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LEGISLATIVE AND JUDICIAL ATTEMPTS TO CONTROL THE LEGAL PROFESSION

THROUGHOUT ITS EARLY HISTORY numerous efforts were made by the several state legislatures as well as by the various courts, usually the state supreme courts, to supervise and control the American legal profession either by legislative enactments or by special rules of court. These efforts, which at times amounted to a veritable policy, in many instances can be traced back to colonial days when the lawyer had been severely restricted for a while. In part these efforts were intended outrightly to curtail, restrict, or embarrass the profession as such; in part they sought to standardize the prerequisites for admission to practice, to regulate admission as such, and to supervise the professional deportment of men already admitted to practice. In addition, both legislatures and courts attempted to regulate the ever vexing problems connected with lawyers' fees by establishing schedules of maximum fees which any lawyer was permitted to charge for professional services, and by penalizing those who demanded or accepted fees in excess of the established schedules. These maximum fees, it goes without saying, in the main were discouragingly small. The various efforts to supervise, regulate, and control the profession, like everything motivated by spite or ill will, were often clumsy, certainly ill-advised, and on

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the whole rather ineffective. In many instances they were deeply resented and often vehemently opposed by the lawyers who, at least in some places, preferred to regulate by themselves these vital matters more equitably either through voluntary agreements or through the instrumentality of local "bar associations."

The Revolution and the deeply emotional aftermath of this historic event induced some of the new states to pass a series of acts intended to eliminate from the profession as well as from the practice of law certain lawyers, among them some of the most renowned practitioners of colonial days, who during the protracted conflict had sided with the cause of the British crown, or who, in the opinion of the patriots, had not displayed sufficient patriotism or shown enough enthusiastic attachment to the principles of independence and liberty. Thus, in 1778, Massachusetts passed an act forbidding the return of those lawyers who had "joined the enemies" of the United States.¹ A year later, in 1779, a further enactment simply confiscated the estates of some of these "loyalists."² In 1781 the Massachusetts Supreme Judicial Court, by rule of court, required all lawyers to take an "Oath of Allegiance . . . in order to . . . exclude [from the profession] men who are enemies of their Country";³ and in 1785 the Massachusetts legislature enacted that only persons "well affected to the constitution and government of this Commonwealth" shall be admitted to practice.⁴ The state of New York followed a similar policy: In 1779 it passed an act requiring all attorneys to produce evidence "of their attachment to the liberties and independence of America," and give satisfactory proof that during the war they had conducted themselves as "good and zealous friends of the American cause."⁵ In 1781 a further act was passed providing for the specific administration of a "loyalty oath," and forbidding any lawyer who failed to take this oath to continue in the practice of law.⁶

But after a while people began to calm down and, as must

¹ See note 7, Chapter I, above. This act, it will be noted, was repealed in 1784.

² *Ibid.* This act was never repealed.

³ See note 9, Chapter I, above.

⁴ See note 10, Chapter I, above.

⁵ See note 11, Chapter I, above.

⁶ See note 13, Chapter I, above. This act was repealed in 1786. See *ibid.*

happen sooner or later, took up again the less glorious tasks of everyday life with its many and insistent demands, be they ever so trivial. One of the many problems which the past had bequeathed to the young republic, whether it liked it or not, was the presence of a rather highly developed legal profession. With the profession it also inherited the need, felt by many though certainly not by all people, to regulate this profession and supervise the various phases of the practice of law. Already during colonial times the legal profession had been subjected to much and often oppressive supervisory regulation. Hence, in many instances the several legislatures or courts of the new states merely continued, sometimes in a modified form and in closer co-ordination with the newly created conditions, policies already established prior to the Revolution.

The only instance where there were no, and could not be any, precedents for the regulations of the legal profession and the practice of law was the newly created Supreme Court of the United States and the other federal courts. By a rule of court of 1790, which remained in force until 1801, any counselor or attorney who had practiced at least three years before the Supreme Court of his home state could be admitted to practice in the Supreme Court of the United States, provided his "private and professional character shall appear to be fair."⁷ In 1801, also by a rule of court, all counselors and attorneys wishing to practice before the Supreme Court of the United States were required to "take either an oath, or, in proper cases, an affirmation, of the tenor prescribed by the rules of this court."⁸ Subsequently, the Chief Justice informed the Attorney General and the bar "that this court considers the practice of the king's bench, and of chancery, in England, as affording outlines for the practice in this court."⁹ In the beginning any lawyer appearing before the Supreme Court was required to state whether he intended to practice as an attorney or counselor. But on August 12, 1801, it was ordered "[t]hat counsellors may be admitted as attorneys in this court, on taking the usual oath."¹⁰ In 1812 a

⁷ 2 U.S. (2 Dall.) 347 (1790).

⁸ 5 U.S. (1 Cranch) xvii (1801).

⁹ *Ibid.*

¹⁰ *Ibid.*, xviii. In New York, Massachusetts, and New Jersey the traditional English distinction between attorney and counselor (barrister) persisted for some time, but this distinction did not refer to the kind of legal work the lawyer was

further order provided "[t]hat only two counsellors be permitted to argue for each party, plaintiff and defendant, in a cause."¹¹

The First United States Circuit Court of Appeals, by a special rule which was not observed by the other Circuit Courts, established four degrees of practitioners, namely: serjeant, barrister, counselor, and attorney. An attorney was required either to have graduated from a college and studied law in the office of an attorney or counselor for at least three years or, if not a college graduate, to have read law in the office of an attorney or counselor for at least four years and have practiced in a state court for at least one year. He was eligible for promotion to the rank of counselor after two years of practice in a Circuit Court. A counselor could be raised to the rank of barrister after six years of practice. The degree of serjeant was conferred upon a barrister of exceptional merit after ten years of practice.¹²

The rank of barrister, which was officially recognized in colonial Massachusetts, was revived or at least recognized by a rule of the Massachusetts Superior Court of Judicature of February 21, 1781—incidentally, the first ruling pertaining to lawyers issued by a Massachusetts court after Massachusetts had become a state:

Whereas Learning and literary accomplishments are necessary as well to promote the Happiness as to preserve the freedom of the People, and the Learning of the Law when duly encouraged and rightly directed, being as well peculiarly subservient to the great and good Purpose aforesaid, as promotive of public and private Justice; and this Court being at all times ready to bestow peculiar marks of approbation upon those Gentlemen of the Bar

performing. New Jersey, at least until 1839, also retained the ancient degree of serjeant at law. In most of the states the general rule seems to have been that a lawyer was expected to have practiced for at least two years in the lower courts before being admitted to practice in the higher courts, including the state supreme court. Also, he had to have practiced for a stipulated period of time as an attorney (usually in the higher courts) before he could become a counselor or, as in Massachusetts until 1784, a barrister.

¹¹ 14 U.S. (1 Wheat.) xvii (1812).

¹² See Warren, *History of the American Bar* 243 (1911). In 1812, by order of the court, Justice Joseph Story conferred "the honorable degree of serjeant-at-law" upon Jeremiah Smith and Jeremiah Mason, both of New Hampshire, "in testimony of the entire respect the court entertains for their learning, integrity, and ability." *Ibid.*

who, by a close application to the Study of the Science they profess, by a mode of Conduct which gives a Conviction of the Rectitude of their minds, and a fairness of Practice that does Honour to the Profession of the Law, shall distinguish themselves as men of Science, Honour and Integrity: Do Order that no Gentleman shall be called to the Degree of Barrister until he shall merit the same, by his conspicuous Learning, Ability and Honesty; and that the Court will, of their own mere Motion, call to the Bar such Persons as shall render themselves worthy as aforesaid; and that the manner of calling Barristers shall be as follows: . . . The Chief Justice, or in his absence, the Senior Justice, shall in the name of the Court, repeat to him [the gentleman who qualifies for the rank of barrister] the Qualifications necessary for a Barrister at Law; shall let him know that it is a Conviction in the Mind of the Court of his being possessed of these Qualifications that induces them to confer this Honour upon him; and shall solemnly charge him so to conduct himself as to be of singular Service to his Country by exerting his abilities for the Defence of her Constitutional Freedom; and so to demean himself as to do Honour to the Court and Bar.¹³

After 1784, however, no additional barristers were created by the Court.¹⁴

In 1781 the Supreme Judicial Court of Massachusetts also took action concerning the admission of attorneys:

Whereas it is provided that all Attorneys commonly practising in the Courts of Justice within this Government shall take the Oath prescribed by Law for Attornies, and the Oath of Allegiance to this Commonwealth and the twelfth Article in the Declaration

¹³ See Davis, *The History of the Judiciary of Massachusetts* 285ff. (1900); Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 29ff. (1907).

¹⁴ In 1784 the Supreme Judicial Court of Massachusetts, having been authorized by the legislature (the General Court) in 1782 to regulate admission to the bar, "[o]rdered that Barristers be called to the Bar by Special Writ." See Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 31 (1907). It also ordered that barristers "shall take rank according to the Date of their respective writs." *Ibid.* The Act of July 3, 1782, provided that the Supreme Judicial Court "shall and may, from time to time, record and establish all such rules and regulations with the respect to the admission of Attorneys, ordinarily practising in the said Court, and the creating of Barristers at Law." *The Perpetual Laws, of the Commonwealth of Massachusetts, 1780-1800* 70 (1801), chap. 9, sec. 4 (1782); *The General Laws of Massachusetts* 66 (1823).

of Rights having provided that every Subject shall be heard by himself or his Council at his Election, in order therefore to carry the same Provisions into effect and to exclude men who are enemies to their Country, immoral Persons and com. . . . of the Peace from stirring up unnecessary Law S[uits] and fomenting Dissentions and Division amongst the good People of this Commonwealth. The Court do in pursuance of the authority by Law given them make the following Rule, viz: That no Person shall be permitted to practise in this Court as an attorney untill he shall have been regularly sworn as the Law directs; and that no Person shall be admitted an attorney of s[ai]d Court untill they are convinced from the manner of his Life that he is a Friend to the Interest and Independence of this Country—that he sustains a good moral Character and has had Time & opportunity for & hath really acquired sufficient Learn[ing] to render himself useful in the Profession and Practice of the Law.¹⁵

In 1785, by An Act Regulating the Admission of Attornies, the legislature provided that "no person shall be admitted an attorney in any Court in this Commonwealth, unless he is a person of good moral character, and well affected to the constitution and government of this Commonwealth." The applicant was also expected to be a professionally qualified and proficient person, and he was required to take an oath of office.¹⁶ This oath, it will be noted, was practically identical with that prescribed in 1701. The Act of 1785 also stipulated that "parties may plead and manage their . . . causes . . . by the assistance of such counsel as they shall see fit to engage." Neither plaintiff nor defendant "in any suit, shall . . . be allowed to manage their cause by more than two attornies."¹⁷ In 1795 "admission fees" for attorneys were set at twenty dollars for the Court of Common Pleas, thirty dollars for the Supreme Judicial Court, and forty dollars for barristers.¹⁸

¹⁵ Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 31 (1907).

¹⁶ Acts of 1785, chap. 23, sec. 1; *The General Laws of Massachusetts* 199 (1823).

¹⁷ Acts of 1785, chap. 23, sec. 2; *The General Laws of Massachusetts* 200 (1823); *The Perpetual Laws, of the Commonwealth of Massachusetts, 1780-1788* 170 (1788).

¹⁸ Acts of 1785, chap. 80, sec. 4; *The General Laws of Massachusetts* 504 (1823). In 1814, when certain parts of the Act of 1795 were repealed, it was en-

In 1806 a ruling of the Supreme Judicial Court introduced the rank of counselor in place of that of barrister. This latter rank was not explicitly abolished, but was merely superseded by that of counselor. This ruling also provided that "[n]o attorney shall do the business of a counsellor, unless he shall have been made or admitted as such by the Court. All attorneys of this Court, who have been admitted three years before the sitting of this Court, shall be, and are hereby, made counsellors, and are entitled to all the rights and privileges as such. No attorney or counsellor shall hereafter be admitted without a previous examination."¹⁹ It was further stipulated that prior to his admission as an attorney of the Supreme Judicial Court the candidate must have practiced as an attorney before the Court of Common Pleas for at least three years, or must be a person who, "besides a good school education, [had] devoted seven years, at the least, to literary acquisitions and three years thereof, at the least, in the office, and under the instruction, of a barrister or counsellor practicing in this Court."²⁰ In 1810 the Supreme Judicial Court repealed the rules of 1806 and adopted a number of substitute rules.²¹ These new rules provided that a person with a liberal education and a college degree could be admitted to practice as an attorney before the Supreme Judicial Court if he had studied law in the office of a counselor for three years and practiced as an attorney in the lower courts for two years. He had to be recommended by the local bar "as having a good moral character and as suitably qualified."²² Persons lacking a liberal educa-

acted that the "admission fee" of twenty dollars demanded of attorneys on their admission to the bar of the Circuit Courts of Common Pleas should be used for the establishing and maintaining of a law library or "County Law Library Associations" in the respective counties. Acts of 1814, chap. 178, sec. 2; 2 *The General Laws of Massachusetts* 382 (1823). For additional details regarding the admission to practice in Massachusetts, see Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 29ff. (1907). For the "loyalty oath" required of all persons wishing to be admitted to the bar, see the Massachusetts Constitution of 1780, chap. 6, sec. 1.

¹⁹ 2 Mass. (Tyng) 72-75 (1806). The examiners for Suffolk County appointed under the rules of court of 1806 were Theophilus Parsons, Christopher Gore, Samuel Dexter, Harrison Gray Otis, William Sullivan, and Charles Jackson. See Bailey, *Attorneys and Their Admission to the Bar of Massachusetts* 41 (1907).

²⁰ 2 Mass. (Tyng) 74, sec. VIII (1806).

²¹ 6 Mass. (Tyng) 382-85 (1810).

²² *Ibid.*, sec. I.

tion or a college degree who had studied law with some counselor for five years were to be considered as having qualifications equivalent to a liberal education and a college degree.²³ A college graduate, who for one year had studied law in the office of an out-of-state attorney admitted to practice before that state's highest court, had to study law for two additional years in the office of a Massachusetts counselor of the Supreme Judicial Court.²⁴ A person without a liberal education and without a college degree, who had studied law for two years with an out-of-state attorney of the highest court of that state, had to study three additional years in the office of a Massachusetts counselor.²⁵ The bar was not to recommend any candidate who did not meet these qualifications.²⁶ Although the recommendation of the bar was necessary for admission to practice, an unreasonable refusal to recommend an otherwise qualified person (or an unreasonable refusal by any of the lower courts to admit to practice a duly recommended and qualified person) entitled a candidate to be examined and admitted directly by one of the justices of the Supreme Court.²⁷ By the discretion of the Massachusetts Supreme Judicial Court a qualified attorney admitted to practice in any other state supreme court of judicature could be admitted to the Massachusetts Supreme Judicial Court, provided he had become an inhabitant of Massachusetts.²⁸ After practicing for at least two years in the Massachusetts Supreme Judicial Court, an attorney could, on the recommendation of the bar, be promoted to the rank of counselor of the Supreme Judicial Court.²⁹ The rules of 1810 relating to admission were reaffirmed in 1820.³⁰

In 1836, presumably under the impact of certain ideas which are frequently referred to as "the spirit of Jacksonian democracy,"

²³ *Ibid.*, sec. II.

²⁴ *Ibid.*, sec. III.

²⁵ *Ibid.*, sec. IV.

²⁶ *Ibid.*, sec. V.

²⁷ *Ibid.*, sec. VI.

²⁸ *Ibid.*, sec. VII.

²⁹ *Ibid.*, sec. VIII. It will be noted that many of these rules already had been proposed by the Suffolk County bar prior to the Revolution. See *Record-Book of the Suffolk Bar*, reprinted in 19 *Proceedings of the Massachusetts Historical Society* 147-79 (1861-62).

³⁰ 16 Mass. (Tyng) 370 (1820).

Massachusetts reversed its traditional policy of requiring the most exacting educational standards of admission to the bar. In a new statute devised to throw open the profession of the law to practically all citizens, it was enacted that "[a]ny citizen of this Commonwealth, of the age of twenty one years, and of good moral character . . . who shall not have studied . . . [law, in the office of some attorney, within this state, for three years], may, on the recommendation of any attorney within this Commonwealth, petition the supreme court, or court of common pleas, to be examined for admission as an attorney in said courts, whereupon the court shall assign some time and place for the examination, and if they shall thereupon be satisfied with his acquirements and qualifications, he shall be admitted, in like manner as if he had studied three full years."³¹ Persons so admitted "to practise in any court, may practise in every other court, in the state, and there shall be no distinction of counsellors and attorneys."³² And any person, "who shall have been admitted an attorney or counsellor of the highest judicial court in any other state . . . and shall afterwards become an inhabitant of this state, may be admitted to practice here, upon satisfactory evidence of his good moral character and his professional qualifications."³³ Also, any person of good moral character, "although not admitted an attorney, may manage, prosecute or defend a suit, for any other person, provided he is specially authorized for that purpose, by the party for whom he appears, in writing, or by personal nomination in open court."³⁴ In brief, the old and rather primitive notion that anyone may either act as his own attorney or designate as his attorney any person of his own choosing was suddenly revived.

After the Revolution two short-lived attempts were made by the Massachusetts legislature to regulate attorneys' fees. In 1786 the general retaining fees in civil actions before the Supreme Judicial Court, whenever an issue of law and fact was joined, were set at twelve shillings, and at six shillings in all other matters before the

³¹ Chap. 88, secs. 19-20; *The Revised Statutes of the Commonwealth of Massachusetts* 541-42 (1836). This provision abrogated some of the rules of the Massachusetts Supreme Judicial Court of 1806.

³² *Ibid.*, chap. 88, sec. 23.

³³ *Ibid.*, chap. 88, sec. 24.

³⁴ *Ibid.*, chap. 88, sec. 27.

Supreme Judicial Court, the Court of Common Pleas, and the Court of General Sessions of the Peace.³⁵ In 1795 it was enacted that the following fees should be allowed: "to parties receiving costs, for an attorney in all causes where an issue in law or fact is joined in the Supreme Judicial Court, two dollars fifty cents. And in all other causes of the Court of Common Pleas, and Court of General Sessions of the Peace, where an issue in law or fact is joined, one dollar fifty cents; and in all other causes in the said courts, one dollar."³⁶

³⁵ Acts of 1786, chap. 73; *The Perpetual Laws, of the Commonwealth of Massachusetts, 1780-1788* 178 (1788). This Act was repealed the following year. Acts of 1787, chap. 65, sec. 1; 1 *The General Laws of Massachusetts* 326 (1823).

³⁶ Acts of 1795, chap. 41; 1 *The General Laws of Massachusetts* 481 (1823). See also Acts of 1813, chap. 11; 2 *The General Laws of Massachusetts* 334 (1823). But in the main the fees for professional services were determined largely by agreement among the lawyers themselves. A schedule of charges was adopted by the bar as the lowest fees that could reasonably be demanded, and the members of the profession bound themselves "not to receive less fees or compensation than therein expressed." Quoted in Chase, *Lemuel Shaw* 129 (1918). The first of such schedules of established fees was adopted in 1796, "taking into consideration the great depreciation of money . . . and the general inadequacy of the fees hitherto paid in many cases to the services performed in the line of our profession." *Ibid.* In 1819 a resolution of the bar called for a substantial increase in professional charges. The preamble to this resolution stated the reasons for this action: "Taking into consideration that the rules of the Supreme Judicial Court [of Massachusetts] require that nine years, at least, should have been passed in literary and professional pursuits, to qualify a man for admission to that Court as an attorney thereof, and two years practice therein as an attorney, to qualify him for admission as a counsellor thereof, and also that those who take upon themselves to perform professional duties are, and ought to be, holden in law and honor to indemnify their clients for all losses or damages which are occasioned by negligence or want of professional knowledge; and lastly, that the members of the profession are never applied to if the party can obtain, without their agency, the rights which the laws of the land secure to him . . ." *Ibid.* The charges fixed by this new agreement seem to have been rather modest: for professional advice and consultation where the value of the disputed interest or claim exceeds five hundred dollars, five dollars; for a letter demanding payment for a sum over five hundred dollars, two dollars; for arguing a case in the Supreme Judicial Court, twenty dollars; for collecting money not exceeding one thousand dollars, a retainer of 2½ per cent. These rates, which established minimum fees, however, were "not intended to restrict gentlemen from taking higher compensation in cases of difficulty or magnitude." *Ibid.*, 129-30. By 1827 ninety-seven counsellors, four attorneys of the Supreme Judicial Court, and twenty-five attorneys of the Court of Common Pleas, presumably the overwhelming majority of the Massachusetts bar, had signed this resolution. *Ibid.*, 130.

In 1820, the year Maine became a sovereign state, the Supreme Judicial Court of Maine made a general rule that "[t]he rules and regulations of the Supreme Judicial Court of Massachusetts, in force on the fifteenth day of March, 1820, relating to the admission of Counsellors and Attorneys to practice, shall be considered as in force in this Court until further order."³⁷ By a rule of court the Massachusetts Supreme Judicial Court, in 1820, ordered "[t]hat all the rules of this Court, excepting only those which relate to the admission of counsellors and attorneys . . . shall be repealed."³⁸ This meant that the general rules of the Massachusetts Supreme Court of 1810³⁹ were in force in Maine, at least for a while. In 1822 the Supreme Judicial Court of Maine issued a comprehensive set of rules relating to the admission of counselors and attorneys to practice before that Court.⁴⁰ With some minor alterations and amendments, these new rules were practically identical with the Massachusetts rules of 1820. All attorneys and counselors, who had been admitted to practice in the Massachusetts Supreme Court of Judicature prior to March 15, 1820, and were residents of Maine on February 10, 1821, were considered attorneys or counselors of the Maine Supreme Court.⁴¹

Aside from authorizing the Supreme Judicial Court to make from time to time rules with respect to the admission of attorneys and counselors,⁴² the Maine legislature, on February 10, 1821, passed a special Act Regulating the Admission of Attornies: No person, unless of good moral character and well affected toward the government and constitution of the state, nor until he had "devoted seven years at least to the acquisition of scientific and legal attainments" and had taken the oath prescribed in the state constitution, should be admitted to practice as an attorney in any court.⁴³

³⁷ 1 Maine (Greenleaf) 410 (1822).

³⁸ 16 Mass. (Tyng) 370 (1820).

³⁹ 6 Mass. (Tyng) 382-85.

⁴⁰ 1 Maine (Greenleaf) 410-14 (1822); 9 Maine (Greenleaf) 295-97 (1835). These rules did not apply to the Court of Chancery.

⁴¹ 1 Maine (Greenleaf) 410 (1822).

⁴² Act of June 24, 1820, 1 *Laws of the State of Maine* 243 (1821).

⁴³ *Ibid.*, 396-97. A person who failed to meet these requirements was not entitled to demand or receive any remuneration for his professional services. *Ibid.*, 397. Every attorney admitted to practice in the Supreme Judicial Court was charged an "admission fee." The money thus collected was applied to the salary

Neither the plaintiff nor the defendant in any action was permitted to retain more than two attorneys to manage their cause,⁴⁴ but every citizen was authorized to handle his own suit either by himself or by any person "of a good and decent moral character" of his choice. Such person, upon producing a letter of attorney, had the power to prosecute or defend any action as fully as any duly admitted and sworn attorney.⁴⁵ In 1825 it was enacted that "[a]ny person who shall have been admitted to practice law in the highest court [of judicature] in any other State, where the qualifications for admission are equal to those in this State, may be admitted to practice in this State, *Provided* He otherwise conforms to the rules and regulations adopted for the admission of attornies and Counselors, although he may not have prosecuted his professional studies two years in this State."⁴⁶ In 1826, it was enacted that no person who has "applied himself to the acquisition of literary, scientific and legal attainments" as required under the Act of February 10, 1821, shall "be required to pursue his studies for a longer time, in order to be qualified for admission as an attorney in the Court of Common Pleas," provided he is able to meet the standards of good moral character, adequate legal knowledge, "and is otherwise qualified according to the requisitions of law."⁴⁷ In 1830 the legislature apparently reintroduced the requirement of at least one year of

of the Reporter of the Supreme Judicial Court. *Ibid.*, 246. On February 22, 1822, it was enacted that no person should be admitted as an attorney in the Circuit Court of Common Pleas or in any Court of Common Pleas, until he had paid the County Treasurer twenty dollars. And no person was to be admitted as an attorney in the Supreme Judicial Court until he had paid the Clerk of this Court thirty dollars. 3 *ibid.*, 9-10 (1831).

⁴⁴ 1 *ibid.*, 397 (1821).

⁴⁵ *Ibid.*, 397-98.

⁴⁶ Act of February 25, 1825, 3 *ibid.*, 151-52 (1831). This Act in part repealed the Act of February 10, 1821 (see note 43, Chapter V, above) as well as part of the rules and regulations of the Supreme Judicial Court of 1822 (see note 40, Chapter V, above), which had provided that all persons desiring to be admitted to practice in Maine must have studied at least three years with a counselor in Maine. 1 *ibid.*, 397 (1821); 1 Maine (Greenleaf) 413 (1822).

⁴⁷ Act of February 27, 1826, 3 *ibid.*, 174-75 (1831). This Act eliminated the provision of the Act of 1825 that any candidate for admission to practice, irrespective of his other qualifications, must have studied at least two years with a counselor in Maine. See the preceding note. The Act also provided that the several Courts of Common Pleas were authorized to prescribe proper regulations for the admission of attorneys to their respective bars. *Ibid.*, 175.

legal studies in Maine: "[A]ny person of good moral character, who is well affected towards the Government and Constitution of this State, and shall have faithfully devoted seven years, at least, to the acquisition of scientific and legal attainments, whereof three shall have been spent in professional studies, with some counsellor at law, and one of the three, with such counsellor in this State, shall be admitted to practice as an attorney, at the Court of Common Pleas, upon his taking . . . the oaths . . . required by the constitution and laws of this State."⁴⁸ Finally, in 1837, the legislature enacted that the Justices of the Supreme Judicial Court should not only prescribe rules for the admission of attorneys to practice law in all the courts of Maine as well as define a course of studies to be pursued by persons wishing to be admitted, but also appoint annually within each county a committee of counselors to examine all applicants. If this committee found that the applicant was a person twenty-one years of age, of good moral character, well affected to the government and constitution of Maine, and had pursued the course of studies prescribed by the Supreme Judicial Court as well as had acquired a thorough understanding of the law, it should certify him to the court. Upon such certification the applicant was to be admitted by the court to practice both in the county where the application was made and in the Supreme Judicial Court, provided he paid the required "admission fee" and took the oath of office as well as an oath to support the Constitution of the United States.⁴⁹

In 1797, Vermont passed An Act Adopting the Common Law of England, which among other matters provided in section 21 "[t]hat the supreme and county courts shall have power to admit attorneys in said courts."⁵⁰ Section 22 of this Act stipulated that any person wishing to be admitted as an attorney to the county courts should be examined by the judges and "by the attorneys of the bar," and "if upon examination, he shall be found . . . to have a competent knowledge of the law, and be of good moral character, he shall, after taking . . . the oath prescribed by law, be admitted to all the privileges of an attorney at law in this state."⁵¹ And "the supreme

⁴⁸ Act of March 15, 1830, 3 *ibid.*, 310 (1831).

⁴⁹ *The Revised Statutes of the State of Maine, Passed October 22, 1840* 416-17 (1841).

⁵⁰ 1 *Laws of the State of Vermont* 60 (1808).

⁵¹ *Ibid.*

court of judicature in this state, shall have the exclusive right of admitting attorneys to plead at their bar; and no attorney, who shall be admitted to plead at the county courts . . . shall hereby be authorized or empowered to plead in the supreme court, without permission or license first obtained from said court."⁵²

In 1797 the Vermont legislature also enacted that no sheriff, deputy sheriff, or constable should act as an attorney for others, and that no justice of the peace "shall be of counsel, or act as an attorney . . . [or] undertake to advise, or assist any party, in any suit or cause pending before him," or in any suit which at one time was before his court.⁵³ In 1805 clerks of the Supreme Court of Judicature or of the County Courts were forbidden to practice as attorneys "before any court in this state."⁵⁴

In 1802 an Act was passed by Vermont providing that upon demand every attorney "who shall demand or receive fees, for any services by them, or . . . performed, in their capacities," must "make out and deliver . . . a particular statement of the items of such services, with the sums demanded therefor and shall receipt the same. And if any [attorney] . . . shall knowingly and wilfully demand and receive any more or greater fees . . . than is allowed them by law; or shall demand and receive fees for services not performed . . . he shall forfeit and pay to the party injured, fourfold the sum or sums so by him unlawfully taken and received, with cost of suit, in an action of the case, in any court proper to try the same. And if [he] . . . shall neglect or refuse to give such statement or receipt . . . he shall forfeit and pay, for every such refusal or neglect, the sum of *ten dollars*, with cost of prosecution."⁵⁵

⁵² *Ibid.* Section 23 of this Act provided "[t]hat when a plaintiff or defendant, in any cause pending before a county court, or the supreme court of judicature shall empower a person to appear and prosecute or defend the same; such person so empowered, having filed his power with the clerk of said court, shall be heard therein, and have the same power of conducting such cause, as though he were duly admitted and sworn, as a practising attorney of said court; and shall be subject to the same rules." *Ibid.*, 61. Thus it appears that a retainer by either the plaintiff or the defendant was tantamount to an *ad hoc* formal admission to practice by the court itself.

⁵³ *Ibid.*, 313, and 173.

⁵⁴ *Ibid.*, 106.

⁵⁵ 2 *ibid.*, 400-401 (1808).

In order to curb the mischievous activities of certain persons who offered the public their services as attorneys, Vermont enacted a comprehensive statute in 1807 which bore the significant title *An Act, to Punish Undue Combinations, Speculations, and Unjust Practices among Attornies and Pettifoggers*:

[I]f any attornies, practising as such, in any of the courts in this state, shall enter into any combination or agreement for the purpose of preventing any attorney from appearing in any cause . . . on account of the original writ's not being drawn, or filled up by a sworn attorney, or because the action was commenced before any justice of the peace by one who was not a sworn attorney; or refuse to be employed to advocate any cause, on account of the writ's not being filled up, or drawn by a sworn attorney; every attorney so offending, shall forfeit and pay the sum of *thirty-three dollars* . . . and shall be further liable to make good all damages to the party aggrieved. . . . [And] if any attorney . . . shall cause his name to be entered on the docket of any court, as the attorney for any party, in any suit pending in said court, without being employed by such party . . . or shall, without being so employed, charge any person in account, as though he had been employed as his attorney, or shall under false or feigned pretence of being, or having been employed in any cause, receive or take any money, or fees, or attempt to collect the same; the attorney so offending, on proof thereof made, to the satisfaction of the judges of said court, shall have his name erased from the list of attornies, of said court . . . [and] shall thereafter be incapable of practising in any court in this state, until restored by an order of the supreme court. . . . [And] if any attorney . . . having any negotiable note, or other instrument assigned for collection, shall put the same in suit in the name of the assignee, and shall thereupon recover and take any more costs, than would have been recoverable in case the said note . . . had been sued in the name of the person to whom the same was originally given; such attorney . . . so offending, shall forfeit and pay the sum of *twenty dollars*. . . . [And] if any attorney . . . shall enter into any agreement or contract with any sheriff, deputy sheriff, high bailiff, or his deputy, or any constable, for the delay of any writ of execution, thereby to lay the foundation for another action, and to recover judgment for another bill of costs, in the collection of the same demand; or shall make any contract for the payment of costs, upon such delay, without suit; or shall in any

case where an execution issues against two, or more persons, direct the sheriff . . . to commit the persons named in said execution to prison, at different times, or periods, for the purpose of obtaining separate goal bonds, that he may thereby be enabled to commence more than one suit for the same demand, and shall so commence more than one suit upon the same; or for having any joint, and several note or obligation in his possession, for collection, shall institute or have pending in any court in this state more than one suit at the same time, for the same demand, to enhance costs; or shall enter into any speculating practices, by purchasing, or procuring to be purchased, any note, or other demand, for the purpose of putting the same in suit, when otherwise the owner or holder thereof would not sue the same; every person so offending, shall forfeit and pay the sum of *sixty dollars* . . . [and] shall thereafter be incapable of practising as . . . [an attorney], in any court in this state, until restored by order of the supreme court.⁵⁶

This interesting Act, it may be added, also reflects what must have been frequent and irksome abuses committed by attorneys.

Only in 1817 did the Supreme Court of Vermont make some rules dealing with the admission of attorneys to practice, intended to improve the Vermont bar as a whole. Any attorney "who has been admitted to the County Court, and has practiced with reputation therein, for three years," could apply for admission to practice before the Supreme Court. On the recommendation of the local bar, the Supreme Court was to appoint a committee composed of members of the local bar "to examine into the character and qualification of such candidate," and if satisfied, the committee was to "recommend him to the Court for admission." The same rule applied to persons wishing to be admitted as solicitors in the Court of Chancery.⁵⁷

The *Revised Statutes of the State of Vermont*, passed on November 19, 1839, stipulated that "[t]he supreme court and county courts, respectively, shall have power to make all necessary rules for the orderly practice in the several courts; and the judges of the supreme court shall make, adopt and publish, and may, from time to time, alter and amend rules regulating the admission of attornies to the practice of law, before the supreme and county courts,

⁵⁶ *Ibid.*, 401-404.

⁵⁷ 3 Vermont (Brayton) 14-15 (1817).

which rules shall be uniform and binding upon the several county courts."⁵⁸ In addition, they restated the provisions contained in the Act of 1802 regarding the duty of every attorney upon demand to furnish his client with an itemized bill of his fees and, upon payment of said fees, to give the client a receipt;⁵⁹ as well as the provisions contained in An Act, to Punish Undue Combinations . . . of 1807:⁶⁰ "If any attorney . . . practising before any court, shall knowingly make up, take or receive a greater sum in any bill of costs than is provided by law, he shall pay to the person aggrieved the sum of ten dollars for each dollar in excess of fees so taken or received, and in the same proportion for a greater or less sum."⁶¹ Attorneys' fees likewise were regulated in a general fashion: "For writs returnable to the county courts, including recognizance and signing, as follows: On note or book, forty seven cents; on bonds for the payment of money, debt on judgment, debt on recognizance, scire facias, or on jail bond, one dollar; all other writs in the same proportion, according to the length and difficulty, such sum as the court shall allow."⁶²

In Rhode Island the legislature authorized the Supreme Judicial Court "to make and establish all such rules for the admission of attorneys to practice in said court . . . as the discretion of said court shall direct; provided such rules are not repugnant to the laws of the state."⁶³ It also provided that all persons admitted as either counselors or attorneys in any court of record should upon their admission pay the clerk of the Supreme Judicial Court the sum of twenty dollars.⁶⁴ In 1837 the Supreme Judicial Court of Rhode Island made the following rule: "Persons who shall have received a classical education, and who shall have studied law two years in the office of any Attorney or Counsellor of this Court, or, if not having received such education, shall have studied law three years

⁵⁸ *Revised Statutes of the State of Vermont* 161 (1839). This particular statute was originally passed on October 25, 1826. *Laws of Vermont of a Public and Permanent Nature* 12 (1835).

⁵⁹ *Revised Statutes of the State of Vermont* 471 (1839). See also note 55, Chapter V, above.

⁶⁰ *Ibid.*, 471-72. See also note 56, Chapter V, above.

⁶¹ *Ibid.*, 472.

⁶² *Ibid.*, 477.

⁶³ *The Public Laws of the State of Rhode-Island* 109 (1822).

⁶⁴ *Ibid.*, 427. See also *ibid.*, 500 (1844).

. . . and who shall be recommended by the bar as having a good moral character, and being suitably qualified for admission, shall be admitted Attorneys and Counsellors of this Court."⁶⁵ Any attorney or counselor so admitted had to take an oath of office.⁶⁶

Attorneys' fees were established in Rhode Island by legislative enactment in 1798 and again in 1822 at the following rates: for a writ and declaration, one dollar; the general fee for both attorneys and counselors in the Court of Common Pleas, one dollar, and in the Supreme Judicial Court, two dollars; for the entry of every action in the Supreme Court, three dollars; for the entry of every petition in the Supreme Court, two dollars; and for the entry of every motion for a new trial in the Supreme Court, two dollars.⁶⁷ All fees or charges not conforming with the above schedule were to be disallowed by the courts.⁶⁸ No attorneys' fees were allowed in a bill of cost before a justice of the peace.⁶⁹

The Act for the Appointment and Regulating Attornies, originally passed by Connecticut in 1708, modified in 1750, and re-enacted with further modifications in 1784, provided "[t]hat the County Courts . . . shall appoint . . . Attornies in their respective Counties, as there shall be occasion, to plead at the Bar." These attorneys had to take an oath of office, and "the Administration and Taking of which Oath, together with said Appointment, shall . . . be a Sufficient Evidence for his Admission as an Attorney at the Bar."⁷⁰ No person, except in his own case, "shall be admitted to make any Plea at the Bar in any Court, but such as are allowed and qualified Attornies,"⁷¹ and no party or litigant was permitted to engage more than one attorney in "all Actions wherein the Title of Land is not concerned and the Demand is not above *ten Pounds*. . . . But in all other Cases there shall be allowed to each party two

⁶⁵ 1 *Rhode Island* xxv (1837).

⁶⁶ *Ibid.*

⁶⁷ *The Public Laws of the State of Rhode-Island* 222-23 (1798); *ibid.*, 171-72 (1822).

⁶⁸ *Ibid.*, 192 (1798); *ibid.*, 145 (1822).

⁶⁹ *Ibid.*, 224 (1798); *ibid.*, 172 (1822).

⁷⁰ *Acts and Laws of the State of Connecticut in America* 10-11 (1784). For the attorneys' oath of office, see *ibid.*, 186. This oath, it will be noticed, actually goes back to the year 1708.

⁷¹ *Ibid.*, 11.

Attornies . . . and no more."⁷² In view of the large number of available lawyers in Connecticut, this particular provision was certainly unnecessary. Aside from the fact that it was probably intended to keep down legal expenses for litigants, it was really a carry-over from colonial days when lawyers were scarce and, hence, a restatement of the acts of 1730 and 1750. The fees of the "allowed and qualified attornies," the Act of 1784 goes on, "shall be stated in the Table of Fees"; and "the several Attornies, who are qualified and appointed . . . shall . . . be under the Directions of the Courts before whom they plead; who upon just Reason, shall and may displace, and wholly suspend any of said Attornies, or fine them."⁷³ In 1803, An Act in Addition to "An Act for the Appointment and Regulating Attornies" stipulated that the Superior Court and the several County Courts were empowered "to make . . . rules and regulations . . . relative to the admission and practice of attornies in such courts, provided such rules and regulations shall have no operation upon attornies already admitted to the county courts."⁷⁴ In compliance with this Act, the Superior Court made the following rule in 1809: "[H]ereafter no attorney shall be admitted to practice in the Superior Court until he shall have practiced two years in the Court of Common Pleas . . . and unless he sustain a good moral character, and shall be found qualified for practice, on a public examination of his knowledge of the law, by a committee of the bar, in the county where the application is made, to be appointed by the Superior Court: and on report of such committee, that such applicant has the requisite qualifications, the court shall direct an entry of record to be made, that he is admitted to practice in the same."⁷⁵ Since this particular rule apparently caused some confusion with regard to those applicants for admission to the bar who had begun their law studies prior to July 4, 1809, the Superior

⁷² *Ibid.*

⁷³ *Ibid.* This particular rule was first introduced in 1730, and modified in 1750. For a schedule of attorneys' fees, see *ibid.*, 65: for a general retainer in the Superior Court, 8s., and 4s. in the County Court. These fees were originally established in 1750. Between 1730 and 1750 they were 10s. and 5s., respectively. In 1787 these fees were restated in the new American currency: \$1.34 and \$.67, respectively. See 1 *Public Statute Laws of the State of Connecticut* 289 (1808).

⁷⁴ *Ibid.*, 67.

⁷⁵ 4 Conn. (Day) 119 (1809). This rule was made on July 4, 1809.

Court ruled in 1811 that its rule of 1809 did not apply to those persons who had commenced their clerkship before July 4, 1809, provided they had "regularly pursued their studies, and have been, or shall be, admitted, in any of the Courts of Common Pleas, in this State."⁷⁶

By the year 1835 the following regulations of attorneys had been adopted by the Connecticut legislature: the County Courts were authorized to "approve of, admit, and cause to be sworn as attorneys such persons, as are qualified therefore"; to make rules and regulations relative to the admission and practice of attorneys; and to exercise disciplinary supervision over all attorneys admitted in their court.⁷⁷ Attorneys admitted by the County Courts "shall be attorneys of all the courts in this state, and shall be subject to the lawful rules and orders of the courts before which they act."⁷⁸

The Act Relating to Attornies, passed by the New Hampshire legislature on February 17, 1791, provided that every plaintiff or defendant in any cause or suit, "being a citizen of this State, may appear, plead, pursue or defend, in his proper person or by such other citizen of the State, being of good and reputable character and behaviour, as he may engage and employ, whether the person so employed be admitted as an attorney at law, or not."⁷⁹ This Act also stipulated that "[a]ll attornies commonly practising in any of the courts of justice within this State, shall be under oath, which oath shall be administered . . . in open court, before the justices."⁸⁰

⁷⁶ 5 Conn. (Day) 180 (1811).

⁷⁷ *The Public Statute Laws of the State of Connecticut* 100-101 (1835). The County Courts could also fine an attorney, not exceeding one dollar, for any breach of their rules, or suspend and displace him for cause. *Ibid.*, 101. Lawyers convicted of maintenance were to be stricken forever from the roll of attorneys. *Ibid.*, 367. In order to assist young struggling lawyers to get their heads "above water," it was also enacted that they should not be taxed during the first two years of their practice. *Ibid.*, 526. This provision underlines the well-known fact that the Connecticut bar was overcrowded, and that it was extremely difficult to start a successful practice there.

⁷⁸ *The Revised Statutes of the State of Connecticut* 222 (1849).

⁷⁹ *Constitution and Laws of the State of New-Hampshire* 100-101 (1805). This Act was repealed in 1792. 6 *Laws of New Hampshire* 30 (1917). Article XV of Part I (Bill of Rights) of the New Hampshire Constitution of 1792 declared that every person under all circumstances should have the right to counsel.

⁸⁰ *Constitution and Laws of the State of New-Hampshire* 101 (1805).

And "but one attorney [was] to be taxed in the bill of cost."⁸¹ After having enacted these rather scanty provisions, the legislature apparently abandoned its efforts to regulate the legal profession and turned the matter over to the courts, excepting the fixing of attorneys' fees. On June 24, 1813, by An Act Establishing a Supreme Judicial Court, and Circuit Courts of Common Pleas, it determined that "the admission of attorneys shall be vested in, and exclusively exercised by, the . . . supreme judicial court."⁸²

On February 9, 1791, the New Hampshire legislature passed An Act Regulating Fees. In the Court of Common Pleas attorneys' fees for the plaintiff's writ and declaration were 8s.; for the defendant or the party recovering costs on an appeal from a justice of the peace, 6s. 8d.; for the petitioner's complaint or petition in the Court of General Sessions of the Peace, 8s., and for the respondent, if he recovered costs, 6s. 8d.; for the party recovering a bill of costs in the Superior Court, 12s.; for every complaint entered in the Superior Court, 8s.; for drawing a writ "triable" before a justice of the peace, 3s.; and for drawing a complaint for discontinuance before a justice of the peace, 3s. Any person demanding or taking larger fees for his services than provided by law was to pay the party aggrieved the sum of £10 for every offense.⁸³ In 1796, a new schedule of attorneys' fees in the new American currency was enacted. In the Court of Common Pleas for a writ and declaration, \$1.34; for the defendant recovering costs from an appeal from a justice of the peace, \$1.10; for the party recovering a bill of costs in the Superior Court, \$2.00; for every complaint entered in the Superior Court, including the drawing of said complaint, \$1.34; for drawing a writ to be tried before a justice of the peace, \$.50; for pleading for the defendant before a justice of the peace, \$.50; and for drawing a complaint for discontinuance of an action before a justice of the peace, \$.50.⁸⁴ In substance, the fee schedule of 1796, which merely restated in terms of the new American currency the tariffs already established in 1791, was restated in 1820.⁸⁵

⁸¹ *Ibid.*

⁸² *The Laws of the State of New-Hampshire* 81 (1815).

⁸³ *Ibid.*, 118-20 (1792).

⁸⁴ *Constitution and Laws of the State of New-Hampshire* 116 (1805).

⁸⁵ 2 *Laws of the State of New-Hampshire, Enacted since June 1, 1815* 93 (1823).

The New York State Constitution of 1777, article 27, section 2, stipulated that "all attornies, solicitors, and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the judge of the court in which they shall respectively plead or practice; and be regulated by the rules and orders of the said courts."⁸⁶ The first rule concerning attorneys and their admission to practice was made in 1778 by the newly organized Supreme Court of New York: "[N]o person shall be admitted as an Attorney of this Court unless he shall previously have served as a Clerk to an Attorney of this Court for at least three years and shall on an Examination as to his qualification be found of Sufficient Ability and Competent Learning to practice as an Attorney of this Court and produce a certificate of his Moral Character."⁸⁷ On October 9, 1779, an Act was passed by the legislature requiring all attorneys, solicitors, and counselors at law to produce upon demand certificates or other evidence "of their attachment to the liberties and independence of America" under penalty of permanent suspension from practice. This Act also revoked all licenses to practice law issued prior to April 21, 1777, subject to reinstatement under the condition that the lawyer in question could give a jury satisfactory proof that he had "conducted himself as a good and zealous friend to the American cause."⁸⁸ On November 20, 1781, a further statute was enacted providing for the administration of a test or loyalty oath, and forbidding all members of the legal profession who refused or were unable to take this oath to pursue the practice of law.⁸⁹ These stringent provisions, which admitted of much unfair abuse, remained in full force until April 6, 1786.⁹⁰

During the April term of 1783, the Supreme Court of New

⁸⁶ 1 *Laws of the State of New-York* 14 (1802). This provision, it will be noticed, distinguishes between attorneys, solicitors, and counselors. Such a distinction had already existed in practice, if not by rule of the Supreme Court of Judicature or by act of the legislature, throughout the later history of colonial New York.

⁸⁷ *Minutes of the Supreme Court of Judicature of the State of New-York, 1775-1781* 177, Court of Appeals Hall, Albany, New York.

⁸⁸ 1 *Laws of the State of New-York Passed at the Sessions of the Legislature* 155-57 (1886).

⁸⁹ *Ibid.*, 420-21.

⁹⁰ 2 *Laws of the State of New-York, Passed at the Sessions of the Legislature* 237 (1886).

York "[o]rdered that no person whatsoever after this Term be admitted an Attorney of this Court unless he shall have previously served as a Clerk for at least three years with a practising attorney of the said Court actually residing in this State during the said Service and such Attorney shall certify to the Judges of the said Court that such Clerk is of good moral [character] and he be found on examination sufficiently qualified to practice as an Attorney of the said Court. . . . [N]o person whatsoever after this Term [shall] be admitted to the Degree of Counsellor in this Court unless he shall have previously practised in this State as an Attorney for at least two years at the Expiration of which time he may be admitted to the degree of Counsellor, if on Examination he be found duly qualified."⁹¹ Fourteen years later, during the October term of 1797, the Supreme Court, again by a rule of court, stipulated that "no person shall hereafter be admitted to practice as an attorney of this Court, unless he shall have served a regular clerkship of seven years, with a practicing attorney of this Court; but any portion of time, not exceeding four years, during which a person, after he shall be fourteen years of age, shall have regularly pursued classical studies, shall be accepted in lieu of an equal portion of time of clerkship. . . . And every person who shall be so admitted . . . and having practiced for four years, shall be entitled of course to be admitted to practice as counsel. . . . [N]o person who shall be

⁹¹ *Minutes of the Supreme Court of Judicature of the State of New-York, 1781-1783* 367, Court of Appeals Hall, Albany, New York. This rule also provided that it did not "extend to any inhabitant of this State who commenced the study of the Law in this State while it was a Colony by entering as a Clerk into the office of a then practising Attorney of this Court [this is obviously a reference to those persons who had clerked in the office of a "loyalist" lawyer—A.-H. C.], and providing such inhabitant has been prevented from prosecuting his study during the war by being actually employed in the public service. . . . [N]o service since the ninth day of July 1776 with any Attorney who was during the war residing within the British lines shall be considered as any part of the Clerkship required by this rule. . . . [T]his rule shall not be construed to extend to any inhabitant of this State wilst it was a Colony, residing with the same before the year 1776 who during that year or at any time since left his place of abode and who has since that and before the present Term served a Clerkship of three years with a practising attorney of any of the Supreme Courts or Superior Courts of any of the Neighbouring States. . . . [P]ersons described in the above provisions may be admitted to practice as Attorneys of this Court in like manner as if they had served a regular Clerkship of three years within this State."

admitted to practice as Counsel . . . shall thereafter practice also as an attorney."⁹²

On October 13, 1787, the New York Court of Chancery ordered that "no person shall here after be admitted a Solicitor of this Court unless he shall have previously served for the space of at least three years a Clerkship in the Office of one of the solicitors of this Court, or in the office of any of the Officers of this Court—And that no person shall be so admitted unless upon due Examination It shall be certified to the Chancellor by the persons appointed to Examine him that it appears to them that he is of good moral Character and of competent ability. . . . [E]very person heretofore or hereafter to be admitted a solicitor of the Court shall after such Admission practice for at least the term of two years as a solicitor before he shall be admitted to practice as a Counsellor of this Court. . . . [N]o Sollicitor shall in the future be admitted a Counsellor of this Court unless he shall on Examination by such Counsellors as the Chancellor shall appoint have proved himself qualified to Execute the duties thereof."⁹³ On October 20, 1788, the Court of Chancery ruled that "no person in [the] future be admitted to practice as a Solicitor in this Court unless he has served a clerkship of Three Years with one of the Officers or Solicitors of this Court and thereafter been Three Years admitted an Att[orne]y of the Supreme Court of Judicature of this State; nor then but upon Examination in open Court."⁹⁴

On February 20, 1787, the New York legislature enacted a statute which provided "[t]hat it shall be lawful for all and every person whomsoever, of full age and sound memory, other than defendants in cases where corporal punishment may be inflicted, to make and appear by . . . attorney or attornies, in all and every or any suit, action or plea . . . in any court of this State; and to commence, pursue, prosecute or defend the same suit, action or plea,

⁹² 1 *Reports of Cases of Practice Adjudged and Determined in the Supreme Court of Judicature . . . of the State of New-York* (Coleman's Cases) 10-12 (1883).

⁹³ *Minutes of the Court of Chancery of the State of New-York, January, 1787, to December, 1787* 179, Chancery Room, Court of Appeals Hall, Albany, New York.

⁹⁴ *Minutes of the Court of Chancery of the State of New-York, December, 1787, to January, 1789* 144, Chancery Room, Court of Appeals Hall, Albany, New York.

in person, or by his, her or their attorney or attornies."⁹⁵ The same statute also dealt with the legal profession: "[N]o person shall henceforth be admitted a counsellor, attorney, solicitor, advocate or proctor in any court, but such as have been brought up in the same court, or are otherwise well practiced in soliciting causes, and have been found by their dealings to be skilful, and of honest disposition; and that every person hereafter to be admitted . . . shall, before such admission, be examined by the judges or justices of the same court; and such only as shall be found virtuous and of good fame, and of sufficient learning and ability, shall be admitted; . . . and each and every person so admitted shall upon such admission in open court take and subscribe an oath of office. . . . [I]f any counsellor, attorney, solicitor, advocate or proctor of any court . . . shall be found notoriously in default, of record or otherwise, he shall be put out of the roll, and never after be received to act as counsellor, attorney, solicitor, advocate or proctor in any court. . . . [I]f any counsellor, attorney, solicitor, advocate proctor or other, do any manner of deceit or collusion in any court of justice, or consent unto it in deceit of the court, or to beguile the court, or the party, and thereof be convicted, he shall be punished by fine or imprisonment, and shall moreover pay to the party grieved treble damages, and costs of suit . . . [and if he] shall wilfully delay his clients suit, to work his own gain, or wilfully demand by his bill any sums of money or allowance for or upon account of any money which he hath not laid out or disbursed, or become answerable for, in every such case the party grieved shall have his or her action against such attorney, solicitor, or proctor, and recover therein treble damages, and costs of suit; and such attorney, solicitor, or proctor, shall thereupon be put out of the roll, and be discharged thenceforth, from being an attorney, solicitor or proctor any more."⁹⁶ Every attorney, solicitor, or proctor, for either plaintiff or defendant, must file his "warrant of attorney" with the proper officer of the court where the suit "is or shall be depending . . . upon pain to forfeit for every neglect or offence the sum of ten pounds . . . ;" and must subscribe or indorse every

⁹⁵ 2 *Laws of the State of New-York, Passed at the Sessions of the Legislature* 412-13 (1886).

⁹⁶ *Ibid.*, 413-14.

"process for arresting, and every writ for execution . . . before service or execution thereof."⁹⁷ And "if any attorney of any court of record shall knowingly and willingly permit or suffer any other person to sue out any writ, or commence, prosecute or defend any action or suit in his name, and be thereof convicted, he shall be put out of the roll of attornies, and from the time of such conviction be disabled to practice in such court . . . [and] forfeit for every such offense the sum of twenty pounds."⁹⁸ The statute finally provided that after May 1, 1787, "no clerk, or register, or deputy register of any court, nor any examiner, or master of the court of chancery . . . [or] under sheriff, sheriff's clerk, coroner or bailiff, shall during his continuance in office, act as counsellor, attorney, solicitor, advocate or proctor."⁹⁹

The Act of February 20, 1787, in substance was restated by An Act Concerning Counsellors, Attornies, and Solicitors, passed on March 20, 1801.¹⁰⁰ On April 8, 1801, the New York legislature enacted a comprehensive and lengthy Act Regulating the Fees of the Several Officers and Ministers of Justice within the State.¹⁰¹ This Act established the following fees for counselors in the Court of Chancery: a general retainer, \$3.00 (in each cause), and for arguing upon the final hearing of any cause, \$5.00 (but no costs to be taxed for more than one counsel in the same cause);¹⁰² for solicitors in the Court of Chancery: a general retainer, \$2.50 (in each cause);¹⁰³ for counselors in the Court of Errors and in the Supreme Court: for the trial of a cause or for arguing a demurrer, \$3.75;¹⁰⁴ for attorneys in the Court of Errors and in the Supreme Court: for a general retainer, \$3.63½, and for arguing a demurrer, a special verdict, or in error, \$3.75;¹⁰⁵ and for an attorney in the Court of Common Pleas or in the Mayor's Court: for a general retainer, \$2.50.¹⁰⁶ Section 3 of this Act also provided "[t]hat whenever the

⁹⁷ *Ibid.*, 414.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ 1 *Laws of the State of New-York* (chap. 23, secs. 1-9) 219-22 (1802).

¹⁰¹ 2 *Laws of the State of New-York* (chap. 190) 66-88 (2nd ed., 1807).

¹⁰² For more detail, see *ibid.*, 69-70.

¹⁰³ For more detail, see *ibid.*, 70.

¹⁰⁴ For more detail, see *ibid.*, 72.

¹⁰⁵ For more detail, see *ibid.*, 72-73.

¹⁰⁶ For more detail, see *ibid.*, 81-82.

same person shall act as attorney and counsel, or as solicitor and counsel in the same cause, he shall not be entitled for the same service to fees both as counsel and attorney, or as counsel and solicitor, but shall be allowed the fees of counsel only . . . : and the fees of an attorney or solicitor only for the particular service done as attorney or solicitor."¹⁰⁷ Section 4 of this Act stipulated "[t]hat if any person shall knowingly or willfully exact . . . any other or greater fee . . . or reward than is . . . allowed . . . upon conviction thereof, either at the suit of the party grieved or upon information or indictment, shall pay to the party grieved treble damages, and such fine . . . as the court . . . shall think proper to impose."¹⁰⁸

Although the New York state Constitution of 1777, article 27, section 2, had provided that in the future "all attorneys, solicitors, and counsellors . . . be appointed by the court . . . and be regulated by the rules and orders of the said courts,"¹⁰⁹ the New York Supreme Court did not adopt any rules dealing with the admission to practice until 1797. In that year it ordered "[t]hat no person shall hereafter be admitted to practise as an attorney of this court, unless he shall have served a regular clerkship of seven years, with a practising attorney of this court; but any portion of time, not exceeding four years, during which a person, after he shall be fourteen years of age, shall have regularly pursued classical studies, shall be accepted in lieu of an equal portion of time of clerkship. . . . And every person who shall be so admitted to practise as an attorney, and having practised for four years, shall be entitled to be admitted to practise as counsel. . . . [E]very person who shall have regularly pursued juridical studies under the direction or instruction of a professor or a counsellor of law for four years, or shall have been admitted to the degree of counsellor at law, either in this state or elsewhere, shall be admitted to practise as counsel in this court. . . . [And] no person who shall be admitted to practise as counsel . . . shall thereafter practise also as an attorney."¹¹⁰ In 1803 the Supreme

¹⁰⁷ *Ibid.*, 88.

¹⁰⁸ *Ibid.* Subsequently a number of similar acts regulating lawyers' fees were passed.

¹⁰⁹ 1 *Laws of the State of New-York* 14 (1802).

¹¹⁰ *Reports of Cases of Practice Determined in the Supreme Court of the State of New-York, from April Term, 1794, to November Term, 1805* (Coleman and Caine's Cases) 7-8 (1808).

Court ruled that a person had to pursue legal studies for four years in New York or that he had to have been "admitted to the degree of counsellor at law in any other [state] of the *United States*, and practised as such for four years in such state," before he could be admitted as counsel in New York.¹¹¹ In 1804 the Supreme Court ordered that "every person who hath been or shall thereafter be admitted to the degree of attorney in this court, and practised as such for three years, shall be admitted to practise also as counsel in this court."¹¹² At the same time it repealed the rule made in 1797, that no counsel of the Supreme Court may practice also as an attorney.¹¹³ Finally, in 1806, it ruled that "thereafter no person, other than a natural born or naturalized citizen of the *United States*, shall be admitted as an attorney or counsellor of this court."¹¹⁴ Similar rules governed the admission of solicitors in the Court of Chancery, with the significant addition of a provision, not applicable in the courts of law, that the candidate had to pass a satisfactory examination before either the Chancellor, the Vice-Chancellor, or any other officer of the Court designated by the Chancellor.¹¹⁵

In 1829 the New York rules for admission to the law courts were amended: in order to be "permitted to practice as an attorney or counsellor in [the Supreme Court] . . . the person applying had to be examined under the direction of the court."¹¹⁶ At the same time it was ordered that an attorney might be promoted to the rank of counsel after having practiced as an attorney for at least three years, but only "if found duly qualified."¹¹⁷ In 1837 it was ordered by the Supreme Court that any portion of time to be served as a clerk with a practicing lawyer, but not exceeding two years, spent in regular attendance upon the law lectures delivered at the University of New York City was to be allowed to a law

¹¹¹ *Ibid.*, 17.

¹¹² *Ibid.*, 18.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*, 19.

¹¹⁵ See Smith, "Admission to the Bar of New York," 16 *Yale Law Journal* 514, 515-16 (1907). This rule was restated in rule 11, *Rules and Orders of the Court of Chancery of the State of New-York* 29 (1837).

¹¹⁶ *Rules and Orders of the Supreme Court of the State of New York*, of October 1829 (rule 1) 1 (1831).

¹¹⁷ *Ibid.* (rule 5), 2.

student in place of an equal amount of time spent in clerkship.¹¹⁸ In 1845 this particular provision was extended to students at the "Harvard Law School" as well as to students attending the "Yale Law School": "Any portion of time, not exceeding one [two?] years, spent in regular attendance upon the law lectures in the University of New-York, Cambridge University, or the law-school connected with Yale College, shall be allowed in lieu of an equal portion of clerkship in the office of a practicing attorney of . . . [the Supreme Court]."¹¹⁹ After 1851 graduates of the New York State and National Law School,¹²⁰ and after 1855 graduates of the "Law School" connected with Hamilton College,¹²¹ could, at the discretion of the court, be admitted to practice in New York without further examination by the court; while after 1859 graduates of the Albany Law School,¹²² and after 1860 graduates of the Law School connected with Columbia College,¹²³ were admitted without further inquiry into their legal knowledge by the court.¹²⁴

In 1799, New Jersey passed a comprehensive Act to Regulate the Practice of the Courts of Law,¹²⁵ which among other matters provided that "no person, except in his own case, or in the case of an infant, shall be permitted to appear and prosecute, or defend any action in the . . . courts, but such as is a licensed solicitor or attorney at law, who shall be under the direction of the court in which he acts." Any counselor, solicitor, or attorney, who shall be "guilty of malpractice . . . shall be put out of the roll, and never after be permitted to act or practice . . . unless he shall obtain a new license."

¹¹⁸ Smith, "Admission to the Bar of New York," *loc. cit.*, 516.

¹¹⁹ *Rules and Orders of the Supreme Court of the State of New York*, of May 30, 1845 (rule 4) 9 (1845).

¹²⁰ *Laws of the State of New York* (for 1851) Chap. 43 (passed on March 17, 1851), 50-52.

¹²¹ *Laws of the State of New York* (for 1855) Chap. 310 (passed on April 12, 1855), 524-25.

¹²² *Laws of the State of New York* (for 1859) Chap. 267 (passed on April 12, 1859), 575-76.

¹²³ *Laws of the State of New York* (for 1860) Chap. 202 (passed April 7, 1860), 342.

¹²⁴ See here also *The New Revision of the Statutes of the State of New York, Code of Remedial Justice, Laws of 1876, Chapters 448 & 449* Chap. 448, art. 2, par. 58 (1876); *Matter of Graduates*, 11 *Reports of Practice Cases Determined in the Courts of the State of New York* (Abbott) 301-37 (1860).

¹²⁵ *Laws of the State of New-Jersey* 413-27 (1821).

And "if any solicitor or attorney . . . shall neglect or mismanage any cause . . . he shall be liable to make good all damages sustained by his client." Any solicitor or attorney who "shall charge in the bill of costs for services not actually done, or for services not allowed by law, or shall take any greater fee or reward . . . than is or shall be allowed by law . . . shall pay to the party aggrieved thirty dollars."¹²⁶

Admission to practice of attorneys, counselors, and serjeants was regulated by several rules of the Supreme Court.¹²⁷ No person was to be recommended by the justices of the Supreme Court to the governor for a license to practice as an attorney in New Jersey, unless he was twenty-one years of age; by way of an examination had given satisfactory evidence to one or more of the justices of the Supreme Court of his learning in the law and his knowledge of the practice thereof; and had served a regular clerkship with some practicing attorney of the Supreme Court for at least three years if a college graduate, or four years if not a college graduate, provided he was a person of good moral character and had not at any time during his clerkship been engaged in any "employment incompatible with the full, fair and bona fide service of his clerkship."¹²⁸ No person was to be recommended for a license to practice as a counselor unless by way of any examination he had given satisfactory evidence of his knowledge of the principles and doctrines of the law,¹²⁹ and of his ability as a pleader; and unless he had practiced as an attorney in the Supreme Court for a period of at least three years.¹³⁰ No out-of-state lawyer was to be admitted to practice in New Jersey unless he had submitted first to an exam-

¹²⁶ *Ibid.*, 413-14. For attorneys' fees, see below. In 1804 and again in 1820 clerks of the Court of Common Pleas were expressly forbidden to practice as attorneys in their respective courts. *Laws of the State of New-Jersey* 120 (Bloomfield ed., 1811); *Laws of the State of New-Jersey* 716 (1821). In 1818 justices of the peace and constables, and in 1820 judges of the Court of Common Pleas and surrogates were excluded from the practice of law. *Laws of the State of New-Jersey* 646, 688-89, 788 (1821).

¹²⁷ *Digest of the Laws of New Jersey* 691-92 (Elmer ed., 1838).

¹²⁸ *Ibid.*, 691.

¹²⁹ Three of the counselors (or serjeants at law) of the Supreme Court were appointed annually to conduct the examinations to which all persons who were applying for a license to practice as an attorney or counselor had to submit. *Ibid.*

¹³⁰ *Ibid.*

ination, had served a clerkship as well as practiced as an attorney in his home state for a period of at least four years, and was able to produce satisfactory proof of his moral and professional standing in his home state, provided "that no such person shall be at all admitted unless an attorney from this state would be admitted in such state on the same or equally liberal terms."¹³¹

The Supreme Court of New Jersey also laid down the rule that all persons intending to practice either as an attorney or as a counselor had to take an oath to support the Constitution of the United States, an oath of allegiance to the state of New Jersey, and an oath of office prescribed by law;¹³² that any counselor at law from another state, if of good standing, might, at the discretion of the Supreme Court, be admitted to speak in any cause before the Supreme Court in which he might be employed; and that there should be at least twelve serjeants in the Supreme Court who should be selected from among the counselors and appointed by rule of the Supreme Court.¹³³ And no "attorney who shall not have practiced within the space of one year in this state shall be allowed to plead his privilege as an attorney of this court"; neither should any attorney or other person not residing in the state of New Jersey or not licensed and enrolled be permitted to practice in the name of any attorney of the Supreme Court, nor might an attorney of the Supreme Court permit another to practice in his name, on pain of being disbarred. "No attorney of this court, not actually residing in this state, shall appear or act, as attorney of record, in any case in any of the courts of this state."¹³⁴

The Act to Regulate Fees,¹³⁵ passed by the New Jersey legislature in 1799, established the following schedule of maximum fees: solicitors and counsel in a court of equity could demand \$2.00

¹³¹ *Ibid.*, 691-92.

¹³² *Ibid.*, 692. The oath of office, which was prescribed in 1799, was as follows: "I, A. B., do solemnly promise and swear, that I will faithfully and honestly demean myself in the practise of an attorney (and of a counsellor, or solicitor, as the case may be) and will execute my office according to the best of my abilities and understanding. So help me God." *Laws of the State of New-Jersey* 444 (1821).

¹³³ *Digest of the Laws of New Jersey* 692 (Elmer ed., 1838).

¹³⁴ *Ibid.*

¹³⁵ *Laws of the State of New-Jersey* 481-94 (1821).

as a general retainer fee; \$1.50 for a special motion; \$3.00 for arguing a plea or demurrer (counsel only); \$4.00 for arguing upon a final hearing (counsel only); and \$.80 for a single term fee. A counsel trying a cause or arguing a demurrer or a special verdict in the Court of Appeals or the Supreme Court could charge \$3.00, and for attending the Court of Appeals to make or oppose a motion, \$1.50. Attorneys were entitled to more moderate fees: for a general retainer, in each term, \$1.00; for every declaration, plea, or pleading, \$.70; for every special motion, \$.80; for arguing a special motion, \$1.25; for arguing a demurrer, special verdict, or for trying a case, \$2.00; and for a term fee, \$.80.¹³⁶

During the early years of its statehood, admission to the practice of law in Delaware was controlled by An Act for the Establishing Courts of Law and Equity within This Government,¹³⁷ which originally was enacted in colonial Delaware between 1726 and 1736. Sections 26 and 27 of this Act provided that "[t]here may be a competent number of persons of an honest disposition, and learned in the law, admitted by the Justices [of each court], to practice as Attornies there, who shall behave themselves justly and faithfully, in their practice, and before they are so admitted, shall take the following qualifications, (*viz.*) Thou shalt behave thyself in the office of an Attorney within the court according to the best of thy learning and ability, and with all good fidelity as well to the court as to the client: Thou shalt use no falsehood, nor delay any person's cause through lucre or malice. And if they misbehave themselves therein, they shall suffer such penalties and suspensions as Attornies at Law in Great Britain are liable to in such cases. . . . Attornies, so admitted, may practice in all the courts of this government, without further or other license or admittance."¹³⁸ Section 12 of An Act for the Better Regulation of the Supreme Court within This Government, passed in 1760, stipulated that "[t]he Attornies at Law, to be hereafter admitted to practice in the said Supreme Court, shall take the same qualifications, and have the same privileges as they would have done, or might have had, by the laws of this government, if they had been admitted to practice in

¹³⁶ *Ibid.*, 484-86.

¹³⁷ *Laws of the State of Delaware* 101-104 (1829).

¹³⁸ *Ibid.*, 103-104.

the Supreme Court before the making of this law."¹³⁹ Thus, during the early years of Delaware's statehood, admission to practice was controlled by two colonial statutes.

In 1793 the state of Delaware passed An Act for Regulating and Establishing Fees,¹⁴⁰ which in section 18 established the following attorneys' fees: for drawing a writ, \$.40; for every appearance in a lawsuit, \$2.60 (probably \$2.67); for every appeal bond for pleading in the Court of Appeals, \$1.00; for every appeal from an Orphan's Court, \$1.00; for drawing a warrant of attorney, \$.13; for "giving oyer on a bond or other oyer," \$.01 per line, twelve words a line; for drawing the general issue, \$.10; for all pleadings in an action, subsequent to a declaration, for every line, twelve words to a line, or for an injunction, prohibition, etc., \$.01; and for a declaration, plea, etc., by warrant of attorney, \$2.67.¹⁴¹

In 1791 the Pennsylvania legislature enacted that "[n]o Judge of any Court of Record . . . shall practice as an attorney or counsellor, in any court of justice in this commonwealth, or elsewhere,"¹⁴² a provision which subsequently was extended also to include every officer attached to any court within the state. The right to appear either in person or by counsel was reaffirmed in 1806, when a statute was passed to the effect that "[i]n all civil suits and proceedings in any court . . . any suitor and party concerned, shall have a right to be heard, by himself and counsel, or either of them."¹⁴³ The same act also stipulated that "when it shall be made to appear to the satisfaction of the court, that any attorney of such court has retained money belonging to his client, after demand made by the client for payment thereof, it shall be the duty of the court to prevent said attorney from prosecuting any

¹³⁹ *Ibid.*, 105. The Act for Establishing Courts of Law and Equity within This Government, Passed between 1726 and 1736, secs. 26 and 27 (see note 137, Chapter V, above), also applied to attorneys practicing in the Supreme Court. This is the meaning of the Act of 1760.

¹⁴⁰ Chap. 27, 2 *Laws of the State of Delaware* 1100-24 (1797).

¹⁴¹ *Ibid.*, 1116.

¹⁴² Chap. 1564, sec. 15, 3 *Laws of the Commonwealth of Pennsylvania, 1700-1810* 32 (1810).

¹⁴³ Chap. 2685, sec. 4, 4 *Laws of the Commonwealth of Pennsylvania, 1700-1810* 330 (1810).

longer in the said court, and to have his name stricken off the record of attornies."¹⁴⁴

In 1777, "by reason of the high and extravagant prices of necessaries of life," attorneys' fees, which had last been regulated by law in 1752, were doubled in Pennsylvania.¹⁴⁵ Two years later, in 1779, it was enacted that lawyers' fees could be paid in wheat;¹⁴⁶ and in 1781 it was provided that attorneys, who received sums of money for their clients and kept this money until it depreciated, should be accountable to their clients "for so much gold and silver money, as the said . . . money, so by them received, were worth" at the time they received it.¹⁴⁷ These three statutes reflect the "inflation" which at the time imperiled the monetary stability of Pennsylvania. In 1792 all attorneys "entitled to demand or receive fees" were required to "transmit to the governor of the commonwealth a particular statement of the several services for which they are entitled to demand and receive fees . . . and of the fees . . . which they respectively charge and receive . . . for the performance of their respective duties, together with the several particulars."¹⁴⁸ This information was to be used by the legislature to draft a new act for lawyers' fees and court fees. In 1795 attorneys' fees in the Court of Common Pleas were regulated by law as follows: for filing a lawsuit and entering an appearance, "if the suit is ended before or during the sitting of the first court," \$1.67; for every suit "ended after the first court and before judgment," \$3.34; for "every suit prosecuted to judgment," \$4.00; for an appeal from the judgment of the justices of the peace, if settled "before or during the sitting of the first court," \$1.33; if settled after the first

¹⁴⁴ *Ibid.*

¹⁴⁵ Chap. 793, sec. 2, 9 *Statutes at Large of Pennsylvania, 1682-1801* 229-30 (1903). For the *Act Regulating and Establishing Fees*, of 1752, chap. 38, see 5 *Statutes at Large of Pennsylvania, 1682-1801* 172 (1898). The Act of 1752 was modified in 1795, and was repealed by a general declaration in October, 1795. See below.

¹⁴⁶ Chap. 875, sec. 3, 10 *Statutes at Large of Pennsylvania, 1682-1810* 40 (1904).

¹⁴⁷ Chap. 934, secs. 11-12, 2 *Laws of the Commonwealth of Pennsylvania, 1700-1810* 4 (1810).

¹⁴⁸ Chap. 1648, sec. 1, 14 *Statutes at Large of Pennsylvania, 1682-1801* 329 (1909).

court but before judgment, \$2.00; and if judgment was "rendered," \$3.00.¹⁴⁹ Lawyers' fees in the Supreme Court were to be double the amount of those allowed in the Court of Common Pleas.¹⁵⁰

The Act Relative to the Organization of the Courts of Justice, passed in 1834,¹⁵¹ provided that the "judges of the several courts of record . . . shall . . . have the power to admit a competent number of persons of honest disposition, and learned in the law, to practise as attorneys in their respective courts."¹⁵² After having taken the prescribed oath, every attorney so admitted had the power to take full charge of all legal actions and suits, provided he had filed, if required to do so, his "warrant of attorney" with the office of the prothonotary or clerk of the court under penalty of losing his fee and being denied audience.¹⁵³ Misbehavior in his office made the attorney liable to suspension, removal from office, or some other penalty;¹⁵⁴ and if an attorney should retain money belonging to his client, though the latter had requested payment, he should be "stricken from the record of the attorneys, and . . . [be prevented] from prosecuting [any] longer in the said court."¹⁵⁵ No judge of any court might practice law in any court of justice, nor might any alderman or justice of the peace be an agent in a case "removed from before him by appeal." And no prothonotary, clerk of court, or register of wills could act as an attorney in the court or courts to which they were officially attached.¹⁵⁶

In 1777 the state legislature of Maryland passed an act to the effect that every attorney had to take an oath of office.¹⁵⁷ In 1781 the legislature enacted that whenever an action was lost because of the attorney's default the latter was to be fined five thousand pounds of tobacco, if in the General Court, and two thousand pounds, if in a County Court.¹⁵⁸ In order to establish a uniform

¹⁴⁹ Chap. 1863, sec. 1, 15 *Statutes at Large of Pennsylvania, 1682-1801* 360 (1911).

¹⁵⁰ *Ibid.*

¹⁵¹ Chap. 416, *The General Laws of Pennsylvania, 1700-1846* 531-55 (1847).

¹⁵² Chap. 416, sec. 68, *ibid.*, 543.

¹⁵³ Chap. 416, secs. 69-72, *ibid.*

¹⁵⁴ Chap. 416, sec. 73, *ibid.*

¹⁵⁵ Chap. 416, sec. 74, *ibid.*

¹⁵⁶ Chap. 416, sec. 75, *ibid.*, 543-44.

¹⁵⁷ Act of 1777, chap. 5, sec. 1.

¹⁵⁸ Act of 1781, chap. 14, sec. 2.

policy in the licensing of attorneys, a comprehensive Act Regulating the Admission of Attorneys to Practice Law in the Several Courts of This State¹⁵⁹ finally was passed in 1831: Applications for admission to practice had to be made to one of the County Courts, Courts of Equity, or Courts of Appeal in open court. Applicants had to be "free white male citizens of Maryland, above the age of twenty-one years, who shall have been a student of law in any part of the United States for at least two years."¹⁶⁰ The court receiving such application was "to examine said applicant . . . touching his qualifications for admission as an attorney," and investigate into "his probity and general character." If fully satisfied, the court was to certify the applicant and admit him to practice in any and all courts of the state.¹⁶¹ In case the court should refuse to admit the applicant, the latter was not to reapply in any court until the expiration of one year.¹⁶² Persons who had been licensed to practice in another state, district, or territory of the United States were to be admitted to practice in Maryland "upon the same terms and under the same regulations, that a citizen of Maryland would be admitted in the courts of the state, district, or territory, in which said applicant may have practised, or may have been licensed to practise; *Provided* that in the said state, district or territory, the mode and terms of admission to the bar, be regulated by law."¹⁶³ Any person whose application for admission to the bar had been denied by the court could carry an appeal to the Court of Appeals, "who shall examine such applicant as to his qualifications, character and time of studying . . . and if upon such examination the court of appeals shall determine that the applicant ought to be admitted . . . he shall be admitted accordingly, and such admission shall entitle him to admission to practice in any county court of this state, or in the court of equity."¹⁶⁴

¹⁵⁹ *Laws of Maryland* chap. 268, secs. 1-7; 2 *The General Public Statutory Law . . . of Maryland, 1692-1839* 1032-34 (1840).

¹⁶⁰ *Ibid.*, 1032.

¹⁶¹ *Ibid.*, 1032-33.

¹⁶² *Ibid.*, 1033.

¹⁶³ *Ibid.* If admission to the bar of the state, district, or territory from which the "foreign" attorney hailed was not regulated by law, his admission to practice in Maryland was wholly within the discretionary powers of the Maryland court before which his application was pending. *Ibid.*

¹⁶⁴ *Ibid.*, 1033-34.

Maryland also made some rather feeble attempts to regulate attorneys' fees. Thus, in 1805, it was enacted that "all attorneys practising in the courts of appeals . . . shall be entitled to receive the same fees as attorneys were entitled to receive in the late general court."¹⁶⁵ In 1810 a provision was made that "no attorney of any of the county courts shall be authorized to charge more . . . than the sum of three dollars and thirty-three cents and one third of a cent in any one suit."¹⁶⁶ Finally, in 1833, the legislature insisted that "the fees of attorneys . . . hereafter become due shall be collected in three years from the date such fee or fees are due, and not after."¹⁶⁷

In 1786 the Maryland legislature enacted that no register of wills should plead as an attorney in any county court where he was register;¹⁶⁸ in 1791 it excluded all justices of the Orphan's Court from acting as attorneys or solicitors in any court of law or equity while holding their judicial office;¹⁶⁹ and in 1796 it provided that "[n]either the chief justice of any district, or any of the associate justices, shall, after their appointment and qualification, act as an attorney or solicitor in any court of law or equity in this state during the time that they shall respectively act as such."¹⁷⁰

In 1835, An Act to Establish Magistrates' Courts in the Several Counties of This State, and to Prescribe Their Jurisdiction was passed. Section 20 of this Act stipulated "[t]hat in all cases, suits, complaints or prosecutions instituted or brought before the . . . district court, either party shall be entitled to appear and prosecute and defend the same by agent or attorney, being such as have been

¹⁶⁵ *Laws of Maryland of 1805* chap. 65, sec. 16; 1 *The General Public Statutory Law . . . of Maryland, 1692-1839* 503 (1840).

¹⁶⁶ *Laws of Maryland of 1810* chap. 126, sec. 2; 1 *The General Public Statutory Law . . . of Maryland, 1692-1839* 601 (1840).

¹⁶⁷ *Laws of Maryland of 1833* chap. 258, sec. 1; 2 *The General Public Statutory Law . . . of Maryland, 1692-1839* 1126 (1840). This time limit was extended for another two years in 1836. *Ibid.*, 1228.

¹⁶⁸ *Laws of Maryland of 1786* chap. 10, sec. 1; 1 *The General Public Statutory Law . . . of Maryland, 1692-1839* 235 (1840).

¹⁶⁹ *Laws of Maryland of 1791* chap. 76, 3; 2 *The Laws of Maryland* 327 (Kilty ed., 1800).

¹⁷⁰ *Laws of Maryland of 1796* chap. 43, sec. 8; 2 *The Laws of Maryland* 624 (Kilty ed., 1800).

admitted to practise the law in any county courts of this state."¹⁷¹

In 1786 the Virginia legislature passed An Act for Licensing Counsel Attornies at Law and Proctors: "[N]o person . . . shall be permitted by any court to practise therein as a counsel, attorney at law, or proctor, unless he shall heretofore have obtained a license, in the manner prescribed by the law then in force, or until he shall obtain a license from three . . . judges of the high court of chancery, or general court, which license, if he produce to them a certificate from the court of that county wherein his usual abode shall have been during twelve months next preceding, that he is a person of honest demeanor, such three judges are empowered and required to grant . . . if, after examination, it be their opinion, that he is duly qualified. Every counsel, attorney, and proctor, before he shall practise, shall . . . give assurance of fidelity to the commonwealth, and . . . shall take the oath following: 'I do swear that I will honestly demean myself in the practice of a counsel, attorney, or proctor, and will execute my office according to the best of my knowledge and ability.'"¹⁷² Persons convicted of treason, felony, forgery, or willful and corrupt perjury were excluded from admission to practice. Counsel or attorneys "practising in a court of a county, city, or borough" were not permitted to "practise the same profession in the high court of chancery or general court."¹⁷³ This particular provision, however, was repealed in 1787, and all lawyers were authorized to practice in both the inferior and superior courts, "except only that no attorney shall be permitted to prosecute in a superior court an appeal from the judgment or decree of any inferior court, where he shall have appeared in the inferior court for the appellant."¹⁷⁴

In Virginia attorneys' fees were strictly regulated by statute. As early as 1778 fees in the High Court of Chancery as well as in

¹⁷¹ *Laws of Maryland of 1835* chap. 201, sec. 20; 2 *The General Public Statutory Law . . . of Maryland, 1692-1839* 1209 (1840).

¹⁷² 12 *Statutes at Large . . . of Virginia* 339 (Hening ed., 1823). The attorney's oath required in 1777 was as follows: "I, A. B., do solemnly promise and swear, that I will be faithful and true to the Commonwealth of Virginia, and that I will well and truly demean myself in the office of attorney at law." 9 *ibid.*, 121.

¹⁷³ *Ibid.*, 339-40.

¹⁷⁴ *Ibid.*, 497. This latter provision was reaffirmed in 1788, and a fine of twenty pounds was levied for every infraction of this provision. *Ibid.*, 708.

the General Court, "in any real, mixed, or personal action, where the title or bounds of land shall or may come into question," were established at ten pounds, and in any personal action, at five pounds. In the County Courts and other inferior courts the corresponding fees were fixed at four pounds, forty shillings, or fifteen shillings, depending on the nature of the action.¹⁷⁵ Lawyers practicing in the General Court within the District of Kentucky after 1788 "may demand and receive for any suit at common law . . . a fee of thirty shillings; for any chancery suit, or real, mixed or personal action, where the title or bounds of lands shall or may come in question, three pounds."¹⁷⁶ Any lawyer within the District of Kentucky, "receiving or demanding any greater fee, or other reward, for any . . . services, shall forfeit, and pay, twenty pounds for every offense."¹⁷⁷ In 1801 counsel and attorneys were allowed the same fees in chancery district courts as were allowed to them in the High Court of Chancery.¹⁷⁸ In 1786 it was also provided that "[e]very practising attorney, in any court . . . before he shall be permitted to appear for the plaintiff or defendant in any matter . . . shall pay down to the clerk of the . . . court one tenth part of the said fee."¹⁷⁹

A number of statutes also dealt with professional discipline. Thus, in 1777, it was provided that "every attorney failing to enter an appearance according to . . . [his] engagement shall forfeit to the plaintiff fifty shillings,"¹⁸⁰ while an act of 1785 stipulated that a "delinquent attorney" not only had to pay for the court costs of his client but also was liable "for all the damage his client shall sustain."¹⁸¹ In 1786 the legislature really bore down on the legal profession: "If the general court, from their own observation, detect any mal-practice in a counsel or attorney of that court, or if a complaint in writing be made to them of such mal-practice in the said court, or in the court of a county, city, or borough . . . and if . . . he be found guilty, of the matter herein charged, the said general

¹⁷⁵ 9 *ibid.*, 529.

¹⁷⁶ 12 *ibid.*, 709.

¹⁷⁷ *Ibid.*

¹⁷⁸ 2 *Statutes at Large of Virginia, 1792-1806* 333 (Shepherd ed., 1835).

¹⁷⁹ 12 *Statutes at Large . . . of Virginia* 285 (Hening ed., 1823).

¹⁸⁰ 9 *ibid.*, 404.

¹⁸¹ 12 *ibid.*, 36.

court may either suspend his license, during a certain time, or vacate it altogether, as they shall think him to have deserved. And the high court of chancery and court of admiralty, upon the like detection or complaint of mal-practice . . . shall proceed in the same manner against a counsel, attorney, or proctor."¹⁸² In 1787 the legislature enacted that any "attorney receiving money for his client, and refusing to pay the same when demanded, shall be proceeded against in a summary way, on notice, before any court of record."¹⁸³

On November 19, 1792, Virginia passed a comprehensive Act Concerning Counsel and Attornies at Law.¹⁸⁴ Every applicant for a license to practice in any court had to produce "a certificate from the county court where he resided for the last preceding twelve months that he is a person of honest demeanor, and is upwards of twenty-one years of age." Three judges of the superior courts, upon receipt of such certificates, were authorized to grant to the applicant a license to practice in all the Virginia courts, "if after examination they shall be of the opinion that he is duly qualified."¹⁸⁵ Before being admitted to practice, every counsel and attorney had to "give assurance of fidelity to the commonwealth" and take an oath of office.¹⁸⁶ Any person practicing law without being duly admitted "shall for every such offence forfeit and pay the sum of one hundred and fifty dollars." Persons who had been or thereafter should be convicted of any felonious crime were "incapable of obtaining such license, or if licensed, the judges of any court, in which such person may practice, on proof thereof . . . may supersede his license." And "[i]f the judges of the general court, either in the general court or district courts, from their own observation, detect any mal-practice in either of the said courts, in any counsel or attorney . . . or if a complaint in writing be made to them of such mal-practice . . . and if the counsel or attorney so offending, should be found guilty of the matter therein charged,

¹⁸² *Ibid.*, 339-40.

¹⁸³ *Ibid.*, 473.

¹⁸⁴ *A Collection of All Such Acts of the General Assembly of Virginia . . . As Are Now in Force* 96-98 (1803); 1 *Statutes at Large of Virginia* (new series) 13-16 (1835).

¹⁸⁵ 1 *Statutes at Large of Virginia* (new series) 13 (1835).

¹⁸⁶ *Ibid.* For the oath of office, see note 172, Chapter V, above.

the said judges . . . may either suspend his license during a certain time, or vacate it altogether, as they shall judge most proper. The judges of the high court of appeals, and the high court of chancery, shall have the same power. . . . The justices of any county court or other inferior courts . . . [may cause] any attorney practising in such courts to find security for his good behavior or . . . [fine] such counsel or attorneys for misdemeanor, or contempt."¹⁸⁷

No lawyer prosecuting a suit in an inferior court, "in which an appeal may be prayed," may "appear, or prosecute such appeal in any superior court, to which the same may be carried or removed; and any counsel or attorney who shall appear to, or prosecute such appeal in any superior court, shall forfeit the sum of sixty dollars." If a lawsuit was dismissed for culpable nonattendance or other neglect of duty on the part of the lawyer, "it shall be at his costs, and he shall moreover be liable for all damages his client shall sustain." A lawyer "receiving money for his client and refusing to pay the same when demanded" could on notice be proceeded against in a summary way before any court of record. Neither in the superior courts nor in the inferior courts were more than two lawyers permitted "to argue on any one side, except in criminal cases, unless good cause be shown." "If any attorney or other person practising as an attorney, shall presume to appear under any power of attorney made before action [is] brought for confessing or suffering judgment to pass by default or otherwise, for any defendant in any court of record . . . such attorney shall for every such offence forfeit and pay fifteen hundred dollars to such defendant." No justice of the peace, sheriff, undersheriff, or clerk of any County Court was permitted to act as an attorney in the court to which he was attached, "except only as general attorney for any person or persons not residing or being within this commonwealth, under penalty of being fined . . . in the sum of thirty dollars for every such offence."¹⁸⁸

Attorneys were not allowed to demand or receive, directly or indirectly, any greater or other fees than provided by law: lawyers practicing in the General Court might demand for professional advice or opinion, where no lawsuit was brought, \$3.58; in a law-

¹⁸⁷ *Ibid.*, 13-14.

¹⁸⁸ *Ibid.*, 14-15.

suit, where no title or bounds of land might come into question, \$8.33; in a lawsuit, where the title or bounds of land were or might be involved, \$16.66; in any suit in chancery, \$16.66; in any suit before a District Court, where the title or bounds of land was or might be in question, \$5.00; and in all other cases before a District Court, \$2.50, except in causes transferred from the General Court, in which case the fee was the same as in the General Court. Lawyers practicing in the inferior court (County Courts) could demand for professional advice and opinion, where no lawsuit was brought, \$1.67; in all chancery suits or real, mixed, or personal actions, where the title or bounds of land were or might be involved, \$5.00; in a petition for a small debt, \$1.25; and for attending a survey in the country, for every day he should attend, \$3.58. Any lawyer "exacting, taking, receiving, or demanding, any greater fee, or other reward, for any of the above services, before he has performed the said services, or finished the said suits, shall forfeit and pay one hundred and fifty dollars for every offence." Any lawyer suing for his fees or services could recover only the fees established in this Act, and no more, "notwithstanding any agreement, contract, or obligation, made or entered into by the party against whom such suit shall be brought." Lawyers' fees were to be taxed in the bills of costs.¹⁸⁹

In 1819 the Act to Reduce into One, the Several Acts Concerning Counsel and Attornies at Law¹⁹⁰ in substance restated the provisions contained in the acts of 1786 and 1792, with the following significant addition: "Counsel and Attornies at Law licensed and duly qualified to practise as such in the respective courts of *Pennsylvania, Ohio, Kentucky, Tennessee*, the District of *Columbia, North Carolina* and *Maryland*, shall be, and they are hereby authorized to practice as such in the several courts of law and equity of this Commonwealth, upon producing proper certificates of their qualifications and licenses, and taking the oath of office only."¹⁹¹

In North Carolina the Act for Establishing Courts of Law, and for Regulating the Proceedings Therein, passed in 1777, also regulated the admission of attorneys: any person holding a license

¹⁸⁹ *Ibid.*, 15-16.

¹⁹⁰ *The Revised Code of the Laws of Virginia* 267-72 (1819).

¹⁹¹ *Ibid.*, 268. See also Act of 1815, chap. 44, par. 1.

granted prior to the Revolution was permitted to continue practicing "without any further examination"; any person "who shall hereafter apply for admission to practise as an attorney, shall undergo an examination before two or three judges of the superior courts of this state,¹⁹² and if such person shall be found to possess a competent share of law knowledge, and be a person of upright character, such judges shall give him a certificate . . . to practice in any court of this state for which they may judge him qualified. . . . [N]o person coming into this state . . . with an intention to practise the law, shall . . . be admitted to practise as an attorney, unless he shall have previously resided one year in this state, or unless such person shall produce . . . a testimonial from the chief magistrate of such state or country [from which he comes], or from some other competent authority, that he is of an unexceptionable moral character; and all such attorneys . . . shall in open court . . . take the following oath, viz. I A.B. do swear, that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability. *So help me God.*"¹⁹³ The fee for a general license to practice law in all the courts was set in 1784 at ten pounds, and for practicing in the County Courts at five pounds;¹⁹⁴ and no attorney was permitted to practice until he had produced a receipt showing that he had paid the license fee imposed by law.¹⁹⁵

Attorneys' fees "in the several courts of law and equity" were regulated in 1786: in any suit in equity, ten pounds; in any suit in

¹⁹² In 1818, by An Act Supplemental to the Act Concerning the Supreme Court, two or three judges of the Supreme Court rather than two or three judges of the superior courts were to examine the candidate. 2 *Laws of the State of North-Carolina* 1436 (Potter ed., 1821).

¹⁹³ 1 *ibid.*, 284-85.

¹⁹⁴ 1 *Public Acts of the General Assembly of North-Carolina* 372 (Martin ed., 1804).

¹⁹⁵ 2 *Laws of the State of North-Carolina* 1064 (Potter ed., 1821). By rule of the North Carolina Supreme Court of 1838, "[a]ll applicants for admission to the Bar must present themselves for examination during the first seven days of the term." 20 *North Carolina* 324 (1838). The law required two examinations, one for admission to practice in the county courts, and one for the Superior Court; and an interval of at least one year prior to the granting of the second license was required. See Battle, *Memoirs of an Old-Time Tar Heel* 81 (Battle ed., 1945). But the Superior Court did not strictly enforce this regulation. The Supreme Court, for instance, admitted William H. Battle to both the County Court and the Superior Court in a single term.

the Superior Court where the title of lands was involved, five pounds; in all other suits, five pounds; in appeals to the superior courts, five pounds; in actions before the county courts of pleas and quarter sessions where the title of lands was involved, five pounds; in all other suits in the County Courts, two pounds; and for an appeal from the judgment of a justice of the peace to a County Court, twenty shillings.¹⁹⁶ Any attorney demanding or receiving fees in excess of this schedule could be indicted for malpractice and upon conviction thereof barred from practicing in any court for the period of one year.¹⁹⁷

Parties in an action before a County Court could retain only one lawyer.¹⁹⁸ No court of pleas and quarter sessions was permitted to admit to its bar a person who held the office of justice of the peace in that court, unless this person had previously resigned from said office; and no attorney could accept an appointment to the office of justice of the peace of the court in which he practiced, unless he resigned as an attorney for the period he acted as a justice.¹⁹⁹

Until 1785 the admission to the practice of law in South Carolina was by rule of the Supreme Court.²⁰⁰ In that year the legislature passed An Act to Regulate the Admission of Attornies at Law, which provided "[t]hat when any person, citizen of the United States of America, who hath resided four years in any one or more of them, shall have acquired a sufficient knowledge of the laws of this State to qualify him to practise the law in this State, and shall apply for admission to the bar, he shall address a petition to the judges of the court of common pleas, praying to be examined touching his capacity, ability and fitness. . . . [T]he judges . . . are

¹⁹⁶ 1 *Laws of the State of North-Carolina* 545 (Potter ed., 1821). In 1806 some of these fees were substantially reduced. 2 *ibid.*, 1055.

¹⁹⁷ 1 *ibid.*, 545-46. See also 1 *Revised Code of 1821* chap. 21, sec. 1, p. 169. These regulations were devised to protect the general public from exploitation, but they did not establish fees for every kind of legal service. In 1825 the Supreme Court of North Carolina held that attorneys were entitled to reasonable fees corresponding to the worth of the professional services rendered. *Leach v. Strange*, 10 N.C. 601-603 (1825).

¹⁹⁸ 1 *Laws of the State of North-Carolina* 545. This Act was passed in 1786.

¹⁹⁹ 2 *ibid.*, 1140. This Act was passed in 1808.

²⁰⁰ 7 *Statutes at Large of South Carolina* 173 (McCord ed., 1840); *Public Laws of South Carolina* 116.

hereby directed, diligently and faithfully to examine such person. . . . [S]uch person shall also produce satisfactory testimonials of his probity, honesty and good demeanor; and if such person shall be found duly qualified, the said judges on examination shall grant to such a person a license . . . to plead and practise as an attorney, in any court of law or equity in this State." Any person who had for four years clerked with a practicing attorney of the Court of Common Pleas, "who hath practiced therein for the term of seven years," or with the prothonotary of the Court of Common Pleas; "or any native of the United States who shall produce proper testimonials of his having studied three years in any foreign university or law college, and is willing and desirous to be examined as to his knowledge of law . . . —every such person shall be admitted to the bar of the several courts of law and equity in this State. . . . [And] where any citizen of any of the United States hath been admitted . . . [to] any court of supreme jurisdiction in either of the said United States, and shall become a resident of this State . . . [upon] setting forth such his admission, and shall . . . produce . . . a certificate . . . that such person is an attorney of such court, duly admitted, at least two years previous to the date of such certificate, and is a person of unblemished character for probity, honesty and good demeanor . . . such person shall be admitted to the bar of the supreme courts of law and equity in this State. . . . [And] every person so licensed . . . shall . . . take the oath of allegiance and fidelity to this State, and likewise the oath of an attorney; and if any person shall presume to act without having taken the said oaths . . . such person shall forfeit and pay the sum of one hundred pounds sterling."²⁰¹

The Act of 1785 was amended in 1796 to the effect that every citizen and graduate of a college or university, who subsequently had served a clerkship of three years and attained the age of twenty-one; and any citizen, not a college graduate, after having served a clerkship of four years and attained the age of twenty-one, should be admitted to the bar, provided he underwent a satisfactory examination with the judges. "[A]ny citizen of the United States, coming to settle and reside in this State, who shall

²⁰¹ 4 *Statutes at Large of South Carolina, 1752-1786* 668-69 (Cooper ed., 1838).

produce to the judges of the courts of law and equity of this State . . . satisfactory testimonials of his having been admitted and having practised for three years in the supreme court of law, or the court of equity, of any other State, upon taking the usual oaths shall be commissioned."²⁰² In 1801 a further amendment provided that "every . . . citizen of this State, who hath been or hereafter shall or may be sent by his parents or guardians into any of our sister States, there to be instructed in the science of law, and who shall or may serve a regular clerkship . . . under the immediate direction or instruction of any practising attorney . . . for and during the term of four years . . . on their . . . undergoing an examination to the satisfaction of the judges of the . . . courts of law and equity in this State . . . shall, upon application, be admitted . . . [p]rovided [they] . . . shall . . . prefer with their petitions for admission a certificate under the hand of some practising attorney, in whose office or under whose direction and instruction the applicant may have studied law, certifying the actual and precise time during which the said applicant may have so read law under his direction; and also a certificate . . . accrediting his certificate . . . and specially certifying that the said attorney is a practitioner in the courts of law and equity in the State in which such certificate shall or may be granted or obtained."²⁰³

In 1806 the several previous acts touching upon the admission to the bar were once more revised. Any citizen of the United States and resident of the state of South Carolina, "who shall have attained the age of twenty-one years, and shall have been admitted . . . as an attorney or solicitor in the superior courts of law and equity, in any of the United States, whose period of regular study previous to his admission, and that of his regular and actual practice afterwards, shall, together, form the term of three years, if he shall have graduated in any regular college or university, and if he shall not have so graduated, then if they shall, together, form the term of four years, upon undergoing an examination to the satisfaction of the judges . . . shall be . . . admitted to plead and practise in all the courts of law and equity of this State

²⁰² 5 *Statutes at Large of South Carolina, 1786-1814* 289-90 (Cooper ed., 1839).

²⁰³ *Ibid.*, 416.

... and ... be admitted to the bar." And "every person, being a citizen of the United States, and residing in this State, who shall have attained the age of twenty-one years, and who shall have diligently read law in the office ... of any regular practising attorney, or ... judge of the superior courts ... in this State, or any one of the United States ... for the period of three years, if he shall have graduated in any regular college or university in this State, or of the United States, or in any regular foreign university, and if he shall not have so graduated, then for the period of four years, upon undergoing an examination to the satisfaction of the judges ... shall be ... admitted to ... practise as an attorney, counsellor or solicitor, in all the courts ... in this State ... [p]rovided ... he shall have served a regular and diligent clerkship in the office of a practising attorney in this State, for and during the period of one year immediately preceding his application to be admitted."²⁰⁴

In 1812, in order to avoid "unnecessary and expensive delay to the youths of this State," the previous educational requirements for admission to practice were abolished. Henceforth "every person, being a citizen of this State, who shall be desirous of admission to the bar, shall apply ... to the Judges of the Courts of Law and Equity ... who shall, upon examining such petitioner, admit him, if they shall deem him properly qualified, to plead and practice in the several Courts of Law and Equity ... Provided, that he produce satisfactory evidence of his morality and general good character; and provided, also, that no person shall be admitted ... who shall not have attained the age of twenty-one years; and that it shall be the duty of the judges ... to see that the candidates ... shall be examined rigidly upon the theory and practice of law, and the principles and practice of equity."²⁰⁵

In 1823 the state of Georgia passed an Act which stipulated that lawyers duly admitted to practice in South Carolina were authorized to practice law in Georgia, provided South Carolina would reciprocate and pass a similar statute admitting to practice in South Carolina lawyers licensed in Georgia.²⁰⁶ In 1824, South

²⁰⁴ *Ibid.*, 521-22.

²⁰⁵ *Ibid.*, 677-78.

²⁰⁶ Dawson, *Compilation of the Laws of the State of Georgia* 228 (1831). See note 225, Chapter V, below.

Carolina, recognizing the principle of reciprocity, admitted to all its courts lawyers licensed to practice in Georgia, on the condition that they would be able to "produce ... a certificate ... of the aforesaid State of Georgia ... stating in substance that such person has practised for three years, immediately preceding ... as an Attorney or Solicitor [in Georgia], and has maintained a good moral and professional reputation."²⁰⁷ Four years later, in 1827, lawyers licensed in North Carolina were granted the same privileges as the lawyers of Georgia.²⁰⁸

Attorney's fees, which were fixed by law in 1791,²⁰⁹ in 1795,²¹⁰ and again in 1808 and 1809,²¹¹ were comparatively generous. Any lawyer demanding or accepting a larger fee than established by law was liable to a fine of \$214.43 (£50);²¹² and any lawyer guilty of collusion or deceit could be imprisoned for a year and a day and forever barred from pleading in any court.²¹³

The first state Constitution of Georgia of 1777, article 58, provided that "[n]o person shall be allowed to plead in the courts of law in this State, except those who are authorized so to do by the house of assembly; and if any person so authorized shall be found guilty of malpractice before the house of assembly, they shall have power to suspend them. This is not intended to exclude any person from that inherent privilege of every *freeman*, the liberty to plead his own cause."²¹⁴ Since not a few persons apparently had construed this article to have abolished all educational and legal qualifications previously established and, to the disgrace of the profession, had managed to be admitted to the bar without having been properly trained, in 1784, Georgia passed An Act for Ascertaining the Qualifications Necessary for the Admission of Attorneys, Solici-

²⁰⁷ 6 *Statutes at Large of South Carolina, 1814-1838* 239-40 (McCord ed., 1839).

²⁰⁸ *Ibid.*, 337-38.

²⁰⁹ 5 *Statutes at Large of South Carolina, 1786-1814* 154-55 (Cooper ed., 1839).

²¹⁰ *Ibid.*, 265.

²¹¹ *Ibid.*, 596; James, *A Digest of the Laws of South-Carolina* 365-66, 370 (1822).

²¹² James, *A Digest of the Laws of South-Carolina* 51 (1822).

²¹³ *Ibid.*, 51-52.

²¹⁴ 1 Poore, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* 377, 383 (1878).

tors, and Proctors in This State.²¹⁵ This Act stipulated that no one might practice law in the state of Georgia except persons who had made application to the Chief Justice, "who is hereby Authorized and Required to receive such testimony, And make such examination as he shall think Good and sufficient, respecting the time any such person has served to the profession, and of his capacity therein and in case he shall find that such person shall have served the term of five Years, as an Articled Clerk, to some Sworn Barrister, Attorney, Solicitor or Proctor, and practising as such during the said term, and shall be well certified therein, under the hand of the Governor and Seal of the State from whence such person or persons if a Citizen of the United States shall come, or if a foreigner, then from such Certificate, Voucher or Credentials as the custom and law of their Country may direct and of which the said Chief Justice shall Judge, and to have sufficient knowledge in the laws, that then and in such case, he do certify the same under his hand and seal to the Speaker of the Assembly for the time being to be laid before the house for their deliberations."²¹⁶ British subjects had to be citizens of Georgia and had to reside within the state or in some other state of the Union for at least three years; citizens of some other state of the Union had to be residents of Georgia for at least six months; and subjects or citizens of "any of the Nations in alliance with the said United States" had to be citizens and residents of Georgia for at least one year, before being allowed to make application for admission to practice.²¹⁷ County clerks and sheriffs, who had served in that capacity for at least five years, likewise were entitled to apply for admission to the bar, provided they could show by way of an examination before the Chief Justice that they possessed the necessary qualifications.²¹⁸

The Act of 1784 was amended in 1786 by the elimination of those restrictive provisions which applied to "aliens" or citizens of other states, provided the latter were, in the opinion of the Chief

²¹⁵ 19 *Colonial Records of the State of Georgia*, part 2, 284 (Candler ed., 1911).

²¹⁶ *Ibid.*, 285. Thus it appears that in Georgia the General Assembly originally was the sole licensing authority.

²¹⁷ *Ibid.*, 286.

²¹⁸ *Ibid.*, 286-87. These clerks or sheriffs also had to resign from their public offices.

Justice and the General Assembly, "possessed of Sufficient Knowledge and capacity to act as an Attorney Solicitor or Proctor." The Act of 1786 also provided that "no Attorney hereafter to be admitted shall plead in any Court of Record in this State, till they have paid . . . [the] sum of Ten pounds."²¹⁹

The Act for Settling and Ascertaining the Fees to Be Taken by the Several Public Officers and Persons Herein After Named, passed in 1784, established a schedule of attorneys' fees: the general retaining fee was fixed at fourteen shillings; a motion, at one shilling and one and one-half pence; drawing a petition to the court, two shillings and seven pence; a special argument, seven shillings and one penny; attending a special court, seven shillings and one penny for each day; drawing interrogatories, two shillings and two pence; and pleading an issue, seven shillings.²²⁰ Lawyers were required to keep posted in their offices a schedule of all the fees and charges established by law; and any lawyer who demanded or received fees in excess of those provided by statute "shall for every such Offense forfeit and pay Twenty pounds, with Costs of Suit."²²¹ In 1792, by An Act to Revise and Amend an Act for Ascertaining the Fees of Public Officers of This State, attorneys' fees were raised to eighteen shillings and eight pence for "each cause commenced and tried in the superior or inferior courts" as well as for "each appeal prosecuted to judgment, except appeals from a justice's court." And "[w]here the defendant prevails, [he was] to receive the fee in lieu of the plaintiff's attorney."²²²

By an act passed on January 7, 1795, all attorneys who were citizens of other states were permitted to practice law in Georgia, provided they could "produce to the Judge or Judges of the Superior Courts in the State a certificate of . . . [their] regular admission to the Superior Courts in the State from which such applicants may come, together with a certificate of his fair moral and professional character, duly certified." In addition, they had to "undergo a strict examination as to . . . [their] professional abilities

²¹⁹ *Ibid.*, 522-24. Previously, by the Act of 1784, the licensing fee was two pounds, three shillings, and six pence, to be paid to the Chief Justice. *Ibid.*, 320.

²²⁰ *Ibid.*, 312, 329-32.

²²¹ *Ibid.*, 313.

²²² *A Digest of the Laws of the State of Georgia* 476 (1800).

before a judge or judges of the Superior Court."²²³ On December 8, 1806, the legislature enacted that "all . . . citizens of this State, may, on application to the judge of the Superior Court, be admitted to practice as an attorney—Provided, such persons shall produce a satisfactory evidence of their moral rectitude, and shall undergo an examination in open court . . . by the judge. . . . [T]he rules of court relative to the admission of attorneys, which require the applicant to study any particular length of time in the office of any judge or practitioner of law . . . [are] hereby declared to be abrogated and void."²²⁴ Finally, on December 22, 1829, an act was passed to the effect that "any attorney or solicitor from any of the adjoining States or territories . . . [may] plead or practice in any of the courts of law and equity in this State," provided the applicant can produce "a certificate from some of the judges of the superior, circuit or district courts of the State or territory of which he is a citizen . . . that he is of good moral character, and that he has been regularly admitted to plead and practice in such State or territory, and is at the date of such certificate a practising attorney of such State or territory."²²⁵

When discussing the regulation and control of the legal profession in the early frontier states, one must clearly distinguish between the states (or territories) carved out of the old Northwest Territory, and such states as Tennessee and Kentucky. From its very beginning Tennessee (and to a lesser degree Kentucky) made determined efforts to regulate the practice of law. In this we might recognize the original aspirations of the old Regulators who during the latter part of the colonial rule had suffered, or believed they had suffered, what they considered "gross injustices" from the hands of unrestrained and uncontrolled lawyers. The act of December 20, 1798, required all applicants for a license to practice law in Tennessee to be examined by two or more judges of the

²²³ Marbury and Crawford, *Digest of the Laws of the State of Georgia* 41 (1802).

²²⁴ 1 Clayton, *Compilation of the Laws of the State of Georgia* 331 (1811).

²²⁵ Dawson, *Compilation of the Laws of the State of Georgia* 228 (1831). In 1823 attorneys duly admitted to practice in South Carolina were authorized also to practice law in Georgia, provided the state of South Carolina passed a similar act admitting to practice in South Carolina lawyers licensed in Georgia. *Ibid.*, 316. See also notes 206 and 207, Chapter V, above.

Superior (or Supreme) Court, and to "possess a competent share of law knowledge." Lawyers from other states were admitted upon producing evidence of their qualifications. At one time residence of at least one year in Tennessee was required as one of the qualifying conditions. An act passed in 1815 provided that all attorneys properly licensed in another state could be admitted in Tennessee only after having been examined by two judges of the Superior Court; and chapter 61 of the act of 1817 called for the disbarment for a period of five years of all lawyers who indulged in gambling. Chapter 7 of the act of the Tennessee legislature of 1796 set the maximum fee or compensation which any lawyer might receive for professional services at twelve dollars and fifty cents,²²⁶ a comparatively generous amount.

Admission to the practice of law in the majority of states or territories which had been carved out of the old Northwest Territory followed a definite pattern. In 1792 a statute was enacted in the Territory providing that only such persons be admitted to practice within the Territory as were of good moral character; had passed an examination as to their professional qualifications before one or more of the Territorial judges; and had taken an oath of office.²²⁷ In view of the dearth of lawyers during the earliest years, and in order to prevent any litigant from monopolizing legal counsel, neither party was permitted to employ more than two attorneys, and not more than one in any county where only two lawyers were licensed. Subsequently, two additional acts were adopted by the Territory, one of which was in the nature of a code of professional ethics.²²⁸ On June 16, 1795, an Act of the Territory, adopted from some New York and Pennsylvania statutes, made a distinction between attorneys and counselors. It also provided that any person desiring to be admitted to practice had to

²²⁶ See, in general, Caldwell, *Sketches of the Bench and Bar of Tennessee* 21-22 (1898).

²²⁷ 1 *Laws of the Territory of the United States, Northwest of the Ohio River* 27-36. The Act of 1792 was repealed in 1795, and attorneys remained without uniform regulation until 1799. See 1 *The Laws of the Northwest Territory, 1788-1800* 88-89, 257 (Pease ed., 1925), 17 *Collections of the Illinois State Historical Library, 1 Law Series*.

²²⁸ See here also 3 Marshall (ed.), *History of the Courts and Lawyers of Ohio* 933 (1934).

take an oath to conduct himself "according to the best of your learning and with all good fidelity as well as to the court as to the client."²²⁹ Four years later, in 1799, an elaborate statute was enacted regulating in detail the legal profession, including the admission of attorneys and counselors. Every applicant had to have resided in the Territory for at least one year; he had to have studied law for four years under the supervision of a licensed attorney or counselor; he had to pass an examination by the Territorial judges concerning his professional qualifications and moral character; and he had to take an oath of office. Attorneys could practice in all courts of record in the several counties, while counselors were qualified to appear also before the General Court of the Territory. After having practiced successfully in the lower courts for a period of at least two years, an attorney could be promoted to the rank of counselor, provided he could pass a special examination conducted by the General Court.²³⁰

During the time Illinois was part of the Indiana Territory, the Act Regulating the Admission and Practice of Attorneys and Counsellors at Law,²³¹ passed and approved on October 29, 1799, controlled the legal profession. This act, which is indicative of the high aspirations of the members of the first Territorial Legislative Assembly with reference to the future bar of the Territory, in some respects was far in advance of similar provisions governing admission and practice in some of the central and western jurisdictions throughout the nineteenth and, in some instances, during the twentieth century.²³² The Act Regulating the Admission and Practice of Attorneys and Counsellors at Law,²³³ passed on September 17, 1807, abolished a number of preparatory or educational requirements established by the Act of 1799. Henceforth any person could obtain a license from any two judges of the General Court upon satisfying such requirements as these judges might stipulate

²²⁹ 1 *Laws of the Northwest Territory, 1788-1800* 257 (Pease ed., 1925).

²³⁰ See in general, 1 *Laws of the Territory of the United States, Northwest of the River Ohio* 27-36. See also 3 Marshall, *Courts and Lawyers of Ohio* 932 (1934).

²³¹ See note 229, Chapter V, above.

²³² See 1 Crossley, *Courts and Lawyers of Illinois* 95 (1916).

²³³ *The Laws of Indiana Territory, 1801-1809* 340-44 (Philbrick ed., 1930).

²¹ Collections of the Illinois State Historical Library, 2 Law Series.

in the case of each individual applicant, except that the latter was required to obtain from some County Court a certificate of his good moral character.²³⁴ In 1808 the Territorial legislature set the maximum lawyer's fees at \$5.00 for all suits involving the title of land, and \$2.50 in suits not involving land. For oral advice the fee was \$1.25, and for written advice, \$2.50.²³⁵

In 1809 the Illinois Territory was separated from the Indiana Territory, and on June 13, 1809, the Illinois Territorial Legislature, which had declared all the general laws of the Indiana Territory to be in force in the Illinois Territory, enacted that "the sixth section of the act regulating the admission and practice of attorneys and counsellors at law by the General Assembly of the Indiana Territory on the seventeenth day of September, eighteen hundred and seven, as prohibits the admission of attorneys and counsellors at law to practice in the courts of this Territory who are not residents thereof," be repealed.²³⁶ On December 26, 1816, Illinois, appealing to the principle of reciprocity, passed an act which set forth that since Indiana, in a spirit of illiberality and injustice, prohibited persons not residing in Indiana, though qualified according to the laws of Indiana, from practicing in the courts of Indiana, "no per-

²³⁴ *Ibid.*, 340. This Act, in particular, abolished the requirement of 1799 that the applicant for admission to practice must have been a student for four years in the office of a licensed attorney (or judge) practicing in the Territory; that this attorney (or judge) must give a certificate concerning the applicant's ability and moral character; that at least two judges of the General Court must examine the applicant; that only counselors might practice before the General Court; that only after having practiced as an attorney for at least two years and after having passed an additional examination might the attorney be promoted to the rank of counselor; and that lawyers licensed elsewhere in the United States were not excused from taking these examinations.

²³⁵ *Ibid.*, 561. As fixed in 1795 and 1798, counselors' fees in the General Court were as follows: a general retainer, \$3.50; term fee, \$.75; arguing a special motion, \$1.25; trial fee, \$1.50; and charges for a brief (and copy or copies), \$1.12. In the County Court the corresponding fees for attorneys were as follows: a general retainer, \$1.00; pleading (issue or demurrer), \$1.50; and term fee, \$.50. For other services the fees allowed in the General Court also applied to the County Court. The Territorial statutes of 1803 substantially increased attorneys' fees. See *ibid.*, 46-63. But the statute of 1807 again reduced these fees considerably. *Ibid.*, 560-62.

²³⁶ *Laws of the Territory of Illinois, 1809-1818* 5-6 (Philbrick ed., 1950), 25 Collections of the Illinois State Historical Library, 5 Law Series. For the Indiana provision forbidding a person who was not a citizen of Indiana to practice law there, see *Laws of Indiana Territory, 1801-1809* 342 (Philbrick ed., 1930).

son residing in the state of Indiana, shall hereafter be permitted to practice . . . in any of the courts of this territory [*scil.*, Illinois]. . . . [I]f any person residing in the state of Indiana who has heretofore obtained licence, or has had been admitted to practice in any of the courts of this territory, shall attempt hereafter to practice in any of the said courts . . . or in any way [attempt] . . . to avail himself of the privileges of attorney of any such court, he shall be subject to a fine of two hundred Dollars. . . . And . . . if any court in this territory shall knowingly suffer or permit any person residing in the said state of Indiana, to practice . . . in any of the courts of this territory, such court . . . shall be liable to pay five hundred Dollars. . . . This act shall . . . be in force . . . and continue in force until the laws of the state of Indiana herein before referred to shall be repealed, and no longer."²³⁷

Under the new state Constitution, the General Assembly of Ohio repealed all Territorial statutes relating to attorneys, and on February 4, 1804, passed an act regulating the legal profession in the state. The distinction between attorney and counselor was abolished, and the applicant for admission to practice had to submit to an examination conducted by the judges of the Supreme Court or by a board of lawyers appointed by the Supreme Court. No definite period of legal studies was required, but the applicant had to be a citizen of the United States, though not necessarily a resident of Ohio. The same act also made the attorney liable to his client for negligence, and provided for summary disbarment in case of failure to account properly for moneys received from or for his client.²³⁸ The fact that in 1810, 1819, and 1824 additional statutes were enacted regulating and supervising the practice of law should be indicative of the General Assembly's concern with the stringent control of the legal profession.²³⁹

²³⁷ *Ibid.* An interesting feature of early Illinois practice was that no person charged with a crime went unrepresented upon showing his financial inability to retain counsel. The Illinois courts made it a rule to assign counsel *in forma pauperis*, thus implementing effectively the right to counsel as well as alleviating the natural disadvantages of paupers in criminal cases. In this respect the frontier state Illinois stood at the forefront among the states.

²³⁸ For a summary of the act of February 4, 1804, see 3 Marshall, *Courts and Lawyers of Ohio* 933 (1934).

²³⁹ For a summary of these additional acts, see *ibid.*

On January 19, 1807, the Supreme Court of the Territory of Michigan ordered "that it shall be a rule of the Court that persons applying to be admitted as Counsel, who have been admitted, as either Counsel, or attorney in any Court of the United States, or in any Court of any State, or in any territory, or in any court of any foreign Country, Shall be admitted as Counsel and attorney on Satisfying the Court of Such fact."²⁴⁰ It also provided "that it be a rule of the Court that persons applying to be admitted as Counsel and attorney, who never have been admitted before, Shall be required to wait on the judge, or judges, at his or their Chambers, in order to satisfy him, or them of their pretensions."²⁴¹ The candidate also had to take an oath "to Support the Constitution of the United States of America," and an oath of office.²⁴² Somewhat later a committee of lawyers appointed by the Supreme Court of the Territory examined the candidate concerning his professional qualifications and moral character, and reported its findings to the Court.²⁴³ Upon admission the new lawyer's name was entered in the "Roll of Attorneys" by the clerk of the Supreme Court.²⁴⁴ These Michigan rules, which in the form of either a rule of court or a statute controlled admission to practice, were rather typical of the rules in the majority of the early frontier states or territories.

During the earlier days the standards and requirements for ad-

²⁴⁰ 1 Blume, *Transactions of the Supreme Court of the Territory of Michigan, 1805-1814* 374-75, 379 (1935).

²⁴¹ *Ibid.*, 375.

²⁴² *Ibid.*, 346.

²⁴³ Statute of April 12, 1827, 2 *Laws of the Territory of Michigan* 414. This statute provided for the examination of applicants for admission to practice by the judges of the Supreme Court or by "some person or persons learned in the law, to be appointed by the judges." It further stipulated that no person should be admitted to such examination unless he had studied law for at least three years or had been admitted to practice before a court of record within the United States, and had been in the practice of law in one of the states during the period of at least two years previous to his application in Michigan. On September 29, 1826, the Supreme Court of Michigan appointed five lawyers to act as examiners. 1 Blume, *Transactions of the Supreme Court of the Territory of Michigan, 1825-1836* 34 (1940). As early as 1820 a provision had been adopted calling for the appointment of an "examining committee." *Ibid.*

²⁴⁴ 1 Blume, *Transactions of the Supreme Court of the Territory of Michigan 1814-1824* xliii (1938), and *passim*.

mission to practice in the territories or in the states which were carved out of these territories were fairly high. The territorial judges were inclined, on the whole, to admit only those applicants who were able to meet the rather exacting standards laid down in the territorial statutes.²⁴⁵ As a matter of fact, these requirements were so exacting that some men preferred to procure their licenses in some Eastern or Southern state, and on returning to the territory to be admitted on the strength of their "out-of-state" licenses.²⁴⁶ But after 1816, for some reason, an increasing number of persons with deficient or inadequate educational and professional backgrounds were admitted to practice throughout the frontier.²⁴⁷ In 1832, for instance, the requirements for licensing were substantially lowered in Missouri by the elimination of a definite period of preparatory study.²⁴⁸ When in 1841 the right to issue licenses was turned over to the circuit judges in Missouri,²⁴⁹ applicants were subjected to purely perfunctory examinations concerning their educational backgrounds, legal knowledge, and moral qualification by uninterested and often ignorant judges or by a "board" of equally uninterested and ignorant lawyers. In this manner it became quite easy to procure a license, not only in Missouri but all along the frontier.²⁵⁰

²⁴⁵ 1 *The Laws of the Northwest Territory, 1788-1800* 340 (Pease ed., 1925); 1 *Laws of a Public and General Nature of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri up to 1824* 123 (1842).

²⁴⁶ In some instances the territorial judge went so far as to insist upon a further examination of "out-of-state" lawyers before he granted them a license to practice within the territory. See 1 *Record of the Superior Court of the Territory of Louisiana* 54.

²⁴⁷ See, for instance, Bay, *Reminiscences of the Bench and Bar of Missouri* 383 (1878).

²⁴⁸ 2 *Laws of a Public and General Nature of the State of Missouri, Passed Between the Years 1824 and 1836* 206 (1842).

²⁴⁹ *Laws of the State of Missouri, Passed by the First Session of the Eleventh General Assembly* 16 (1841).

²⁵⁰ See English, *The Pioneer Lawyer and Jurist in Missouri* 95-96 (21 *The University of Missouri Studies*, No. 2, 1947).

IV

BRIEF SUMMARY

DESPITE THE FACT that, on the whole, lawyers had played a prominent role in the American Revolution, this historical event for a time had an adverse effect on the legal profession. Many of the more distinguished members of the colonial bar, especially in the North, remained loyal to the British crown, and, after the departure of the British forces, either voluntarily or, as for instance in New York, under compulsion, withdrew from active practice. Others simply deserted the country. Many of those who had sided in with the rebels accepted political positions in the young republic and, hence, were lost to the profession.

The profession, which on the eve of the Revolution had succeeded in gaining the respect and confidence of the people, was also adversely affected by the effects of a widespread and calamitous economic depression which followed in the wake of the war. The lawyers, as a class, had a great deal of clean-up business, such as the collection of debt, foreclosures, and insolvencies and, hence, were busier and more prosperous than most of the people. In consequence, they became the object of much public distrust and animosity. They were blamed for all the miseries besetting the country. Acts and resolves were passed by the several state legislatures