum of *eleven* shillings.

Trust Accounts.

40 46. (1) All moneys received for or on behalf of any person by any barrister or solicitor shall be held by him exclusively for such person, to be paid to such person or as he directs, and until so paid such moneys shall be paid into a bank carrying on business under the authority of 45 an Act of the General Assembly to a general or separate trust account.

Practitioners to pay clients' moneys into trust account at bank. 1908, No. 100, s. 47

(2) Such moneys shall not be available for payment of the debts of any other creditor of such barrister or solicitor, nor shall such moneys be liable to be attached or taken in execution under the order or process of any Court at the instance of any such creditor.

(3) The word "person" in this section includes a company or other corporate body.

(4) Any barrister or solicitor who knowingly acts contrary to the provisions of this section is liable for every such offence to a fine not exceeding *one hundred pounds*.

(5) Nothing in this section shall be construed to take away or affect any just claim or lien which any barrister or solicitor as aforesaid may have against any moneys so received by him.

Trust accounts to
be audited.
1913, No. 72, s. 14

47. (1) The Governor-General may by Order in Council gazetted make regulations—

- (a) Providing for an annual audit of the trust accounts of every solicitor, and for a report of the result of such audit :
- (b) Defining a class or classes of accountants authorized to make such audits :
- (c) Requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed :
- (d) Prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record :
- (e) Providing that the auditor shall be subject to an obligation not to divulge, otherwise than as prescribed, any matter which he shall be informed in the course of the audit, and shall also be subject to the like liability in damages to a client of the solicitor as the solicitor would be if the solicitor divulged such matter :
- (f) Prescribing a scale of fees to be paid to such auditors :
- (g) Prescribing that, in the absence of any agreement in writing with the client to the contrary, the auditor's fees shall be paid by the solicitor ; and
- (h) Generally by all such means as may be prescribed to ensure that such trust accounts shall be duly kept and audited, and that persons beneficially entitled to moneys and securities held by solicitors upon trust shall be informed thereof and of the investment thereof.

(2) Each such regulation may prescribe a penalty not exceeding *one hundred pounds* for the breach of any of the provisions and requirements thereof.

(3) Wilful failure to comply with any such regulation shall, if the Court thinks fit, be ground for the exercise of the summary jurisdiction of the Court under the provisions of this Act.

(4) Such regulations shall have the force of law.

Striking Barristers or Solicitors off the Rolls : Summary Jurisdiction of Court, &c.

Applications for
striking off roll to
be by rule *nisi*.
1908, No. 100, s. 54
Procedure thereon.
Ibid., s. 55
Court may
discharge rule.
May suspend from
practice.

48. Applications to strike a barrister or solicitor off the roll shall be made by motion in the Court for a rule *nisi*.

49. Whenever a rule *nisi* is granted by the Court calling upon a barrister or solicitor on the roll to show cause why he should not be struck off the roll,—

- (a) The Court may discharge such rule on cause being shown before it, if it thinks fit ; or
- (b) The Court may direct and order, if it thinks fit, on cause being shown against such rule, that the barrister or solicitor against whom it was granted shall be suspended from acting as

barrister or solicitor, and from enjoying all or any of the privileges of such barrister or solicitor, until the decision of the Court of Appeal upon such rule ; or

5 (c) If, on cause being shown, the Court is of opinion that the rule ought to be made absolute, or that it is doubtful whether the rule ought to be discharged or made absolute, the Court shall reserve the case for the consideration of the Court of Appeal at its next sitting, and shall cause such rule, and all affidavits made in support of or against such rule, and all other proceedings referred to in such rule, to be forthwith transmitted to the Registrar of the Court of Appeal ; and the Court of Appeal shall at its next sitting, whether the party or his counsel appears in support of or against such rule or not, decide thereupon, and order such rule to be made absolute or to be discharged, or may make such other order therein as it thinks fit.

Court of Appeal may make order.

10 50. (1) Nothing in this Act, except as mentioned in the *last preceding* section, shall affect the summary jurisdiction of the Court over barristers and solicitors ; but such Court shall have full power to suspend from practice or attach any barrister or solicitor, or to make such order as it thinks fit respecting the practice of such barrister or solicitor, on reasonable cause shown.

Supreme Court may summarily suspend from practice on reasonable grounds. 1908, No. 100, s. 56

25 (2) The Court may in its discretion reserve any question arising on any application for the exercise of its summary jurisdiction upon a barrister or solicitor for the decision of the Court of Appeal upon a case stated, and the Court of Appeal shall have full power and authority to decide thereon and make such order as it thinks fit.

May reserve any questions thereon for Court of Appeal.

PART II.

LAW SOCIETIES.

District Law Societies.

30 51. (1) All District Law Societies constituted under the Law Practitioners Act, 1908, and so subsisting at the commencement of this Act, are hereby constituted District Law Societies under this Act as the same Societies respectively, without change of corporate entity or otherwise.

Constitution of existing District Law Societies. Ibid., s. 1 (2) (d)

35 (2) Any such Society may at any time, by a resolution passed at a general meeting, change its name from " The Law Society of the District of [Name of district] " or " The Law Society of the [Name of district] District " to " The [Name of district] District Law Society ".

40 52. (1) The practitioners residing and practising within any proposed district (not comprising the whole of any then existing district), present at any meeting duly convened as provided in the *next succeeding* subsection, may, with the precedent consent of every District Law Society having any part of its district within such proposed district, resolve that a District Law Society be constituted under this Act for such proposed district, under the name of " The [Name of district] District Law Society ". Every such resolution shall be published in the *Gazette*, and thereupon such District Law Society shall be deemed to be constituted accordingly, and all practitioners then residing and practising in such proposed district, and all such practitioners thereafter

Formation of new District Law Societies. Ibid., ss. 58, 59, 60

admitted members in manner hereinafter provided, shall be members of such District Law Society, and subject to the rules thereof.

(2) For the purposes of this section a meeting of the practitioners residing and practising within any proposed district shall be deemed to be duly convened if a circular signed by any two or more of such practitioners stating the purpose for which such meeting is to be held, and the time and place for holding the same, is delivered or sent by post to every such practitioner seven days at the least before the day named in such circular as that upon which the meeting is to be held, and if notice of such meeting is also given by advertisement in some newspaper published and circulating in such proposed district :

Provided that the accidental omission to deliver or send such circular to any one or more of such practitioners shall not render the proceedings at any such meeting invalid.

Quorum.

(3) No business of any kind shall be transacted at any such meeting or at any adjournment thereof unless one-third at least of such practitioners are present thereat, or represented by proxies appointed in writing under their hands.

(4) The said practitioners present at any meeting so convened as aforesaid, or at any adjournment thereof, may elect a President, a Vice-President, and members of a Council of such Society, and such other officers as are deemed expedient ; and may also make rules for such Society, and such rules shall have the same effect as if they had been made by such Society under section *fifty-eight* hereof.

Alteration of districts.

53. (1) Subject to the provisions of this section, any two or more District Law Societies may from time to time, by written agreement, alter the boundaries between their respective districts.

(2) No such agreement shall come into force unless and until every District Law Society having the boundaries of its district affected thereby has ratified such agreement by a resolution passed at a general meeting of such Society, and thereafter a copy of such agreement, together with notice of every such ratification thereof, has been published in the *Gazette*.

(3) Upon such publication every such agreement shall have effect to alter such boundaries according to its tenor as from the date of such publication or such later date as may be specified in the agreement.

District Law Societies to be bodies corporate. 1913, No. 72, s. 11

54. (1) Every District Law Society shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.

(2) The seal of each District Law Society shall be such as the Council of that Society from time to time determines, and shall not be affixed to any document except in the presence of three members of that Council, who shall attest the execution of the document accordingly.

Power to admit members. 1908, No. 100, s. 62

55. Every District Law Society shall have power from time to time to admit, in the manner and subject to the conditions prescribed by its rules, any practitioner residing or practising within its district to be a member of such Society.

Members rendered incapable of practising to cease to be members.

Ibid., s. 81

56. If any member of a District Law Society, in consequence of the order of any Court of competent jurisdiction, is rendered incapable, by reason of malpractice, professional misconduct, or any other matter, of practising in the Supreme Court or in any of the Supreme Courts of justice in any part of the British dominions, such person shall forthwith cease to be a member of such Society.

57. (1) Subject to the rules of the New Zealand Law Society, every District Law Society shall have within its district the same functions and powers as the New Zealand Law Society has under this Part of this Act :

Functions and powers of District Law Societies.
1908, No. 100, s. 51 (2), (3)

5 Provided that, in lieu of the function mentioned in paragraph (a) of section *sixty-three* hereof, every District Law Society shall have the function of providing and maintaining law libraries in such towns in its district as its Council directs.

10 (2) Every such library shall be for the use of the Supreme Court and such other Courts as the Council of the District Law Society directs, and of the barristers and solicitors of the Court, and shall be managed as such Council directs.

District law libraries.

15 58. (1) Subject to the rules of the New Zealand Law Society, every District Law Society may from time to time make rules for such District Law Society for any of the purposes for which rules can be made for the New Zealand Law Society under section *sixty-nine* hereof.

Rules.

(2) Such rules shall, subject to the rules of the New Zealand Law Society, have effect according to their tenor in respect of such District Law Society.

20 59. (1) Every District Law Society shall have a President, a Vice-President, and a Council, to be elected at the annual meeting of such Society, and may also have such other officers, to be elected or appointed in such manner respectively, as may be prescribed by the rules of such Society.

Officers and Council.

25 (2) The Governor-General may from time to time, by Warrant under his hand, appoint the President of any District Law Society whenever the office of such President has been vacant for a period of three months.

Ibid., s. 66

30 60. The Council of every District Law Society shall consist of such members, not being less than five nor more than eleven, as is determined by its rules, and, subject to such rules, shall have in respect of such District Law Society the same powers (except the power to make rules) as are by this Part of this Act conferred upon the Council of the New Zealand Law Society in respect of such last-mentioned Society.

Number and powers of Council.
Ibid., ss. 61, 63, 64
1913, No. 72, s. 13
1930, No. 37, s. 6

35 61. Any member of any District Law Society aggrieved by the decision of such Society in any matter affecting himself may appeal from such decision to the Council of the New Zealand Law Society ; and such appeal shall be considered and heard by such last-named Council in such manner as the said Council directs, and the decision
40 of such Council shall be final and conclusive.

Appeal.
1908, No. 100, s. 65

New Zealand Law Society.

45 62. (1) There is hereby established a society, to be known as the New Zealand Law Society (hereinafter called the Society), which shall consist of all practitioners who for the time being are members of any District Law Society.

Incorporation of New Zealand Law Society.
Ibid., ss. 67, 68, 69, 71
1913, No. 72, s. 4

(2) The Society shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.

(3) The Society constituted under this section is hereby declared to be the same Society as the New Zealand Law Society constituted under the Law Practitioners Act, 1908.

Functions and
powers of Society.
1913, No. 72, s. 2

63. (1) The general functions of the Society shall be to promote good feeling and encourage proper conduct amongst the members of the legal profession; to suppress illegal, dishonourable, or improper practices; to preserve and maintain the integrity and status of the legal profession; to provide opportunities for the acquisition and diffusion of legal knowledge; to consider and suggest amendments of the law; to provide means for the amicable settlement of professional differences; and generally to protect the interests of the legal profession and the interests of the public in relation to legal matters. 5

(2) In particular, without limiting the provisions of the last preceding subsection, the Society shall, in addition to its other powers and functions, have the powers and functions following, that is to say:— 15

- (a) To provide and maintain a law library at Wellington for the use of the Judges of the Supreme Court and Court of Appeal:
- (b) To subsidize the funds of the New Zealand Council of Law Reporting in connection with the preparation and publication of reports of legal decisions: 20
- (c) To investigate charges of professional misconduct against any practitioner:
- (d) To institute prosecutions against practitioners or other persons for the breach of any statute, rules, or regulations relating to the practice of the law: 25
- (e) To oppose any application made for admission as a barrister or solicitor, or any other application made under Part I of this Act: 30
- (f) To appoint any barrister to appear before any Court in any of the foregoing matters or in any other matter in which the Society is concerned or interested, and any barrister so appearing shall have audience accordingly on behalf of the Society. 35

Election of Council.
1908, No. 100, s. 72
1913, No. 72, s. 6
1930, No. 37, s. 7

64. (1) For the good government of the Society there shall be a Council of the Society to be elected annually in manner following:—

- (a) The Auckland District Law Society, the Wellington District Law Society, the Canterbury District Law Society, and the Otago District Law Society shall each elect three members of the Council; and 40
- (b) Each of the other District Law Societies shall elect one member of the Council.

(2) Every member elected by each District Law Society shall be elected at the annual meeting of such society, and shall hold office until his successor is elected. 45

(3) Every retiring member shall be eligible for re-election.

(4) If any such society at any time fails to elect a member, the Council of such society may do so in its stead, and the fact that such Council so elects shall be sufficient evidence of its authority to do so. 50

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(5) Any member of the Council who is unable to attend a meeting of the Council may appoint a barrister or solicitor to act in his place at such meeting.

5 65. (1) There shall be a President and a Vice-President of the Society to be elected by the Council from the members of the Council.

President and Vice-President.
1908, No. 100, s. 73
1913, No. 72, s. 7

(2) The Governor-General may from time to time, by warrant under his hand, appoint the President of the Society whenever the office of President has been vacant for a period of three months.

10 66. (1) The Council of the Society may hold meetings at such times and places as it thinks fit, but shall once at least in each year hold a meeting at Wellington at a time and place to be fixed by the rules of the Society, or, in default of any such rule, by the President of the Society.

Meetings of Council.
1908, No. 100, s. 76
1913, No. 72, s. 9

15 (2) Meetings of the Council may be summoned for any time or place by the President of the Society or by any four members of the Council.

(3) At each meeting of the Council five shall form a quorum.

Quorum.

20 67. (1) The Council shall have the sole management of the Society and of the income and property thereof for the purposes and benefit of the Society, and shall have the sole right of nominating, appointing, and removing such officers as it deems necessary, and prescribing their duties.

Powers of the Council.
1908, No. 100, s. 74
1913, No. 72, s. 8

25 (2) For the purposes of this section the Council may appoint a committee or committees of its members, and may delegate to any such committee such of the powers of the Council as it thinks fit.

68. The Council may sell, lease, and otherwise dispose of any real or personal property vested in the Society, if authorized so to do by the rules of the Society or by a resolution passed at a general meeting of the Society.

Power of Council to deal with the property of the Society.
1908, No. 100, s. 70
1913, No. 72, s. 5

30 69. The Council may from time to time make rules for all or any of the following purposes:—

Council may make rules.
1908, No. 100, ss. 77, 78, 80

(a) Providing for the regulation and good government of the Society and of the members and affairs thereof:

35 (b) Prescribing the manner of electing the President and Vice-President, and also the period of their continuance in office, and the manner and time in which any vacancy in the office of President or Vice-President, or any other vacancy in the Council, by death, resignation, disqualification, or otherwise shall be supplied:

40 (c) Prescribing the times and places at which meetings of the Council shall be held:

(d) Providing for the convening of general meetings of the Society, and prescribing the procedure at such meetings:

45 (e) Prescribing fines, not exceeding twenty-five pounds in any case, for a breach of any rule:

(f) Making any provision that may be desirable or necessary for the effective exercise and performance of the powers and functions of the Society.

50 70. (1) Subject to the next succeeding subsection, the New Zealand Council of Law Reporting may from time to time out of its funds grant to the New Zealand Law Society such sums of money as it thinks fit.

New Zealand Council of Law Reporting may grant moneys to New Zealand Law Society.
1930, No. 37, s. 8

(2) Every such grant shall be made by a resolution passed by a majority of not less than three-fourths of such members of the said Council as are present in person or by proxy at a meeting thereof at which not less than four members are so present.

PART III.

5

SOLICITORS' FIDELITY GUARANTEE FUND.

Interpretation.
1929, No. 15, s. 2

71. In this Part of this Act, unless the context otherwise requires,—

“Committee” or “committee of management” means the committee to which the powers of the Council in relation to the fund may be delegated pursuant to section *seventy-nine* of this Act: 10

“Council” means the Council of the New Zealand Law Society:

“Fund” means the Solicitors' Fidelity Guarantee Fund established under this Part of this Act: 15

“Prescribed” means prescribed by this Part of this Act or by rules made under the authority of this Part of this Act.

Application of this
Part of Act.
Ibid., No.15, s. 3

72. This Part of this Act shall apply with respect to every solicitor who is for the time being engaged in the practice of his profession either on his own account or in partnership with any other person or persons, but shall not apply to any solicitor who is not so engaged. 20

Solicitors' Fidelity Guarantee Fund.

Establishment of
Solicitors' Fidelity
Guarantee Fund.
Ibid., s. 4

73. (1) There is hereby established a fund to be known as the Solicitors' Fidelity Guarantee Fund (hereinafter referred to as the fund). 25

(2) The fund shall be the property of the New Zealand Law Society, and shall be held in trust for the purposes hereinafter appearing.

(3) The fund established under this Part of this Act is hereby declared to be the same fund as the Solicitors' Fidelity Guarantee Fund established under the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929. 30

Fund to be kept
in separate bank
account.
Ibid., s. 5

74. All moneys belonging to the fund shall, pending the investment or application thereof in accordance with this Part of this Act, be paid into a bank for the time being carrying on business in New Zealand, to the credit of a separate account to be called the Solicitors' Fidelity Guarantee Fund Account. 35

Moneys payable
into fund.
Ibid., s. 6

75. The fund shall consist of—

(a) All sums paid to or on account of the fund by solicitors, either as annual contributions or as levies, in accordance with the provisions of this Part of this Act in that behalf: 40

(b) The interest from time to time accruing from the investment of the fund, as hereinafter provided:

(c) All moneys recovered by or on behalf of the New Zealand Law Society in the exercise of any right of action conferred by this Part of this Act: 45

(d) Any other moneys that may be lawfully paid into the fund.

76. There shall from time to time be paid out of the fund, as required,

Expenditure from fund. 1929, No. 15, s. 7

(a) The amount of all claims, including costs, allowed or established against the fund as hereinafter provided :

5 (b) All legal expenses incurred in defending claims made against the fund, or otherwise incurred in relation to the fund :

(c) All premiums payable in respect of contracts of insurance entered into by the Council pursuant to section *eighty-nine* hereof :

10 (d) All refunds made to solicitors or to their personal representatives pursuant to section *ninety-one* hereof :

(e) The expenses involved in the administration of the fund, including allowances to members of the Council or the committee of management in respect of their services and their reasonable travelling-expenses incurred in connection with the management of the fund :

15 (f) Any other moneys payable out of the fund in accordance with this Part of this Act or with rules made under the authority of this Part of this Act.

20 77. (1) The accounts of the fund shall be audited annually by a registered accountant appointed for the purpose by the Council. No person shall be so appointed to audit the fund unless he is authorized to audit solicitors' trust accounts in accordance with the regulations for the time being in force relating to the audit of such accounts.

Audit of accounts. Ibid., s. 8

25 (2) Every person acting as auditor under this section shall, in respect of the fund, have the same powers and duties and be subject to the same responsibilities and obligations, with such modifications as may be necessary, as he would have in respect of the audit of solicitors' trust accounts.

30 78. Subject to the provisions of the *next succeeding* section, the fund shall be administered by the Council on behalf of the New Zealand Law Society.

Council to administer fund. Ibid., s. 9

35 79. The Council may by resolution delegate its powers in relation to the fund or any of such powers to a committee of management, consisting of not less than three nor more than five persons being members of the New Zealand Law Society. Any member of that Society may be appointed a member of the committee of management, notwithstanding that he may not be a member of the Council. Any resolution as aforesaid may be at any time in like manner rescinded or varied.

Council may delegate its powers in relation to the fund to a committee of management. Ibid., s. 10

40 80. (1) Except as provided in the *next succeeding* section, every solicitor with respect to whom this Part of this Act applies, on making application in any year for a certificate under section *forty-two* hereof, shall, in addition to all other fees then payable by him, pay such fee as may from time to time be prescribed for the purposes of this Part of this Act, being not less than *five* pounds or more than *ten* pounds in any year, and no such certificate shall be issued unless and until the prescribed fee is paid.

Solicitors in practice to pay prescribed fees into fund. Ibid., s. 11

45 (2) If any solicitor with respect to whom this Part of this Act is not applicable at the time of his application for a certificate under section *forty-two* hereof thereafter in the year for which such certificate is issued commences to practise as a solicitor on his own account or in partnership with any other person or persons, he shall thereupon become liable to pay to the fund the amount of the prescribed fee for
55 that year.

(3) All fees payable under this section shall be paid in the same manner as fees payable under section *forty-two* hereof are paid, and the person receiving such fees shall forthwith pay them into the fund.

Accumulated fund not to exceed £100,000. 1929, No. 15, s. 12

81. No further contributions in accordance with the *last preceding* section shall be made to the fund established under this Part of this Act at any time while the amount of the fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the fund, is not less than one hundred thousand pounds. 5

In addition to annual contributions, solicitors may be required to pay levy for benefit of fund. Ibid., s. 13

82. (1) If at any time the fund is not sufficient to satisfy the liabilities of the New Zealand Law Society in relation thereto the Council may by resolution impose on every solicitor in respect of whom this Part of this Act applies, for payment into the fund, a levy of such amount as it thinks fit, not exceeding *ten* pounds. 10

(2) The amount of such levy shall become payable on a date and in a manner to be fixed by the Council, and if not theretofore paid shall be paid together with the next annual fee payable to the fund pursuant to the provisions of section *eighty* hereof. 15

(3) No solicitor shall be required to pay by way of levy under this section more than *ten* pounds in any one year or more than *fifty* pounds during the whole period of his practice as a solicitor. 20

Investment of fund. Ibid., s. 14

83. Any moneys in the fund that are not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorized to invest trust funds.

Application of fund. Ibid., s. 15

84. (1) Subject to the provisions of this Part of this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft by a solicitor with respect to whom this Part of this Act applies, or by his servant or agent, of any money or other valuable property entrusted to him, or to his servant or agent, in the course of his practice as a solicitor, including any money or other valuable property as aforesaid entrusted to him as a solicitor-trustee. 25

(2) No person shall have any claim against the fund in respect of any theft committed before the first day of January, nineteen hundred and thirty (being the date of the commencement of the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929), and, in respect of any theft that may be committed after that date, no person shall have a claim against the fund unless notice of such claim is given in writing to the Council or committee of management within twelve months after the claimant has become aware of the theft. 30

Council may settle claims without action. Ibid., s. 16

85. (1) The Council may receive and settle any claim against the fund at any time after the commission of the theft in respect of which such claim arose, but no person shall be entitled, without leave of the Council, to commence any action in relation to the fund unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting solicitor or any other person in respect of the loss suffered by him. 35

Limitations of right of action to recover moneys from fund.

(2) No person shall be entitled to recover from the fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of such loss. 40

(3) No amount shall be paid or payable out of the fund as interest on the amount of any judgment obtained or of any claim admitted against the fund. 45

(4) No right of action shall lie in relation to the fund in respect of any loss suffered by any person by reason of any theft that may be committed by a solicitor at any time after the claimant or his privies have received a notification in writing from the Council or committee of management warning him or them against the employment or continued employment of such solicitor.

(5) No action for damages shall lie against the New Zealand Law Society or any member or servant of the Council or committee of management for any notification given in good faith and without malice for the purposes of the last preceding subsection.

86. In any action brought against the New Zealand Law Society in relation to the fund, all defences which would have been available to the defaulting solicitor shall be available to the Society.

Defences to claims against fund. 1929, No. 15, s. 17

87. On payment out of the fund of any moneys in settlement in whole or in part of any claim under this Part of this Act the New Zealand Law Society shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the solicitor in relation to whom the claim arose, or, in the event of his death or insolvency or other disability, against his personal representatives or other persons having authority to administer his estate.

Subrogation of rights of action against defaulting solicitor. Ibid., s. 18

88. (1) No moneys or other property belonging to the New Zealand Law Society other than the fund shall be available for the satisfaction of any judgment obtained against the society in relation to the fund, or for the payment of any claim allowed by the Council; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, be charged against future accumulations of the fund.

If fund insufficient to satisfy claims, such claims to be charged on future accumulations. Ibid., s. 19

(2) The Council may in its absolute discretion, having regard to the rules hereinafter set forth, determine the order in which the judgments and claims charged against the fund as aforesaid shall be satisfied, and may, if the amount accumulated is not sufficient to satisfy all such judgments and claims in full, satisfy any such judgment or claim in whole or in part.

(3) Without limiting the discretion of the Council, it shall, in applying the fund towards the settlement of such judgments and claims as aforesaid, have regard to the following rules:—

(a) It shall take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants in the event of their claims against the fund not being satisfied in whole or in part.

(b) Claims for amounts not exceeding five hundred pounds shall, unless in special circumstances, be satisfied in full before claims for amounts exceeding five hundred pounds are satisfied to a greater extent than five hundred pounds.

(c) Where all other considerations are equal, claimants shall have priority as between themselves according to the dates of the judgments or the dates when the claims were admitted by the Council, as the case may be.

89. (1) Notwithstanding anything to the contrary in the foregoing provisions the Council may in its discretion enter into any contract or contracts of insurance with any person or company carrying on fidelity insurance business in New Zealand, whereby the New Zealand Law

Council may enter into contracts of insurance for purposes of this Part of Act. Ibid., s. 20

Society will be indemnified to the extent and in the manner provided by such contract or contracts against liability to pay claims under this Part of this Act.

(2) Any such contract of insurance may be entered into in relation to solicitors generally or in relation to any solicitor or solicitors named therein. 5

(3) No action shall lie against the New Zealand Law Society, or against any member or servant of the Council, or against any member of the committee of management, for injury alleged to have been suffered by any solicitor by reason of the publication in accordance with fact of a statement that any contract of insurance entered into under this section does or does not apply with respect to such solicitor: 10

Provided that in the event of any contract of insurance being entered into in respect of any specified solicitor or solicitors, the Council shall on the application of any other solicitor enter into a like contract of insurance in respect of such last-mentioned solicitor if the insurer signifies his or its willingness to enter into such contract on like terms and conditions. 15

Application of
insurance moneys.
1929, No. 15, s. 21

90. No claimant against the fund shall have any right of action against any insurance company or other person with whom a contract of insurance is made under this Part of this Act in respect of such contract, or have any right to claim any moneys paid by the insurer in accordance with any such contract of insurance; but all such moneys shall be paid into the fund and shall be applied in or towards the settlement of relevant claims. 20 25

Council may refund
contributions in
certain cases.
Ibid., s. 22

91. In the event of the death or on the retirement from the practice of his profession of any solicitor in respect of whom no claim has been made under this Part of this Act, or, if any such claim has been made, in respect of whom such claim has not been sustained, the Council may in its discretion pay to him, or to his personal representatives, as the case may be, a sum not exceeding the aggregate amount of his contributions to the fund. 30

Supplementary Provisions.

Council of New
Zealand Law Society
or of any District
Law Society may
appoint registered
accountant to
investigate affairs of
solicitor.
Ibid., s. 23

92. (1) For the purpose of safeguarding the fund established under this Part of this Act the Council of the New Zealand Law Society or of any District Law Society may at any time appoint a registered accountant for the time being qualified to conduct the audit of solicitors' trust accounts to examine the accounts of any specified solicitor or firm of solicitors, whether a member or members of any District Law Society or not, and to furnish to it a confidential report as to any irregularity in the accounts of such solicitor or solicitors that may be disclosed by such examination, or as to any other matter that in the opinion of such accountant should, in the interests of the fund, be further investigated. 35 40 45

(2) Every appointment made under this section shall be in writing and shall be signed on behalf of the Council by the President or two members thereof.

(3) Upon production by such accountant of the instrument of his appointment as aforesaid he may require the solicitor or solicitors in respect of whom the appointment has been made, or any servant 50

or agent of such solicitor or solicitors, to produce to him all books, papers, accounts, securities, or other documents relating to the business or accounts of such solicitor or solicitors, and to give all information in relation thereto that may be reasonably required of him or them, and if any such person, without lawful justification or excuse, the proof whereof shall lie on him, refuses or fails so to do, or otherwise hinders, obstructs, or delays the accountant in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence and shall be liable accordingly.

10 (4) No accountant appointed to make any examination of accounts for the purposes of this section shall communicate any matter which may come to his knowledge in the course of such examination to any person except in the course of his report to the Council that appointed him.

15 (5) The Council receiving such report shall consider the same in committee and not otherwise, and it shall not be lawful for any member of that Council or of any of its officers to publish to any person any information disclosed in such report except in the performance of his duty.

20 (6) Every person who commits a breach of any of the provisions of this section shall be liable on summary conviction to a fine of ten pounds.

25 93. (1) For the purposes of this Part of this Act the Council may from time to time make rules for all or any of the following purposes:—

Council of New Zealand Law Society may make rules for purposes of this Part of Act. 1929, No. 15, s. 24

(a) Prescribing the amount of the annual contributions to the fund to be paid by solicitors with respect to whom this Part of this Act applies:

30 (b) Providing for the investment of so much of the fund as is not immediately required for the purposes thereof:

(c) Prescribing forms of notice to be given to the Council in relation to claims against the fund, and the conditions subject to which and the extent to which the Council may settle any such claims without recourse being had to legal proceedings:

35 (d) Prescribing the duties of accountants appointed to conduct an examination of any accounts pursuant to section *ninety-two* hereof; and prescribing also the duties of the solicitor or solicitors concerned in relation thereto, and the circumstances in which such solicitor or solicitors may be required to pay the cost of such examination:

40 (e) Generally, for such other matters as may be considered necessary for the purpose of giving full effect to the intent of this Part of this Act.

45 (2) Rules made under the authority of this section shall not come into force unless they are approved by the Governor-General in Council.

PART IV.

GENERAL.

50 94. (1) The enactments mentioned in the *Second* Schedule hereto are hereby repealed.

Repeals and savings.

(2) All Orders in Council, regulations, rules, orders, admissions, enrolments, rolls, certificates, applications, notices, examinations, dis-

tricts, seals, Councils, appointments, elections, and generally all acts of authority which originated under any of the enactments hereby repealed and are subsisting or in force at the commencement of this Act shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated. 5

(3) All matters and proceedings commenced under any such enactment and pending or in progress at the commencement of this Act may be continued, completed, and enforced under this Act.

Schedules.

SCHEDULES.

Section 44.

1908, No. 100,
Second Schedule
1913, No. 72, s. 3
1915, No. 71, s. 2
1930, No. 37, s. 3 (6)

FIRST SCHEDULE.

TABLE OF FEES TO BE PAID.

Barristers.

				£	s.	d.
For every admission—						
	Under paragraph (a) or (d) of section 4	..	..	21	0	0
	Under paragraph (b), (c), or (e) of section 4	..	..	5	5	0
For every annual certificate under section 41—						
	If holding a certificate under section 42	..	..	1	1	0
	If not holding a certificate under section 42	..	..	4	4	0

Solicitors.

For every admission—						
	Under paragraph (a) or (d) of section 12	..	..	21	0	0
	Under paragraph (b) or (c) of section 12	..	..	5	5	0
For every annual certificate under section 42—						
	If holding a certificate under section 41	..	..	1	1	0
	If not holding a certificate under section 41	..	..	4	4	0

SECOND SCHEDULE.

ENACTMENTS REPEALED.

- 1908, No. 100.—The Law Practitioners Act, 1908.
 1913, No. 72.—The Law Practitioners Amendment Act, 1913.
 1915, No. 71.—The Law Practitioners Amendment Act, 1915.
 1920, No. 80.—The Law Practitioners Amendment Act, 1920.
 1921, No. 8.—The Law Practitioners Amendment Act, 1921.
 1929, No. 15.—The Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act, 1929.
 1930, No. 37.—The Law Practitioners Amendment Act, 1930.