



ANNO QUARTO

VICTORIÆ REGINÆ,

No. 29.

By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT to make further provision for the Admission of Practitioners in the Supreme Court and to prevent Unqualified Persons from practising therein.

WHEREAS it is expedient to make further provision for the Admission of Practitioners in the Supreme Court and to prevent Unqualified Persons from practising therein—**BE IT THEREFORE ENACTED** by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that after the commencement of this Act every person who not being duly admitted a Barrister Attorney Solicitor or Proctor of the Supreme Court of Van Diemen's Land shall (either directly or indirectly) practise or act within this Island or its Dependencies as a Barrister Attorney Solicitor or Proctor he shall for every such offence forfeit and pay a penalty or sum of One Hundred Pounds to be sued for and recovered as hereinafter directed.

PREAMBLE.

Persons unlawfully acting as Attorneys.

II. AND BE IT ENACTED that every such Penalty as aforesaid may be sued for and recovered by Action of Debt in the Supreme Court of Van Diemen's Land by and in the name of any person who shall think fit to sue for the same—**AND** every such penalty shall be as to one moiety thereof to the use of Her Majesty Her Heirs and Successors and as to the other moiety to the use of the person so suing—**AND** in

Recovery of Penalties.

every Action the proof as to the Defendant being duly admitted shall lie on such Defendant.

Eligibility of persons for admission as Attorneys &c.

III. AND BE IT ENACTED that after the commencement of this Act every person of the age of twenty-one years or upwards who shall have actually and *bonâ fide* served for the term of five years or upwards as Clerk of the Supreme Court or as Clerk to Her Majesty's Attorney or Solicitor General or as Clerk of the Peace or as an Articled Clerk to any practising Barrister Attorney Solicitor or Proctor of the said Court or for any portion of the said term in one of the said capacities and the residue thereof in another of them (whether any such service shall have been before or after or partly before and partly after the commencement of this Act) or who shall have been qualified in respect of service as an Articled Clerk for admission as an Attorney or Solicitor in any of Her Majesty's Superior Courts of Great Britain or Ireland or as a Writer to the Signet in Scotland or who shall have served a portion of the term of five years as an Articled Clerk to a practising Attorney or Solicitor of any of Her Majesty's last-mentioned Courts or to a Writer to the Signet in Scotland and the residue thereof as an Articled Clerk to any practising Barrister Attorney Solicitor or Proctor of the said Supreme Court (whether such last-mentioned service shall have been before or after the passing of this Act) or who shall at the time of the commencement of this Act have actually and *bonâ fide* served as an unarticled Clerk to any such last-mentioned Barrister Attorney Solicitor or Proctor for and during the full term of five years or who having at the commencement of this Act actually and *bonâ fide* served as such unarticled Clerk as last aforesaid a portion of the said term shall within one month after the commencement of this Act enter into and serve thereafter under such articles of clerkship as aforesaid for so long a time as will complete the whole of the said term shall be eligible for admission to practise as a Barrister Attorney Solicitor and Proctor of the said Supreme Court subject to the several Regulations in that behalf hereinafter provided.

Exceptions.

IV. PROVIDED ALWAYS AND BE IT ENACTED that nothing hereinbefore contained shall be deemed to render any man (not being the Clerk of the Supreme Court or the Clerk of the Attorney or Solicitor General or Clerk of the Peace) eligible for such admission as aforesaid in respect of any service not under articles merely as a copying or engrossing clerk nor unless he shall during the period of such service not under articles have been *bonâ fide* employed in the general duties of the office of his master or employer nor unless he shall produce proof to the satisfaction of the Examiners to be appointed as hereinafter provided that he was prevented from entering into Articles of Clerkship by the belief on his part and that of his master or employer that his so doing would not have facilitated his admission to practise as aforesaid.

Period limited after expiration of service within which persons are to apply for admission.

V. PROVIDED ALSO AND BE IT ENACTED that no person who shall be in this Island and shall have completed his term of clerkship at the time of the commencement of this Act shall be entitled to the benefit thereof unless he shall within three calendar months thereafter make application in manner hereinafter provided to be

admitted to practise and no other person shall be entitled to the benefit of this Act if the whole or any portion of the term of clerkship in respect of which he shall claim to be eligible shall have been served within this Island or if the whole of such clerkship shall have been served in Great Britain or Ireland unless he shall make such application for admission as aforesaid within three calendar months after the expiration of such term or after his arrival in this Colony as the case may be.

VI. AND BE IT FURTHER ENACTED that the Master of the said Supreme Court for the time being and one actually practising Barrister of the said Court who shall have been called to the Bar in England or Ireland or admitted as an Advocate in Scotland and two actually practising Attorneys of the said Court shall be appointed by Rule of Court in the fourth term of the present and every succeeding year subject to the control of the Judges of the said Court to be Examiners touching the fitness of persons applying for admission to practise therein as Barristers Attorneys Solicitors and Proctors under this Act any three of whom two whereof to be the said Master and the said Barrister shall be competent to conduct the examination subject to such appeal as is hereinafter mentioned and the Examiners so to be appointed shall conduct the said examinations under regulations to be approved of by the Judges and in case any person shall be dissatisfied with the refusal of the Examiners to grant such Certificate as is hereinafter mentioned he shall be at liberty to apply for admission by Petition in writing to the Judges of the said Court which application shall be heard by both the said Judges if there be two only and by not less than two of them if there be more than two Judges of the said Court.

Examiners appointed.

Appeal against their decision.

VII. AND BE IT FURTHER ENACTED that every person desirous of being admitted to practise under this Act shall make known such his desire to the said Examiners in writing under his own hand and shall therein state his names age and place of abode and the several matters in respect of which he claims to be admitted and thereby request the Examiners to appoint a time and place for his examination and thereupon the said Master shall appoint a time and place for that purpose which time shall not be sooner than one month nor more than six weeks after such application shall be brought into and left at the said Master's office unless the applicant shall desire a longer reasonable delay.

Proceedings previously to examination.

VIII. AND BE IT FURTHER ENACTED that on the next day after the said Master shall have made such appointment the person so applying for admission shall cause a written notice of such his application and of the time and place appointed for his examination to be affixed in the office of the Registrar of the Supreme Court there to remain until he shall have been admitted as hereinafter is provided and shall also if required by the Master cause another copy or other copies of such notice to be advertised in one or more public newspapers as the Master shall direct and every such notice shall disclose the true names and place of abode of the party so applying.

Publication of application for admission and of day appointed for examination.

Articles of Clerkship to be deposited with the Master and Applicant to answer certain questions as to his service &c. if required.

IX. AND BE IT FURTHER ENACTED that every person so applying shall within one week after the time and place have been appointed for his examination or at such other time as the said Master shall appoint leave or cause to be left at the said Master's office his Articles (if any) of Clerkship and also any assignment that may have been made thereof together with answers to such written or printed questions as the Judges may approve of to be put generally or in particular cases touching the Applicant's service and conduct and domicile such answers to be signed by the Applicant and by the Barristers Solicitors Attorneys or Proctors whom he may have served in this Island and shall also if required one week before the time appointed for his examination sign and leave or cause to be left in the said Master's office written answers to such other written or printed questions as shall be proposed by the said Examiners touching his service and conduct and shall also if required attend the said Examiners for the purpose of giving further explanations touching the same and shall also if required procure the attendance of the last-mentioned Barristers Attorneys Solicitors or Proctors or any of them as the case may be with whom he has served his Clerkship.

Examination.

X. AND BE IT FURTHER ENACTED that every such person shall attend at the time and place appointed for his examination and shall answer in writing such questions as the said Examiners shall then and there put to him by written or printed papers touching his fitness and capacity to act as an Attorney.

Certificate of fitness.

XI. AND BE IT FURTHER ENACTED that upon compliance with the aforesaid regulations if the major part of the Examiners actually present at and conducting the said Examination of whom the said Master and the said Barrister who shall have been called to the Bar in England or Ireland or shall have been admitted as an Advocate in Scotland shall be two shall be satisfied as to the fitness and capacity of the person so applying to act as a Barrister Attorney Solicitor and Proctor the said Examiners so present or the major part of them shall certify the same under their hands in the following form videlicet—
“Pursuant to the Act of Council in such case made and provided we being the major part of the Examiners actually present at and conducting the examination of *A. B. &c.* do hereby certify that we have examined the said *A. B.* as required by the said Act and we do testify that the said *A. B.* is fit and capable to act as a Barrister Attorney Solicitor and Proctor of the Supreme Court of Van Diemen's Land”—

To be in force one month.

AND every such Certificate shall be in force for one month from the date thereof unless such time shall be specially extended by order of a Judge of the said Supreme Court.

Admission to practice.

XII. AND BE IT FURTHER ENACTED that at any time before the expiration of the said month or extended time it shall be lawful for any Judge of the said Court upon the production of such Certificate and upon the person therein named taking the oath or oaths as nearly as may be usually taken by persons admitted as Barristers

Attorneys or Solicitors in Her Majesty's Superior Courts at Westminster by an order in writing to direct that the person named therein be admitted and enrolled, and he shall upon production of such order to the Registrar of the said Court and upon payment to him of a fee of Five Pounds be thereupon admitted a Barrister Attorney Solicitor and Proctor of the said Supreme Court.

XIII. AND BE IT FURTHER ENACTED that if the Judges of the said Supreme Court upon hearing of any such appeal as aforesaid shall think fit to admit the Appellant and shall make an order in writing for his admission the same proceedings may be had as in case of admission upon the Examiners' Certificate and the order of a single Judge.

Proceedings on appeal to the Court.

XIV. AND BE IT FURTHER ENACTED that nothing in this Act contained shall extend to the case of any person eligible to admission to practise in the said Supreme Court as a Barrister Attorney Solicitor or Proctor under the provisions of the Letters Patent constituting and erecting the said Court.

This Act not to extend to certain persons.

XV. AND BE IT FURTHER ENACTED that it shall be lawful for the said Supreme Court from time to time to make such rules and orders touching the several matters aforesaid as may be necessary to give effect to this Act.

Supreme Court to make rules.

XVI. AND BE IT ENACTED that it shall and may be lawful for the Judges of the said Supreme Court and they are hereby authorised whensoever they may make any rule or regulation for the division of the Practitioners of the said Supreme Court subject to the approbation of Her Majesty to extend the same rule and regulation to those persons who under and by virtue of this Act shall have been admitted Barristers Attorneys Solicitors or Proctors of the said Court.

Any subsequent rule for the division of the Bar to extend to persons admitted under this Act.

XVII. AND BE IT ENACTED that no Barrister Attorney Solicitor or Proctor shall take any Articled Clerk at an earlier age than sixteen years nor shall have more than two Articled Clerks at one time nor shall take or retain any such Clerk at any time or for any period during which he shall not actually practise in and carry on the Profession or Professions for the learning of which such Clerk shall be bound.

No Attorney &c. to have more than two Articled Clerks &c.

XVIII. AND BE IT ENACTED that if any Barrister Attorney Solicitor or Proctor to whom any person shall have been articled to serve as aforesaid shall happen to die before the expiration of the term of Clerkship or if the contract shall by mutual consent of the parties be vacated before expiration of the said term then if such Clerk shall by contract in writing be bound to serve as Clerk to any other practising Barrister Attorney Solicitor or Proctor and shall complete the residue of the full term with such last-mentioned Master then such service shall be taken to be as good and effectual as if such Clerk had continued to serve for the full term the person to whom he was bound originally.

Provision for death of Masters.

any made?
in the Bar

Appropriation
clause.

XIX. AND BE IT ENACTED that the sums of money made payable by this Act into the hands of the Registrar of the Supreme Court and the moieties of all Penalties hereby reserved to the use of Her Majesty shall be and the same are hereby reserved to Her Majesty Her Heirs and Successors for the Public uses of this Island and the support of the Government thereof and shall respectively be from time to time appropriated and applied towards defraying the expense of the Judicial Establishment or otherwise as by any Act or Acts from time to time passed for the General Appropriation of the Revenue shall be in that behalf hereafter directed.

JOHN FRANKLIN.

Passed the Legislative Council this fifth
day of October one thousand eight
hundred and forty,

RONALD C. GUNN, *Clerk of the Council.*