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SUMMONS.

THE STATE OF NEW JERSEY TO HAMPTON E. WILLIAMS:

You are summoned to answer the annexed complaint of Louis B. LeDuc, in (Seal) an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court at Trenton, this 16th day of May, A. D. nineteen hundred and twenty-eight.

EDW. J. KELLEHER,
Clerk.

LOUIS B. LEDUC,
Attorney, pro se.

COMPLAINT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff*,
v.
HAMPTON E. WILLIAMS, *Defendant*.

Action at Law.
Complaint.

Plaintiff, Louis B. LeDuc, residing at Haddonfield, New Jersey, says:

1. He is an attorney and counsellor at law of this State, having been admitted as a counsellor in 1917 and (with the exception of one period of six months in 1918) constantly engaged since that time in the practice of law in the City of Camden in this State.

2. In May, 1924, the defendant was introduced to plaintiff by C. Oscar Beasley, Esquire, of the Philadelphia Bar, and defendant then and there requested plaintiff to represent him in opposing the proposed passage of a certain ordinance introduced before the commissioners of the Borough of Audubon, by which it was proposed to widen a certain thoroughfare in said borough known as E. Atlantic Avenue, in front of a tract of land owned by defendant. Thereafter, defendant requested the plaintiff to represent him, and to render legal services for

him, in endeavoring to have the ordinance providing for the widening of E. Atlantic Avenue, as aforesaid, declared invalid on certiorari because of the alleged violation of certain constitutional rights claimed by defendant; in bringing supplemental proceedings on certiorari to review the validity of said ordinance upon certain additional grounds; in bringing suit in the New Jersey Court of Chancery for an injunction against the enforcement of the aforesaid ordinance and prosecuting the said suit to final hearing in said court; in bringing suit in the United States District Court for the district of New Jersey for an injunction against the enforcement of the aforesaid ordinance and prosecuting the said suit to final hearing before the said court; in appealing from an award for damages to defendant for the taking of his land in connection with the aforesaid improvement, to the Camden County Circuit Court, and in the trial of said appeal before said Court; in opposing before the commissioners of assessment of the Borough of Audubon, and before the board of commissioners of the Borough of Audubon, and on appeal before the Camden County Circuit Court an assessment for benefits imposed upon the defendant because of the widening and paving of said E. Atlantic Avenue in accordance with the aforesaid ordinance, and in the trial of said appeal before the said Court.

3. Plaintiff rendered all of the services requested of him by defendant, as aforesaid, and divers other services incidental to the above and advised defendant from time to time as to his rights and the course to be pursued by him in each case, all of which as set forth in summary form in Schedules A, C and E attached hereto and made a part hereof, and made divers disbursements in connection with his said

services, as set forth on Schedules B and D attached hereto and made a part hereof.

4. All of the aforesaid services and disbursements were performed and incurred at the instance and request of the defendant and of the defendant's Philadelphia counsel and agent, C. Oscar Beasley. Certain of the aforesaid suits were successful, and certain others unsuccessful. Plaintiff advised the defendant at the outset that there was very little chance of persuading any Court to hold the ordinance in question to be invalid, but despite this advice and at the earnest and repeated requests of the defendant, the various suits to test such validity were brought. In the two suits on certiorari and in the suit in the Court of Chancery, the defendant was defeated; in the suit in the Federal Court plaintiff secured a preliminary injunction against the enforcement of the ordinance and sustained the said injunction against an application to modify, but defendant's suit was dismissed on final hearing. The appeal from the award for damages was successful in increasing the award from $2,200.00 to $5,000. The appeal from the assessment for benefits was successful in decreasing the original amount of $4,684.41 to $2,547.77.

5. It was understood between the plaintiff and defendant that the plaintiff would charge the defendant the reasonable value of the services which he was called upon to render in the various litigations hereinabove referred to, as aforesaid. Plaintiff accordingly from time to time rendered bills to the defendant for such services, viz: On November 8, 1924, for services; on November 8, 1924, for disbursements; on July 31, 1925, for services; on July 31, 1925, for disbursements, and on May 9, 1928,

for services, a copy of each of which bills in the order stated is attached hereto, as aforesaid, and marked, respectively, Schedules A, B, C, D and E. Said bills so rendered by plaintiff did not include any charge for services rendered by the said C. Oscar Beasley, the services of the latter being necessarily distinct and independent from those rendered by the plaintiff. Defendant from time to time made payments on account of the said bills set forth as Schedules A, B, C and D and the said payments were duly credited upon said bills.

6. The charges made in said bills for the plaintiff's services were in all instances fair and reasonable charges, and the disbursements shown on said bills were necessarily incurred in the prosecution of the several suits hereinabove referred to or in connection therewith.

7. Plaintiff's services were completed by the end of April, 1928, and on May 9th plaintiff rendered his final bill to defendant (Schedule E annexed hereto. The said bill showed a net amount for services and disbursements, after deducting all payments on account, due from defendant to plaintiff of $1,224.76.

8. On or about May 9, 1928, plaintiff caused a copy of each of the said bills, Schedules A, B, C, D and E annexed hereto, to be left for plaintiff at his usual place of abode, to wit: #520 Stevens Street, Camden, N. J.

9. Defendant has neglected and refused to pay any part of the aforesaid balance of $1,224.76 due as aforesaid from defendant to plaintiff and still refuses and neglects so to do. The full amount of

said sum, together with interest from May 9, 1928, is due plaintiff.

Plaintiff demands judgment in the amount of $1,224.76 with interest from May 9, 1928.

LOUIS B. LEDUC,
Attorney pro se.

SCHEDULE A.

(COPY.)

November 8, 1924.

RE: WILLIAMS V. BOROUGH OF AUDUBON

Hampton E. Williams

to

Louis B. LeDuc, Esq.

To legal services in litigation in the Supreme Court of New Jersey in the matter of an application for a writ of certiorari against the Borough of Audubon; in litigation in the matter of the review by the Camden County Circuit Court of the award by the Borough of Audubon for damages for the taking of client's land; and for litigation in the Court of Chancery of New Jersey in the matter of securing an injunction against the Borough of Audubon $600.00

Received payment.

SCHEDULE B.

(COPY.)

RE: WILLIAMS V. BOROUGH OF AUDUBON

November 8, 1924.

Hampton E. Williams

to

Louis B. LeDuc, Dr.

To various disbursements in litigation conducted for client in the Supreme Court of New Jersey, in the Camden County Circuit Court and in the New Jersey Court of Chancery, as follows:

Expenses in trip to Trenton in re writ of certiorari	$2.40
Expenses in trip to Newark to argue application for certiorari	$7.50
Bill of MacNamara for services as engineer	9.90
Long distance calls to Trenton, etc.	2.35
Services of Mr. Olsen as real estate expert	20.00
Clerk's charges	2.00
Bill for disbursements submitted July 13, 1924	7.00
	$51.15

Received payment.

SCHEDULE C.

(COPY.)

July 31, 1925.

RE: WILLIAMS V. BOROUGH OF AUDUBON

Hampton E. Williams

to

Louis B. LeDuc, Dr.

To services rendered in New Jersey Supreme Court, in New Jersey Court of Chancery, in condemnation proceedings before Circuit Court Judge Donges, as per bill previously rendered November 8, 1924		$600.00
Paid on account of said services		
May 12, 1924	$25.00	
May 29, 1924	25.00	
August 1, 1924	100.00	
November 24, 1924	100.00	
	$250.00	250.00
Balance due on bill rendered		$350.00
To services rendered in litigation in U. S. District Court, including, in conjunction with Mr. Beasley, preparation of pleadings, preparation and argument of motion for preliminary injunction, prepa-		

ration and argument resisting motion to modify preliminary injunction, preparation of agreed state of fact used on final hearing, conduct of final hearing and argument thereon, preparation of brief on final hearing, numerous conferences with Mr. Williams and Mr. Beasley and miscellaneous matters	425.00
	$775.00

SCHEDULE D.

(COPY.)

July 31, 1925.

RE: WILLIAMS V. BOROUGH OF AUDUBON

Hampton E. Williams

to

Louis B. LeDuc, Dr.

To Disbursements as follows:	
To disbursements per bill rendered November 8, 1924	$51.15
To disbursements in conduct of suit in Federal Court, Nov. 28, 1924.	
11/28/24 Clerk's fees	15.00
11/28/24 Expenses, trip to Trenton	2.40

11/22/24	Paid U. S. Marshal	4.86
7/21/25	Paid stenographer for opinion	1.35
		$74.76

SCHEDULE E.

(COPY.)

May 9, 1928.

RE: WILLIAMS V. BOROUGH OF AUDUBON

Hampton E. Williams

to

Louis B. LeDuc, Dr

To professional services rendered from October 1, 1925 to May 1, 1928, including presentation of client's case before Commissioners of Assessment, on assessment of client's lands for benefits from the paving of Atlantic Avenue, etc.; presentation of case and appearance before Commissioners of the Borough of Audubon re said assessment; preparation of appeal from assessment of benefits to Camden County Circuit Court; trial of said appeal before Judge Donges; preparation of brief and argument thereon; miscellaneous

matters in connection therewith and advice to client from time to time.....	$500.00
To bill for services previously rendered July 1, 1925	775.00
To bill for disbursements previously rendered July 1, 1925	74.76
	$1349.76
Credit payment on account January 28, 1926	125.00
Balance due.....	$1224.76

ANSWER.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff*,
v.
HAMPTON E. WILLIAMS, *Defendant*.

Action at Law.
Answer.

Defendant, Hampton E. Williams, of the City and County of Camden and State of New Jersey, answering the complaint in the above matter, says:

1. The allegation of paragraph one is admitted.

2. The allegations of paragraph two are denied.

3. The allegations of paragraph three are denied.

4. The allegations of paragraph four are denied.

5. The allegations of paragraph five are denied.

6. The allegations of paragraph six are denied.

7. The allegations of paragraph seven are denied.

8. The allegation of paragraph eight is denied.

9. The allegation of paragraph nine that the defendant has refused to pay the said bill is admitted, but the other allegations of said paragraph are denied.

FIRST DEFENSE.

What services were performed by the plaintiff were done at the request of C. Oscar Beasley, a member of the Philadelphia Bar, in connection with his employment by this defendant and not at the request of this defendant.

SECOND DEFENSE.

The defendant has made no agreement with the plaintiff to pay for such services nor has he authorized the said C. Oscar Beasley to make such an agreement.

THIRD DEFENSE.

There is no contract, either express or implied, for said services as rendered by the plaintiff. The said services were gratuitous except so far as they

may have already been paid for by said C. Oscar Beasley.

FOURTH DEFENSE.

Plaintiff's charges are for services as an advocate as well as an attorney and are inseparable and there can be no recovery therefore.

JOSEPH BECK TYLER,
Attorney for Defendant.

REPLY.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff,*
v.
HAMPTON E. WILLIAMS, *Defendant.*

Action at Law.
Reply.

Plaintiff denies all the averments in the affirmative defenses set forth in the defendant's answer, reserving, however, the right to move to strike any or all of the said defenses for insufficiency at law.

LOUIS B. LEDUC,
Attorney, pro se.

RULE TO AMEND COMPLAINT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff,* v. HAMPTON E. WILLIAMS, *Defendant.*	Action at Law. Rule to Amend Complaint.

Upon motion of Ralph W. Wescott, attorney for plaintiff, in the presence of Joseph Beck Tyler, attorney for defendant, and upon good cause shown, it is on this 18th day of November, 1928,

Ordered that the complaint hereinbefore filed in this cause be amended by inserting the words "First Count" after the opening sentence thereof, and by inserting at the end in the last numbered paragraph thereof, the following:

"SECOND COUNT.

1. The first count is here repeated as part of this count.

2. By reason of the rendering of the services and making of the disbursements at the request of defendant, and/or his agent, as stated in the foregoing paragraph, and of which defendant had knowledge,

he, the said defendant, undertook and/or became obliged to pay plaintiff the reasonable value thereof.

3. Such value, less that of services paid for as above alleged, was and is the sum of $1,224.76.

Plaintiff on this count demands judgment for $1,224.76 with interest from May 9, 1928."

RALPH W. E. DONGES,
Judge.

MOTION TO STRIKE.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff,* v. HAMPTON E. WILLIAMS, *Defendant.*	Action at Law. Motion to Strike.

To Joseph Beck Tyler, Esq., attorney of defendant:

Please take notice that on Friday, the 16th day of November, 1928, at 10 o'clock in the forenoon thereof, or as soon thereafter as counsel can be heard, at the court house in the City of Camden, New Jersey, I shall move before Honorable Ralph W. E. Donges, Circuit Judge, for a determination before trial of the sufficiency in point of law of the

third and fourth affirmative defenses interposed in the answer filed in this cause; and for an order striking out those defenses as insufficient in law.

LOUIS B. LEDUC,
Attorney of Plaintiff.

RULE FOR SUBSTITUTION OF COUNSEL.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff,* v. HAMPTON E. WILLIAMS, *Defendant.*	Action at Law. Rule for Substitution of Counsel.

On the consent noted below, it is hereby ordered that Ralph W. Wescott, Esq., be substituted as the attorney of the plaintiff in the above cause.

RALPH W. E. DONGES,
Justice.

On motion of
RALPH W. WESCOTT.

Rule entered this 17 day of Nov., 1928.
I consent to the entry of the foregoing rule.

LOUIS B. LEDUC,
Attorney, pro se.

OPINION.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff*,
v.
HAMPTON E. WILLIAMS, *Defendant*.
Action at Law.

(Submitted, Dec. 5, 1928. Decided, Dec. 21, 1928.)

RALPH W. WESCOTT, ESQ., for the plaintiff.
JOSEPH B. TYLER, ESQ., for the defendant.

DONGES, Circuit Judge.

This is a suit to recover for services rendered as attorney and counsellor in several pieces of litigation.

Motion is made to strike the fourth affirmative defense, which challenges the right of plaintiff to maintain such action upon an implied contract to pay for services as an advocate and attorney. The language of the defense is as follows:

> "Fourth Defense. Plaintiff's charges are for services as an advocate as well as an attorney

and are inseparable, and there can be no recovery therefor."

1. By Section 9 of the Practice Act of 1903, it was provided that:

> "No solicitor or attorney shall commence or maintain any action for the recovery of any fees, charges or disbursements, in equity or at law, against his client or his legal representative, until he shall have delivered to such client or his representative or left for him at his usual place of abode a copy of the tax bill of such fees, charges and disbursements" (Comp. St., p. 4054).

By amendment (P. L., 1911, p. 412), it is provided:

> "Every solicitor, attorney and counsellor may commence and maintain an action for the recovery of any reasonable fees, charges or disbursements, in equity or at law, against his client or his legal representative, provided he shall have first delivered to such client or his legal representative or left for him at his usual place of abode, a copy of his bill of such fees, charges and disbursements" (Cum. Sup. Comp. St., p. 2793).

An attorney might, before the Act of 1911, maintain an action for his services and disbursements.

Van Atta v. McKinney's Exrs., 16 Law 235;
Schomp v. Schenck, 40 Law 195;
Voorhees v. Barr, 59 Law 124.

At common law an advocate was incapable of contracting for services, but our Courts, in a number

of cases, modified the rule by permitting a recovery in cases where the amount of the fee is agreed upon.

Seely v. Crane, 15 Law 35;
Schomp v. Schenck, supra;
Hopper v. Ludlam, 41 Law 182;
Zabriskie v. Woodruff, 48 Law 610;
oorhees v. Barr, supra;
Strong, et al., v. Mundy, 52 Eq. 833;
Bentley v. Fidelity, &c., 75 Law 828.

In this state of the law, the Legislature passed the Act of 1911 above quoted. This amendment clearly extended the right to recover for services as counsel or advocate, provided a copy of the bill for fees and charges was served, and provided that the recovery should be for "any reasonable fees, charges or disbursements." In view of the right to recover on express contract theretofore, the obvious effect of the Act in question was to give an advocate (a counsellor) the same right of action for payment for services that an attorney had. This is a right to sue upon an implied contract for the reasonable value of the services rendered, after giving his client a copy of his bill of such fees, charges and disbursements. Any other construction of this Act seems to me to be strained and artificial.

2. Defendant urges that, if the Act in question is to be construed as giving counsellors a right to recover for services as advocates, it violates the provision of the Constitution requiring the object of the Act to be expressed in the title (Art. IV, Sec. VII, par. 4). It is asserted that the title does not express the object of the Act.

The title of the Act is "An Act to amend an Act entitled 'An Act to regulate the practice of Courts of Law.' "

The history of this Act is discussed by Mr. Justice Swayze in Re Hahn, 85 Eq. 510.

From earliest times matters relating to the suability of attorneys and to the conduct of counsellors, solicitors and attorneys have been included in this Act. Numerous cases arising under the first twelve sections of this Act have been in our Courts.

(Clock v. Donnelly, 94 Law 124.)

In none that I have been able to find is there an intimation that the historic title is not broad enough to embrace the enactments. The language used in Re Hahn (supra) would seem to settle this question.

In this Act, now known as "The Practice Act," we find a number of provisions not having to do with procedural steps or administration of litigation merely, but affecting substantive rights. Such a provision is found in Sec. 28, giving a third person a right to sue on a contract for his benefit. This provision has been the subject of much litigation, both at law and in equity.

A reading of the "Practice Act" and a study of its history demonstrates that it has acquired in common and legislative usage a meaning much broader than merely to indicate the form, manner and order in which proceedings in courts of law are to progress.

The title, therefore, being appropriate in the light of historic legislative usage to inform any person of the probable content thereof, and the legislation in question being within the general object of the Act, the constitutional provision invoked is not violated.

Easton, Etc., Co. v. Central R. R. Co., 52 L. 267;
State v. Twining, 73 L. 3 C. E. & A. 683;
Gillard v. Mfrs. Ins. Co., 93 Law 215.

I conclude, therefore, that the fourth affirmative defense must be stricken out.

RULE.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

LOUIS B. LEDUC, *Plaintiff*, v. HAMPTON E. WILLIAMS, *Defendant*.	Action at Law. On Motion to Strike Fourth Affirmative Defense. Rule.

The plaintiff moving to strike the fourth affirmative defense interposed in the answer of the defendant herein, on the ground of its insufficiency in law, and the matter coming on to be heard before me in the above entitled court at Camden, N. J., on December 5, 1928; and the plaintiff appearing by Ralph W. Wescott, his attorney, and the defendant by Joseph Beck Tyler, Esq., his attorney; and the argument of counsel having been heard and considered, it appearing to the Court that the fourth affirmative defense set up in the answer here in is insufficient in law, and the Court having filed a written opinion in support of its said conclusion on Decem-

ber 21, 1928; and it further appearing that through the inadvertence of counsel no written rule striking the said affirmative defense was thereafter prepared or entered, and the case came on for trial at the December, 1928, term of the said Court in Camden County, and at the said trial the defendant was precluded from introducing evidence in support of the said fourth affirmative defense and from urging the said defense, and the jury returned a verdict in favor of the plaintiff and from judgment entered upon said verdict the defendant has now appealed and desires to complete the record of said case for the purposes of appeal, and has set forth as one of his grounds of appeal the striking of said fourth affirmative defense; and for good cause shown;

It is hereby ordered on this 30th day of March, 1929, that the fourth affirmative defense interposed in the answer of the defendant herein be, and the same is, hereby stricken out as insufficient in law;

And it is further ordered that this rule may be entered as of December 21, 1928.

RALPH W. E. DONGES,
Circuit Judge, sitting as
Sup. Ct. Commr.

JUDGMENT.

NEW JERSEY SUPREME COURT.

LOUIS B. LEDUC,
Plaintiff,
v.
HAMPTON E. WILLIAMS,
Defendant.

Action at Law.
On Postea.

It is ordered that judgment be, and hereby is, entered in favor of plaintiff and against the defendant for the sum of five hundred and twenty-five dollars, besides costs to be taxed *nisi*. Entered: January 14, 1929. On motion of

RALPH W. WESCOTT,
Attorney.

$525.00	
72.70	
$597.70	

A true copy,
FRED L. BLOODGOOD,
Clerk.

NOTICE OF APPEAL AND GROUNDS.

NEW JERSEY SUPREME COURT.

LOUIS B. LEDUC, *Plaintiff*, v. HAMPTON E. WILLIAMS, *Defendant.*	Notice of Appeal and Grounds.

To Ralph W. Wescott, Esquire, attorney for plaintiff:

Take notice that the defendant, Hampton E. Williams, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. There was no express contract proved to pay the plaintiff for services rendered and there is no implied contract on the part of the defendant to pay the plaintiff.

2. The plaintiff's charges are for services as an advocate as well as an attorney and inseparable and there can be no recovery therefore except on proof of an express contract.

3. Chapter 199, P. L. 1911, page 412, entitled an Act to Amend an Act, "An Act to regulate the practice of courts of law" (revision of 1903), is uncon-

stitutional for the reason that the object of said Act is not embraced in the title of the Act amended.

4. That the fourth affirmative defense of the defendant's answer was improperly stricken out.

5. That judgment should have been directed for the defendant.

JOSEPH BECK TYLER,
Attorney for Defendant.

CHARGE OF THE COURT.

DONGES, J.:

Ladies and gentlemen, in this suit you are dealing with the question primarily of whether the defendant employed the plaintiff to perform certain services or not.

There was a time in the history of jurisprudence, and it was the law of this State, that a professional person, including lawyers, could not sue for certain kinds of services, but that law has been changed. The Legislature has passed an act providing that an attorney, solicitor or counselor-at-law may recover such reasonable fees and charges as may compensate him for services performed for some one who has engaged him. So that the primary question in this case is, as you have undoubtedly observed as the taking of testimony has progressed, whether the defendant, Williams, engaged the plaintiff, or whether the plaintiff was engaged by some other person; and to determine that question, you will probably have to review all of the testimony, the whole relationship of these parties. The facts are for you to determine and any comments I may make upon them will be simply for the purpose of pointing out what seem to me to be some outstanding facts that may help you and not for the purpose of pointing the direction of your conclusions. The facts are for you to determine.

It appears, however, that having engaged an attorney in Philadelphia, the defendant was put into contact with the plaintiff by a letter from Mr. Beasley, the Philadelphia attorney; that the defendant came in person to the plaintiff; that there was some

discussion evidently of the matters or matter that the defendant wanted to have taken care of, and that from then on for some time there appears to have been no discussion of the matter of payment between the parties. The defendant's position is that whatever was done in that regard was done by Mr. Beasley. The plaintiff's position is that when the defendant came to him and brought to his attention, for the first time, the matter which resulted in a great deal of litigation, the defendant did not state that the plaintiff was being employed by Mr. Beasley, and the defendant has testified that at no time did he say to the plaintiff that he must look to any other person for compensation for any service rendered. Now, there being no express, no specific, contract between these parties, you must find, from the circumstances, whether or not there arose between the plaintiff and the defendant what we call in law an implied contract. That is just as binding as a contract expressed in so many words and put in writing, except that one of the advantages of having a written contract is that there cannot be any doubt, there cannot be any misunderstanding about the terms of the contract and what the parties agreed to, but a contract for services may be made by the conduct of the parties, just as definitely and lawfully as if they had expressed it in writing, as for example, if I come to one of you and say I would like to have a house built or I want a fence built, "Build me a six-foot fence so many feet long," I do not say to you, "When it is done I will pay you so much money," but right there the law steps in and says that when you ask somebody to do work for you, unless there is some other agreement, there is implied, there is read into the association, read into the relationship between you, an understanding that

there shall be payment in accordance with whatever is reasonable for the service; so that it is not necessary that the contract shall be in writing, but what you must find in this case is, in order to entitle the plaintiff to recover, that by the greater weight of the evidence it appears that there was an employment by the defendant of the plaintiff and that the situation was one in which there may reasonably be read into it the implication that when the service was performed the defendant would pay the reasonable value of such service, and, if you cannot do that, then the plaintiff must fail in his effort. There is no testimony here that Mr. Beasley was authorized to employ, at the expense of the defendant, Mr. Le Duc or any other person, and the plaintiff's case rests upon the theory that the employment of Mr. Le Duc was by Mr. Williams, when he came in person to him and engaged him, or, at any rate, the two came into contact, into association, in the matter or matters in which the services were performed. Comment has been made by both sides about a receipt for $200, which appears to have been paid to and receipted for by Mr. Beasley, and the receipt says $75 for Mr. Beasley and $125 for Mr. Le Duc, on account, or whatever it says. Each side argues that that supports their theory. It is for you to say whether or not Mr. Williams was aware that Mr. Le Duc was looking to him and whether payments were being made separately, through Mr. Beasley, for Mr. Le Duc and Mr. Beasley. It may be or may not be an important circumstance that Williams appears to have made a payment for Mr. Le Duc of $125. Each side argues a different conclusion from that circumstance, and, as I say, it is for you to determine.

The first question is, was Mr. Le Duc engaged by the defendant in such a way that there arose an

implied obligation upon the part of the defendant to pay him for his services? If so, then the plaintiff is entitled to recover. If not, plaintiff is not entitled to recover. The amount which the plaintiff would be entitled to recover, if you find that he is entitled to compensation, if you find that there was an agreement made, not an express agreement but an agreement arising out of all of these circumstances, would be such sum as measures the fair and reasonable value of the services, and value in that connection does not mean value to the party receiving the services on the basis of the result obtained, because, obviously, an attorney, a counselor-at-law, is entitled to be paid for the reasonable value of his services depending upon the time and the energy expended, regardless of results.

Courts are open as an orderly way to settle disputes between individuals and between individuals and governments, and every person finds the doors of Courts open whenever he believes that he has a question that ought to be settled by judicial proceeding. A lawyer is entitled to be paid for his services on the basis of what he does and not necessarily upon the basis of the result, so that you may consider that under the testimony in this case incidentally, but the suit is based upon the value, upon the reasonable compensation for the service that was actually performed. You will take all the testimony and if you find that the plaintiff is entitled to a verdict it is entirely in your hands to say what the fair value of the services rendered is. It is a question of fact. You may take the expert testimony, consider it, accept such part as you believe accords with common sense and sound judgment, and reject such part as you are not willing to accept in that way. So that finally the question is, first, did Mr. Williams employ the plaintiff, Mr. Le Duc? If he

did, if you find that there was an employment directly between the plaintiff and the defendant, then the law would imply an obligation to pay. If you find that there was not such employment and Mr. Le Duc was not employed by Mr. Williams, then your verdict will be for the defendant. If your verdict be for the plaintiff, it will be for such sum as from all the testimony you conclude measures the fair and reasonable compensation to be paid for the services rendered.

Mr. Wescott: If your Honor please, may I first except to one portion of the charge and possibly you may want to state it a little further? Where you say, "It is for you to say whether Mr. Williams was aware that Le Duc was looking to him for payment," it seems to me that should have included —

The Court: Just a minute, ladies and gentlemen.

Mr. Wescott: You said, "It is for you to say whether Williams was aware that Le Duc was looking to him for payment." I think possibly what your Honor intended to say was whether Le Duc was aware that Williams was looking to Beasley to pay Le Duc for his services.

The Court: No.

Mr. Wescott: And further, it ought to appear that Le Duc knew from something that Williams said to him.

The Court: Ladies and gentlemen, my attention has been called to a phrase or sentence I used, to this general effect, "It is for you to say whether Mr. Williams was aware that Le Duc was looking

to him for payment." The question is not whether these parties misunderstood, whether honestly or dishonestly they misunderstood each other, but the question is: Was there such an engagement, such an employment arising from all that was said and all that was done, that Mr. Le Duc was engaged by Mr. Williams to do this work? You may retire.

PLAINTIFF'S EXCEPTIONS.

Mr. Wescott: There were some requests to charge. They are refused, I understand?

The Court: No, I charged them as far as I feel that they ought to be charged.

Mr. Wescott: May we enter an exception to the Court's refusal to charge them as they were submitted?

DEFENDANT'S EXCEPTIONS.

Mr. Tyler: My exception is to the statement that the law in the State of New Jersey has been changed from what it used to be, and to the refusal to charge that an express contract is necessary, that recovery may be based upon an implied contract, and also to the refusal to charge that the services for which charges are made are as an advocate and an attorney and inseparable, and for that reason there can be no recovery. That simply preserves my rights, as I understand.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Louis B. LeDuc,
Plaintiff-Appellee,

v.

Hampton E. Williams,
Defendant-Appellant.

Action at Law.

BRIEF FOR APPELLANT.

Plaintiff brought this suit as an attorney and counsellor at law of the State of New Jersey for services rendered to the defendant.

The complaint sets out that the defendant was introduced to plaintiff by C. Oscar Beasley, a member of the Philadelphia Bar, and that said services were performed at the request of the defendant himself and of C. Oscar Beasley as his counsel and agent.

The complaint does not allege any contract or agreement for compensation and attaches a copy of bills rendered based upon an implied contract for payment amounting in all to about $1600.00 and

gives credit for payments of $375.00 paid to the plaintiff by said C. Oscar Beasley.

Plaintiff was associate counsel and introduced to the defendant by C. Oscar Beasley to handle the actual litigation in New Jersey. The defendant paid the said C. Oscar Beasley about $1600.00 of which $375.00 was paid to the plaintiff. C. Oscar Beasley died during the litigation and plaintiff brought this suit in his own right for recovery based upon an implied contract to pay for services rendered.

The answer of the defendant, S. of C. page 12, sets out:

> "Third Defense.
>
> There is no contract, either express or implied for said services as rendered by the plaintiff. The said services were gratuitous except so far as they may have already been paid for by said C. Oscar Beasley.
>
> Fourth Defense.
>
> Plaintiff's charges are for services as an advocate as well as an attorney and are inseparable and there can be no recovery therefore."

The defendant gave notice of a motion to have determination before trial of the sufficiency in point of law of the third and fourth defenses set up in the answer and applied for an order striking out said defenses. On this motion Judge Donges wrote an opinion, S. of C. page 17, and entered a rule, S. of C. page 21, striking out the fourth defense. The third defense was not stricken out because of the allegation of payment.

The case went to trial and judgment was rendered for $525.00 debt and $72.70 costs. An appeal was taken, S. of C., page 24, on the grounds that:

1. There was no express contract proved to pay the plaintiff for services rendered and there is no implied contract on the part of the defendant to pay the plaintiff.

2. The plaintiff's charges are for services as an advocate as well as an attorney and are inseparable and there can be no recovery therefore except upon proof of an express contract.

3. Chapter 199, P. L. 1911, page 412 entitled: "An Act to Amend an Act 'An Act to regulate the practice of courts of law' (revision of 1903)" is unconstitutional for the reason that the object of the Act is not embraced in the title of the Act amended.

The testimony has not been printed for the reason that it simply goes to question of fact of rendering the services and an appeal is taken solely on the legal question presented by the rule striking out the fourth defense and exceptions to the charge to the jury.

The defendant relied upon Section 9 of the Practice Act which is as follows:

> "Every solicitor, attorney and counsellor may commence and maintain an action for the recovery of any reasonable fees, charges or disbursements, in equity or at law, against his client or his legal representative provided he shall have first delivered to such client or his legal representative or left for him at his usual place of abode, a copy of his bill of such fees, charges and disbursements."
>
> P. L. 1911, p. 412.

This is an amendment to Section 9 of the Practice Act of 1903 which is as follows:

> "No solicitor or attorney shall commence or maintain any action for the recovery of any fees, charges or disbursements, in equity or at law, against his client or his legal representative, until he shall have delivered to such client or his representative or left for him at his usual place of abode a copy of the taxed bill of such fees, charges and disbursements. (P. L. 1903, p. 538.)"

The plaintiff relies upon the amendment of 1911 to maintain a suit to recover for services on either an express or an implied contract.

Except so far as the amendment of 1911 creates this right of action to sue on an implied contract it did not theretofore exist. *Bentley v. Fidelity and Deposit Company of Maryland,* 75 N. J. Law 828; *VanAdda v. McKinney's Executors,* 16 N. J. Law 235; *Cooper v. Ludlum,* 41 N. J. Law 182.

But the common law and the decisions of this Court prior to the 1911 amendment allowed recovery on an express contract only and this appeal raises the question whether the amendment of 1911 to an Act entitled, "An Act to regulate the practice of courts of law" can create a substantive right which did not theretofore exist, in other words, whether a right of action or the creation of a contract between the parties can be created in an amendment to "An Act to regulate the practice of courts of law."

The contention of the appellant is that the Act is limited by the title to practice of courts of law and cannot create a contract which will permit the plaintiff to recover.

The Court charged the jury that the plaintiff could recover on an implied contract and exceptions were taken to that part of the charge which said:

"That the law in the State of New Jersey has been changed from what it used to be and to the refusal to charge that an express contract is necessary, that recovery may be based upon an implied contract, and also to the refusal to charge that the services for which charges are made are as an advocate and an attorney and inseparable, and for that reason there can be no recovery."

CITATIONS.

"It is a well settled rule that statutes in derogation of common law rights are to be strictly construed; and we are not to infer that the Legislature intended to alter the common law principles, otherwise than is clearly expressed."

Sinnickson v. Johnson, 17 N. J. Law 129, at page 144.

"None such (liability for damages) can be implied; first, because statutes in derogation of common law rights are to be strictly construed; and we are not to infer that the Legislature intended to alter the common law principles further than is clearly expressed, or than the case absolutely requires."

Tinsman v. The Belvidere Delaware Railroad Company, 26 N. J. Law 147, at page 167.

"When the common law and a statute differ the common law gives place to the statute only where the latter is couched in negative terms or where its matter is so clearly repugnant that

it necessarily implies a negative. (1 Black. Com. 89.)

It is a rule of exposition that statutes are to be construed in reference to the principles of the common law, and it is not to be presumed that the Legislature intended to make any innovation upon the common law further than the case absolutely required."

State v. Norton, 23 N. J. Law 33, at page 41.

"No principle is better settled than that, although where the common law and the statute differ, the common law gives place to the statute and an old statute gives place to a new one; this is to be understood only when the latter statute is couched in negative terms, or where its matter is so clearly repugnant that it necessarily implies a negative."

Hetfield v. The Central Railroad Company, 23 N. J. Law, at page 573.

The Act of 1911, *supra,* is:

"Every solicitor, attorney and counsellor may commence and maintain an action for the recovery of any reasonable fees, charges or disbursements, in equity or at law, etc."

And the title to the Act is:

"An Act to regulate the practice of the courts of law."

There is nothing in the Act of 1911 which provides for more than the right to maintain an action for the recovery of any reasonable fees, charges or disbursements and is perfectly consistent with the law as it previously stood that a right of action could only

be maintained upon an express contract except that it requires that such charges shall be reasonable. Clearly it is not intended to create a new cause of action and if it was so intended the purpose of the Act is not expressed in the title which is limited to a regulation of practice of the courts of law.

The Act does not do more than give a right of action to recover fees, charges and disbursements and does not negative the requirement that there must have been an express contract therefore.

It is a well known principle that the title must be read as a part of the Act and the Act will be limited by the title so that the Act would read so far as the practice of courts of law is concerned an attorney or counsellor may commence and maintain an action for the recovery of fees, etc., thus limiting the scope of Section 9 to practice of the courts of law.

The practice of the courts of law is merely the rules and regulations governing the conduct of courts, attorneys, parties, etc., and does not and cannot create any substantive right.

Practice is defined in Cyclopedia of Law and Procedure, Vol. 31, page 1153, as follows:

> "In law, the mode of proceeding by which a legal right is enforced, that which regulates the formal steps in an action or other judicial proceeding; the course of procedure in courts, the form, manner, and order in which proceedings have been and are accustomed to be had; the form, manner, and order of conducting and carrying on suits or prosecutions in the courts through their various stages, according to the principles of law, and the rules laid down by the respective courts." Citing numerous cases.

I submit that this is all the title the Practice Act can embrace, to wit, the form, manner and order of

conducting and carrying on suits or prosecutions in the courts through their various stages, according to the principles of law.

It is not meant to change the common law principles or to create new substantive rights. If it did the object of the Act would not be expressed in its title.

It is limited to procedure and does not create substantive rights. This is undoubtedly the sense in which it is used in the legal profession and it clearly distinguishes the matter of procedure from substantive rights. In other words, it provides the procedure for courts of law for the conduct of suits to enforce substantive rights which exist independently of the Practice Act.

This amendment of 1911 was discussed in the case of *Clock, et al. v. Donnelly,* 94 N. J. Law 129, Court of Errors and Appeals, opinion by Gummere, C. J., as follows:

> "The Legislature of this State, in passing the Act to regulate the practice of courts of law in 1903 (P. L. p. 537)—of which the Statute of 1911 is an amendment—grouped the provisions thereof under certain headings, the first of which follows immediately after the enacting clause and is entitled 'Attorneys.' The first 12 sections of the statute are grouped under this heading, and a reading of them makes it very clear that by each one of them (passing for the moment Section 9) the Legislature was providing for the regulation and control of attorneys who had been admitted to the practice of law in this State, and was not intending to regulate or control the acts or rights of attorneys practicing in foreign jurisdictions, notwithstanding that the limitation is not expressly declared. The pertinent words of Section 9 are:

'No solicitor or attorney shall commence or maintain any action for the recovery of any fees, charges or disbursements, in equity or at law, against his client, or his legal representative until he shall have delivered to such client or his legal representative, or left for him at his usual place of abode a copy of the taxed bill of such fee, charges and disbursements.' (*The amendment of* 1911 *makes no change which has any materiality in determining the scope of the provision.*)

We find nothing in the language used in this section which indicates that the Legislature intended that it should have a broader reach than is given to the other 11 sections with which it is grouped. In the absence of any such indication, we consider that the whole 12 sections exhibit but one general purpose, and that is the *regulation and control of attorneys and solicitors* of our own State solely."

In *Hendrickson v. Fries*, 45 N. J. Law 563, it was held:

"The statutory provision in question was passed in 1799, as Section 13 of an Act entitled 'An Act to regulate the practice of the courts of law.' Rev. L., p. 415. It was continued in the Practice Act in the Revision of 1846. Rev. Stat., p. 931. In the Revision of 1874 it was transferred to and reenacted as Section 1 of an Act entitled 'An Act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments.' Rev. p. 81.

Under the provision of our constitution, the title of a statute is not only an indication of the legislative intent, but is also a limitation upon

the enacting part of the law. It can have no effect with respect to any object that is not expressed in the title. Const. Art. IV, 7, par. 4; Rader v. Township of Union, 10 Vroom 509; Everham v. Hulit, ante p. 53; People v. Briggs, 50 N. Y. 553.

Applying this canon of construction, I think it is clear that this statute must be construed to be a mere regulation of the practice in our own courts. The Legislature did not intend to prohibit the making in this State of warrants of attorney for use in other States, which are in the form that is legal in their courts; for it placed the prohibition on this form of warrants of attorney in an Act purporting, by its title, to regulate the mode of entering judgments which cannot have any extra-territorial force."

In *State v. Township Committee of Northampton,* 52 Law 496, opinion by Garrison, J., it was held:

"But the enacting part of the Act is qualified and restrained by the title. In the title the Legislature announces its purpose to legislate, not for all the townships of this State, but only with respect to such of them as do not contain an incorporated city or borough either wholly or in part within the limits of the township. The constitutional mandate that the object of every law shall be expressed in its title, has given the title of an Act a twofold effect. It has added additional force to the title, as an indication of legislative intent, in aid of the construction of a statute couched in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law. The enacting part of a statute, however clearly ex-

> pressed, can have no effect beyond the object expressed in the title. To maintain any part of such a statute, those portions not embraced within the purview of the title must be exscinded; and, if the superaddition to the declared object cannot be separated and rejected, the entire act must fail. Township of Union v. Rader, 39 N. J. Law 509; Wright v. Moran, 43 N. J. Law 49; VanRiper v. North Plainfield, Id. 349; Everham v. Hulit, 45 N. J. Law 53; Hendrickson v. Fries, Id. 555-563; In re Paul, 94 N. Y. 497-507."

These cases show that the Practice Act is to be taken merely as a regulation of the practice of our own courts. It is not necessary to say that the Act or any part of the Act is unconstitutional but merely that it is limited by its title to matters of procedure.

The case of *Katz v. Eldridge,* 96 N. J. Law 382 and 97 N. J. Law 123, and 98 N. J. Law 125, this was a decision setting aside the VanNess Act in which the Chancellor said:

> "Appellants also contend that the VanNess Act is invalid because its title is constitutionally defective, in that it does not express a single object embraced in the act itself, but that the act embraces more than one object. The constitutional provision invoked (Article 4, Sec. 7, par. 4), reads: '* * * Every law shall embrace but one object, and that shall be expressed in the title.'
>
> It is argued in this behalf that Section 24 alters the substantive rights existing between landlord and tenant by providing that any violation upon any leased premises shall give the

lessor the right of re-entry; that Section 55 gives a cause of action to any person injured by an intoxicated person, or by reason of the intoxication or sale of liquor to any person in violation of the Act; and that certain sections create a new tribunal, namely, a common pleas judge, and, in certain circumstances, a justice of the Supreme Court, who are created 'magistrates' with power, in prescribed procedure, to try, without a jury, alleged offenders against the act, and to convict and sentence them.

In Jonas Glass Co. v. Ross, 69 N. J. Law 157, 53 Atl. 675, the Supreme Court held that an act entitled 'An Act concerning District Courts (revision of 1898, as amended in 1901 (P. L. p. 68),' could not constitutionally change the relative rights of landlords and tenants; and in Rader v. Township of Union, 39 N. J. Law 509, the same tribunal held that an Act entitled 'An Act in relation to streets in Union township, Union County (Act March 29, 1871 (P. L. p. 1034),' could not validly create a corporation to take charge of the streets. Chief Justice Beasley in this case observed at page 515:

> 'It is true, that it may be difficult to indicate by a formula, how specialized the title of a statute must be; but it is not difficult to conclude that it must mean something in the way of being a notice of what is doing. Unless it does this, it can answer no useful end. It is not enough that it embraces the legislative purpose—it must express it; and where the language is too general, it will accomplish the former, but not the latter.'

Cases other than these might be cited, but it is unnecessary to do so. If, as in Jonas Glass Co. v. Ross, an Act concerning District Courts

could not authorize a change in the rights of landlord and tenant, the Act under consideration, entitled 'An Act concerning intoxicating liquor used or to be used for beverage purposes' cannot affect the substantial rights of landlord and tenant; and if, as in Rader v. Township of Union, an Act in relation to streets could not validly create a corporation to take charge of them, the VanNess Act cannot validly create a special statutory tribunal in which to try those who violate its provisions."

In *Jordan v. Moore,* 82 N. J. Law 552, this Court said:

"The title of the Act, as amended by P. L. 1903, p. 70, is 'An Act for the relief of creditors against absent, fraudulent and absconding debtors' in view of the provision of our Constitution (Article 4, Sec. 7, pl. 4) that 'every law shall embrace but one subject, and that shall be expressed in the title,' it is entirely well established that the title forms a limitation upon the enacting clauses; and any construction of the latter that would give them a scope beyond the object expressed in the title is, for this reason, to be rejected. Hendrickson v. Fries, 45 N. J. Law 555, 563; Dobbins v. Northampton, 50 N. J. Law 496, 499, 14 Atl. 587; Cooper v. Springer, 65 N. J. Law 594, 597, 48 Atl. 605."

In *Reese v. Stires, et al.,* 87 N. J. Eq. 32, the Chancellor said:

"In my opinion, however, the seventh section of the Act of 1915 (P. L. 1915, p. 65) is unconstitutional and void because not within the title of the act. Legislation respecting dower and curtesy, which arise out of the marriage relation

and vest in the relicts of deceased spouses, and which do not descend as to an heir at law, cannot, in my judgment, be constitutionally included in an act whose object is the direction of the descent of real estates. The very words of the constitutional provision that 'every law shall embrace but one object, and that shall be expressed in the title,' plainly forbid the legislation attempted in Section 7 of the Act under review. I deem it unnecessary to cite any of the numerous cases in our State which have construed statutes with reference to the constitutional provision above mentioned. Nor is it necessary to cite the decisions to the effect that an unconstitutional provision in an Act will be excised, and the rest of the Act upheld, if what remains is the primary object to the legislation. The Act under review in Section 6 legislates with reference to its primary object, namely, the descent of real estates—the only object expressed in its title. The seventh section is alien to its object and cannot constitutionally be made one of its subjects. This section is opposed to the organic law and is, consequently, null and void."

In *Stackhouse v. City of Camden,* 96 N. J. Law 533, it was said:

"The clause of the State Constitution (Article 4, Sec. 7, par. 4), which provides that 'every law shall embrace but one object, and that shall be expressed in its title' was designed to give information as to the object of the statute to the legislators and the public,' and consequently the title of an Act should read as it would probably be understood by non-professional persons of ordinary intelligence. VanRiper v. Heppen-

heimer, 17 N. J. Law J. 49. The title must mean something in the way of being a notice of what is contained in the Act. It is not enough that it embraces the legislative purpose; it must express it. Rader v. Union, 39 N. J. Law 509. An object of an Act is expressed in its title when a correct impression concerning the objects of the Act is hereby disseminated. Griffith v. Trenton, 76 N. J. Law 33, 69 Atl. 29. Applying these tests to the title of the Act under consideration, can it be said that any one reading the title of this Act would be apprised that one of its objects was to increase the salaries of recorders? It is entitled 'An Act respecting proceedings in certain criminal cases.' There is in this title nothing which suggests legislation regarding the salaries of recorders. The jurisdiction of the recorders' courts in cities of the second class could be extended to new classes of cases without necessarily increasing the salaries of the recorders. The title gives no notice of the provisions of the Act respecting increases of recorders' salaries. It gives no notice that the increase of the recorders' salaries is to be the effect of the passage of the Act.

(1) We therefore conclude that the provisions of the statute under review with reference to the increase of the salaries of recorders, although embraced in the body of the Act, is an object that is not expressed in the title, and hence the ninth section of the Act, which is the section dealing with this subject, has not been constitutionally enacted into a law."

It is useless to add further authority that a statute must be limited to the purpose expressed in the title.

This Court in the case of *Clock v. Donnelly, supra,* has said that the amendment of 1911 makes no change which has any materiality in determining the scope of this provision and that the first twelve sections of the Practice Act grouped together exhibit but one general purpose and that is the regulation and control of attorneys and solicitors of our own State and this Court in the case of *Hendrickson v. Fries, supra,* said of the Practice Act:

> "It is a mere regulation of the practice in our own courts."

The whole scope of the Act, after examining various sections, shows that it is merely to regulate the practice of our courts. The Act presupposes that there was a contract at common law. The cases decided under the common law are to the effect that it is impossible for an attorney to imply a contract between himself and his client, as pointed out in the case of *Bentley v. Fidelity Deposit Company of Maryland, supra*:

> "But no such implied promises respecting the payment of counsel fees arises in this State merely from the request that a person shall act as counsel or from the acceptance of services as counsel. Inasmuch as the services of counsel is assumed to be gratuitous, it follows that a delegation of power to an agent, or to a lawyer to engage counsel in this State, would carry with it no delegation of power to enter into a contract to pay a specific sum for such services."

Therefore the amendment of 1911 must be limited to the cases where the contract already exists and can only apply to the matters of procedure or to:

> "Regulate practice of courts of law."

The jury was charged by the Court that an express contract was not necessary and a contract was implied from the relationship between the parties to pay what is reasonable for the services rendered.

The Court in its opinion striking out the fourth defense, S. of C., page 20, said:

> "A reading of the 'Practice Act' and a study of its history demonstrates that it has acquired in common and legislative usage a meaning much broader than merely to indicate the form, manner and order in which proceedings in courts of law are to progress."

It is submitted that the ancient and historic rules of the common law relating to attorneys and clients should not be set aside except in the proper way and with a clear statement of intention to do so. The legislature can easily effect that purpose without amending the Practice Act and there is no reason for giving attorneys and solicitors privileges under the Practice Act which is not extended to litigants under other enactments and that the judgment should be reversed.

I believe the bar has always been proud of the law that gave to the relationship of attorney and client the high moral status which prevented suits on implied contracts. There is such a divergence of opinion as to the value of legal services that to do so would result in some cases in imposition. Furthermore there cannot help but be the feeling of the general public that such matters are largely within the control of the legal profession.

It is suggested that the Act if construed to give a right of action where a contract has been made even then limiting it to reasonable charges it retains the high moral status that has existed for centuries.

JOSEPH BECK TYLER,
Attorney and Counsellor for Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

LOUIS B. LEDUC,
Plaintiff-Appellee,
v.
HAMPTON E. WILLIAMS,
Defendant-Appellant.

ON APPEAL FROM SUPREME COURT.

ACTION AT LAW.

BRIEF FOR PLAINTIFF-APPELLEE.

This is defendant's appeal from a judgment for plaintiff at the Camden Circuit on a suit in the Supreme Court for fees earned by plaintiff as an attorney and counselor-at-law, appellant being the reluctant client.

The case presents but one question—a question of legislative intent, which embraces, of course, the question of legislative power, as expressed in Section 9 of the Practice Act, as amended in 1911. No question of fact is involved. The situation out of

which the appeal arises is sufficiently set forth in the opening of appellant's brief.

I.

What was the legislative intent, as disclosed by the act under scrutiny?

Plaintiff below, having brought his action for services rendered as attorney *and as counselor,* without an express contract, was met by the defense that (a) the services were gratuitous, except as already paid for, and (b) were services as advocate, as well as attorney, therefore inseparable, and affording no basis for a recovery (State of Case, p. 12).

A motion to strike these defenses (15) was argued before Circuit Judge Donges, and a rule striking the fourth defense (b, *supra*) was entered (21) for the reasons stated in the memorandum filed by the learned Circuit Judge (17). The appeal is from this ruling. Nothing else is before the Court.

The chief theory of the defense, and the one here asserted by appellant, is based on the contention that the ancient distinction between advocacy and other legal services still prevails in this State, notwithstanding the Amendment of 1911 to Section 9 of the Practice Act of 1903. The section as enacted in 1903, is as follows:

> "No solicitor or attorney shall commence or maintain any action for the recovery of any fees, charges or disbursements, in equity or at law, against his client or his legal representative, until he shall have delivered to such client or his representative or left for him at his usual

> place of abode a copy of the taxed bill of such fees, charges and disbursements." 3 Comp. Stat. p. 4054.

and as amended by P. L. 1911, Ch. 199, p. 412:

> "Every solicitor, attorney and counselor may commence and maintain an action for the recovery of any reasonable fees, charges or disbursements, in equity or at law, against his client or his legal representative, provided he shall have first delivered to such client or his legal representative or left for him at his usual place of abode, a copy of his bill of such fees, charges and disbursements." Cum. Sup. Comp. St. pp. 2793-4.

It is important to note at the outset that the former section had been a part of our statute law since 1799 (see Pat. L. p. 356, Sec. 11), the title of the original act thus antedating the Constitution of 1844. The original title was, "An Act Regulating Practice in the Courts of Law." This is substantially the title of the present Act, and it may fairly be said that the Act, with its various amendments, has continued to regulate practice, in the broadest sense of the word, from 1799 to the present day. At the time of its passage, the Constitution of 1776 was in force. This Constitution did not contain the provision embodied in paragraph 4, Section 7 of Article IV of the present Constitution, which declares that "every law shall embrace but one object and that shall be expressed in its title."

When we remember that the common law in this State at the time of the enactment of the Amendment of 1911 denied the right of a counselor-at-law

to recover for services in the nature of advocacy, except in the case of an express agreement, we see that the several changes made by the Amendment of 1911 disclose a clear legislative intent to abolish this rule of the common law and substitute in its stead the statutory right, or freedom, to recover the reasonable value of services rendered by counselors, irrespective of any express agreement for payment for such services. Attention is respectfully called to the following particulars wherein the said intent appears:

(1) *Where formerly only solicitor and attorney were mentioned, the counselor has now been added by the amendment and given an equal status for all the purposes of Section 9.*

This addition brings up sharply the distinction between the offices of solicitor and attorney on the one hand and of counselor on the other, a distinction which has always prevailed in English history and practice, and while obsolete in most of our States, was still recognized in New Jersey until the Amendment of 1911. The distinction is well understood by this Court and need not be dwelt on here. Unfortunately for the young practitioner, our reported cases do not contain any very extensive or illuminating discussion of the subject. Probably the most explicit utterance is in *Van Atta v. McKinney,* 16 Law, 235, where the Court said:

> "But the remuneration allowable in this case, is not for learning, talent or ingenuity. Our law does not suppose these necessary to conduct the business of a Justice's Court. And remuneration may be recovered, only for services, strictly analogous to the duties of an at-

> torney at law, in the higher courts. Such are drawing accounts, or statements of demand; attending the Court on the return of process, adjourn day, or trial day, in lieu of the party himself; collecting evidence, or whatever else may be necessary to prepare the cause for trial, and present it duly to the Court. But this does not include speaking to a cause in Court, or advocating (*however learnedly, or eloquently*) the one side or the other. The distinction between the duties of an advocate and attorney (though frequently, in our State, discharged by the same person, and therefore often confounded by the community) is well known, *in law.*''

The beginning and end of the professional labors of a counselor of this State, as such, is the advocacy of causes in the higher courts; his position corresponding in all essentials to that of the barrister of the English courts. The following cases may be consulted:

Seeley v. Crane, 15 Law, 35;
Van Atta v. McKinney, 16 Law, 235;
Schamp v. Schenck, 40 Law, 195;
Hopper v. Ludlum, 41 Law, 182;
Zabriskie v. Woodruff, 48 Law, 610;
Voorhees v. Barr, 59 Law, 123;
Bentley v. Fidelity & Deposit Co., 75 Law, 828.

It is clear by the light of these decisions that up to 1911, a counselor of this State, to whom the client had not expressly agreed to pay a fee, could not enlist the Court's aid in the collection of such fee. On the other hand, there was no absolute barrier

against a suit by solicitor or attorney for the collection of a reasonable fee where no contract therefor existed; and if the fee were taxed by the Court and a copy thereof served on the client a suit could be maintained.

Van Atta v. McKinney, supra;
Schamp v. Schenck, supra;
Strong v. Mundy, 52 Equity, 833;
Voorhees v. Barr, supra;
Bentley v. Fidelity & Deposit Co., supra;
McCrea v. Stierman, 76 Law, 394.

The exclusion of the counselor from the provisions of Section 9 of the Practice Act of 1903 was accordingly wholly consistent with the notion of the common law then prevailing, that in the absence of a contract he had no right of action. The addition of the word "counselor" in the amendatory Act, therefore, could have meant nothing less than a deliberate legislative purpose to extend to members of that class of practitioners rights of action which under the common law had formerly been enjoyed only by attorneys and solicitors, or, negatively stated, to remove a prohibition which had long attached to the office or status of a counselor.

(2) *From a negative form of enactment, Section 9 was changed to the affirmative.* Where formerly it simply forbade any action for fees until delivery of a copy of the bill to the client, now it provides that "every solicitor, attorney and counselor *may have and maintain an action* for the recovery of any reasonable fees, charges or disbursements * * * provided he shall have first delivered, etc., a copy of his bill." It is obvious that earlier legislation did not in itself create a right in the attorney (or

solicitor) to recover for services rendered; it merely referred him to the common and statute law of the State for determination of his primary rights; and its sole purpose was to couple such right of recovery as existed, with the obligation of first securing a taxed bill and delivering it to the client. The amendatory Act on the other hand expressly declares a right, as if none before existed, and the words "may have and maintain" are clearly sufficient to override any former rule of law which might have denied such a right of action as the new Act proclaimed.

That the common law, prior to 1911, did forbid suit by a counselor (in the absence of a contract) we know, and therefore, when we examine the words "every * * * counselor may have and maintain an action for the recovery of any reasonable fees, etc.," we are bound to recognize that the Legislature was deliberately making new law by providing a new remedy—not by indirection or by reference to existing law, but by force of the statute itself.

(3) *The new Act added the word "reasonable" before "fees," and substituted "a copy of his bill of such fees, etc.," for "a copy of the taxed bill of such fees, etc."* We note the two changes together, as they are closely related.

The use of the word "reasonable" seems primarily designed to assure to all members of the legal profession a fee commensurate with the services rendered, irrespective of whether or not the client had expressly agreed to pay such a fee. If only reasonable fees which the client *had expressly agreed to pay* were intended, the Act would necessarily have contained limiting words to such effect. The adjective "any" makes the purpose even

clearer. The provision for recovery of "any reasonable fees" certainly cannot be read as "any reasonable fees *expressly agreed to by the client.*" The Act, therefore, clearly *implies an obligation* by the client *in all cases* to pay the lawyer for the services which he renders to the client upon request.

The omission of the adjective "taxed" before "fees" had an equally definite purpose behind it. Under the old Section 9, no attorney or solicitor in the absence of contract with his client, could maintain a suit for fees unless he had first had such fees taxed by the Court as between attorney and client. This should not be confused with the similar taxation of costs between party and party, known as costs *de incremento,* in which allowances are made for the services of counsel to be recovered by the successful against the unsuccessful party. The distinction is pointed out in *Strong v. Mundy* and *McCrea v. Stierman, supra,* and also by Chancellor Walker in *Hoboken Trust Company v. Norton,* 90 Equity, 314, 318.

There are no reported cases, so far as we have been able to discover, in which attorney's or solicitor's fees have been so taxed, and no approved method apparently exists for securing such taxation. See *Truitt v. Darnell,* 65 Equity, 221, 229; *Hoboken Trust Co. v. Norton, supra,* and *Brown v. Harricott,* 81 Law, 44, 45.

The common law right of the attorney or solicitor in New Jersey to recover fees on an implied contract for remuneration was, therefore, largely theoretical, except in the case where moneys of the client passed through his hands, enabling him to deduct therefrom whatever was necessary to pay him a reasonable fee—a right which the counselor did not have in the absence of express contract with his client.

This unsatisfactory state of the law had undoubtedly been brought home to the Legislature by the decision in 1910, by this Court of *McCrea v. Stierman, supra,* as well as the decision by the same Court in that year of *Bentley v. Fidelity & Deposit Co.,* 75 Law, 828. It was natural that the Legislature should act to remedy a very unsatisfactory situation in the law, which it did by providing a right of action to recover fees by suit against the client, predicated not upon a taxation of such fees by the Court and delivery of the taxed bill to the client, but merely upon a delivery of the attorney's bill for his fees. Charges so made, of course, had to be reasonable, and their reasonableness was subject to test in the suit brought for their recovery.

It may be added that while the Act of 1911 gave a new remedy to the solicitor or attorney, as well as to the counselor, it did not repeal the old method of proceeding by taxation of the fee by the Court. This, at least, would appear from Chancellor Walker's decision in *Hoboken Trust Company v. Norton, supra.*

Summarizing this somewhat detailed discussion of the amendment, it is submitted that the Legislature intended by it to achieve two main objects; first, to give to counselors the same protection in the collection of their fees as was given to attorneys and solicitors; secondly, to enable all classes of practitioners to proceed by suit for recovery of their fees without the necessity of first securing a taxation of their fees by the Court.

There has been no judicial interpretation of the Amendment of 1911. In *Perkins v. McBride,* 83 Equity, 653, the Court of Errors held that an attorney's suit to recover his taxed bill of fees and costs required, as part of his *prima facie* case, proof of the service of such bill on the client. Appar-

ently the attorney in that case had either brought his suit prior to the enactment of the amendment of 1911, or in ignorance of its provisions. No distinction is made in the Court's opinion between the delivery to the client of a taxed bill of costs, and the attorney's bill for services, and no such distinction was necessary, as apparently no bill of any kind had been served on the client. The decision, therefore, is not helpful in the construction of the amendment.

While we have, therefore, to deal with questions of statutory construction that have not heretofore been passed on by the higher courts of this State, we feel that when the underlying state of the law at the time of the passage of the amendment is considered, there can be no question of what the Legislature intended to accomplish by its act. Primarily its purpose was to relieve the higher class of lawyers in this State from the unfair burden of an archaic rule which denied them compensation for services rendered, when at the same time the law permitted recovery for their services by the lower class of attorneys and solicitors. The presumption that counselors' services were gratuitous had its origin in the aristocratic notions of the wealthy class of English barristers, and the importation of this doctrine into our own country is opposed to its democratic tendencies and has, in fact, been discarded in practically every State in this country. We cannot doubt that the Legislature of our own State, realizing this condition, determined to do simple justice to the counselor by revoking the old prohibition, and by providing at the same time a more practicable remedy for recovery of fees by attorneys and solicitors, as well as by counselors. The Legislature recognized that whatever reason may have existed in an earlier state of American so-

ciety for the old distinction between barristers and solicitors, as known in England, no reason for it exists in our day. *Cessante ratione legis, cessat ipsa lex.* So said, in effect, the Legislature.

II.

Is Section 9 of the Practice Act of 1903, as amended by P. L. 1911, *Ch.* 199, *void?*

Did the Legislature do a vain thing? Such is appellant's contention. His whole case hinges upon the construction of the title of the Practice Act. The plaintiff below thought the title broad enough to cover the amendment, and that it expressed sufficiently the object of the amendment. So thought the trial Court, as Commissioner of the Supreme Court, after argument by counsel and independent research. See opinion of Donges, J. (17-21).

To determine what is meant in this Act by the word practice; whether it relates merely to procedural matters, or embraces matters of substantive law as well, this Court will look beyond the contents of the Act itself to scrutinize the pronouncements upon its meaning heretofore made in reported decisions. Judge Donges was evidently impressed by his reading of *Clock v. Donnelly,* 94 Law, 124, with the view that substantive rights had been created from time to time by the several enactments embraced in the present statute, and that these had never been successfully challenged on the ground of unconstitutionality. To his mind the reasoning of Mr. Justice Swayze in this court (*in re Hahn,* 85 Equity, 510) settled the question. On page 518 of the cited report the learned Justice said, " * * * it must be remembered that our constitutional pro-

vision as to the title of an Act is not found in the Constitution of 1776, and the Act of 1799 was therefore not objectionable on that score." He was discussing the Practice Act, which despite its amendments, or with its amendments, is the Practice Act today as fully as it was in 1799. The doctrine of "immemorial usage," as applied to the substantive elements of the Act as well as to its procedural elements, likewise convinced the Court below that the right of suit for recovery of his reasonable fees, allowed to every counselor by the Amendment of 1911, was a matter of practice properly expressed in the title of the original Act, and properly embraced within the single object of the Act, to wit: to regulate the practice. Either or both of these reasons ought readily to convince this Court of the propriety of the lower Court's ruling.

The cases cited by the lower Court at the end of its opinion (20), refer to a long line of decisions, many by this Court, settling the interpretation of the words of the Constitution relied on by appellant. Said Chancellor Magie, in the celebrated case of *State v. Twining,* 73 Law, 683, "While the title need not include nor express the means by which the legislation proposed is to effect that object, it must plainly express that object." Mr. Justice Minturn, speaking for this Court in *Gillard v. Manufacturers' Ins. Co.,* 93 Law, 215, quoted the late Mr. Justice Garrison, who spoke for this Court in *Moore v. Burdett,* 62 Law, 163, as saying in reference to the title of a legislative Act, under our constitutional mandate, that it is to serve the practical purpose of "a label, not an index," and that the product of the Act "may be as diverse as the object requires."

The object of the constitutional mandate is stated in the cited paragraph thereof to be "To avoid improper influences which may result from intermix-

ing in one and the same Act such things as *have no proper relation* to each other.'' Can it reasonably be said that the removal of an old prohibition against the assertion by a counselor-at-law of a right of action for the value of services rendered, and thereby putting him on the same footing before Courts with all other litigants seeking recovery for valuable services duly rendered, is a matter having *no proper relation* to the practice, and the regulation of practice, in courts of law? The advocate, by immemorial usage, was, until the 1911 Amendment, regarded by our Courts as prohibited from asserting a right, which, but for such usage, would not have been denied him. The existence of that prohibition was implicitly recognized in Section 9 of the Practice Act up to the going into effect of the Amendment of 1911. The implication, supported until then by judicial decisions *on matters of practice,* was removed by the amendment. If the status of a counselor up to that time was dealt with (even impliedly) under the Practice Act, without successful challenge, for many years, then the Legislature with perfect propriety might continue to deal in that Act with that subject by declaring a change in that status. That the change, through the means of a removal of the ancient prohibition, results in recognition of a substantive right, does not now make into something else that which has always been regarded matter germane to practice and the regulation thereof.

Assuming still, while not admitting, that the constitutional mandate of 1844 applies to the present Practice Act, it remains to remark that if the newly recognized right of a counselor to sue for his fee be not considered as strictly a matter of practice in the narrow sense of the word contended for by appellant, yet that sense of the word has never, it is

believed, been given judicial recognition in any case involving this Act. On the contrary, all the attempts to persuade our Courts to accept the narrow construction, so far as I have followed them, have failed. Further citations and illustrations may be superfluous, but because of the lively interest of the profession in the subject, a further brief discussion of decided cases follows:

The requirement that "every law shall embrace but one object and that shall be expressed in its title," does not prohibit the inclusion in a single Act of any number of provisions so long as they have "one general object fairly indicated by its title."

> "It is not intended to prohibit the uniting in one bill of any number of provisions having one general object fairly indicated by its title. The unity of the object must be sought in the end which the legislative Act purposes to accomplish, and not in the details provided to reach that end. The degree of particularity which must be used in the title of an Act rests in legislative discretion, and is not defined by the Constitution. There are many cases where the object might with great propriety be more specifically stated, yet the generality of the title will not be fatal to the Act, if by fair intendment it can be connected with it." *Walter v. Union,* 33 Law, 350, 353-4.
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> "The Constitution does not prohibit the union in one Act of several subjects, using that term in a limited sense; the interdict is against the union in one Act of such things as have no proper relation to each other. In giving effect to this constitutional provision, the Courts give paramount consideration to the general object of the Act—the general purpose of the legisla-

> tive scheme. The general object of the Act being ascertained, the power of the Legislature is vindicated to include in it provisions of a multiform character, designed to carry into execution the legislative purpose, which are not inconsistent with or foreign to the general object of the Act. The decisions to this effect in our own Courts are numerous." *Easton, etc., R. R. Co. v. Central R. R. Co.,* 52 Law, 267, 271-2.

Illustrations of this rule are abundant in our statute law. The Municipalities Act of 1917, constituting as it does a comprehensive code covering a multitudinous subject-matter, is entitled simply "An Act Concerning Municipalities."

Another rule affecting the application of the constitutional mandate is laid down by the Court of Errors in *State v. Twining, supra.* It was asserted in that case that the title, "An Act Concerning Trust Companies," could not be held to affect safe deposit companies. The Court, however, pointed out that while the term "Safe Deposit Company" had been first used in legislation on the general subject, it had long ceased to be the characteristic designation for that class of banking corporation known as safe deposit and trust companies, and the words "Trust Company" had come in common parlance to be understood to include the functions of the old safe deposit company.

> "The examination of these legislative Acts clearly indicates that while the safe deposit feature of these corporations may perhaps have originally been the predominant one, by gradual additions to the powers conferred by the original Act the trust feature of the corporations had enormously increased.

> It is a matter of common knowledge that, after these companies had been clothed with extensive trust powers by the legislation above shown, *they were commonly known and designated as trust companies, and the Legislature, in applying to them the name 'trust companies,' adopted the popular designation.*" *State v. Twining,* 33 Law, 684, 688-9.

This point in itself disposes of the defendant's argument on this head, since the word "practice" as used in the title to our Practice Act has, by unbroken usage and understanding, come to designate the practice of law in its broadest acceptation.

The precise point was passed on by the Court of Errors in the opinion written for it by Mr. Justice Swayze in the *Hahn* case, already quoted from. The Court there was dealing with the question of the asserted power of the Court of Chancery to disbar an attorney and counselor from practicing as such because of misconduct in his office as solicitor in Chancery. It had been pointed out that the title of the Act did not refer to Courts of Equity, and, indeed, by its terms, was limited to practice in "Courts of Law." The Court said:

> "Although the title of the Practice Act points only to the Courts of Law, it must be remembered that our constitutional provision as to the title of an act is not found in the Constitution of 1776, and the Act of 1799 was therefore not objectionable on that score. In 1844, when our present Constitution was adopted, the power of the Supreme Court under the Act of 1799 was settled beyond the power of legislative interference; and the Legislature in the revisions of 1846, 1877 and 1903 merely followed

the ancient lines." *In re Hahn,* 85 Equity, 510, p. 518.

In a system of jurisprudence such as ours, where law and equity are divided by fairly clear boundaries, and where the Courts of Law and of Equity are wholly independent of each other, the view of the Court of Errors in the *Hahn* case is, indeed, significant. If "Courts of Law" within the popular understanding of the Practice Act embraced Courts of Equity, there should be no difficulty in recognizing that "practice" embraces not only that body of procedural rules by which causes are prosecuted, but the practice of a lawyer in all its aspects.

How, indeed, can we avoid the conclusion that by the word "practice" the Legislature of 1799, in passing Judge Paterson's original act, intended to give the word its broadest possible scope? The original Act will be found reproduced in the revised laws of 1821, at page 413. It will be noted in the first place that the article "The" appears before "Courts of Law" (although such article has been omitted in subsequent revisions), an insertion which certainly tended to limit rather than amplify the meaning of the phrase it modified. At the very beginning of the Act, however, it is clear that the Legislature did not mean strictly to limit the application to Courts of Law, but intended to include in it the Courts of Equity as well. Also it is clear from the beginning that the word "practice" was used throughout in its broadest significance. Thus Section 3 (Section 5 in the Act of 1903) deals with "malpractice" of "any counselor, solicitor or attorney at law." Section 6 (incorporated in our present Section 5) *provides a right of action* to a client whose cause has been mismanaged by his solicitor or attorney. Section 9 (now in Section 8

of our present Act) forbids the collection or retention of fees greater than those "allowed by law" and provides a *penal action* in such case. Section 10 is a Statute of Limitations for the collection of such penalty. Section 11 is the present Section 9 of our Practice Act. Section 100, to select an entirely different enactment, grants authority to the Courts of Common Pleas to lay out the bounds and rules of prisons in the several counties—manifestly a function which can only be brought within the scope of the word "practice" by giving that word the broadest possible significance. Here we see "practice," as the word was used in Judge Paterson's Practice Act, obviously intended to be given a meaning sufficiently broad to cover not only the conduct of members of the bar in their professional characters, but to extend as well to the administrative functions of Courts!

Thus, although appellant argues that a substantive right of action cannot be granted in an Act whose purpose, declared in its title, is "to regulate the practice of law," we see that he overlooks the fact that in the original Act of Judge Paterson's, as in our present Practice Act, such substantive rights are created in many instances. There is first the right of action given to clients for the malpractice of their counselors or attorneys, as well as for the negligence of such counsel, above referred to. There is the penal action against an attorney who fails to file a taxed bill of costs (Section 7 of the Act of 1799), and the penal action against the solicitor or attorney who shall fail to draw a bill of particulars of costs or deliver a receipt therefor (Section 8 of the old Act and of the new), or who takes any greater fee than allowed him by law. In the present Act there is, in addition, in Section 19 the provision for assignment of choses in action *ex con-*

tractu, a right which, under the common law, was cognizable only in equity. There is the right of action given a married woman living separate from her husband for the recovery of damages for any injury done her person or reputation (Section 23, Act of 1903). There is the right given to any third person for whose benefit a contract is made, to sue direct, found in Section 28. Other sections might be pointed to, and other general Acts, also, such as our Railroad and Corporation Acts, wherein many new substantive rights are created.

Before closing the subject on this head, we may further note, that the provision for women practicing (Section 12, Practice Act of 1903) certainly lies outside the meaning of practice as confined to a set of rules for prosecuting causes. Indeed, the whole subject of admission to the Bar, which is by license from the Governor, and not by the Courts, clearly lies outside the strict meaning of the "practice in courts of law," although it is referred to more than once in both the old and the present Practice Acts.

The emphasis upon creation of a new substantive right is misplaced. Logically, if the Legislature could not, under defendant's theory, create a substantive right, neither could it create a remedial right. Yet, admittedly, in our present Section 9, before amended by the Act of 1911, a remedial right was recognized in attorney or solicitor, and such remedial right was limited by imposing upon it certain conditions precedent. If the Legislature could lawfully do this, it could lawfully provide a new substantive right, provided only that that right concerned the practice of law.

In fine, it is clear that the appellant's contention proves too much. If the word "practice" is to be limited as appellant would limit it, many of the most familiar sections of our Practice Act would lie out-

side the scope of the title and, by virtue of the constitutional provision, be wholly void. Our Practice Act has been too long followed, and has been too many times the subject of minute and careful study by the Courts of record of this State, to be subjected to any such bewildering result. The very section which is now drawn into controversy has time and again been brought before this Court, and in no instance has it ever been suggested by this Court that the title of the Act was not broad enough to permit the Legislature to deal with the subject of recovery of a lawyer's fees. As we have seen, the Court of Errors in *In re Hahn* clearly indicated that in its opinion the regulation of this subject could properly continue to be recognized under the old title given by Judge Paterson.

It may further be observed, though it hardly needs argument, that advocacy, the very function of counselors for the exercise of which plaintiff is here seeking compensation, is "practice," carried on within the four walls of the courtroom, and without which function there would be little for the rules of practice, as commonly understood, to operate on in the physical presence of the Court.

III.

While the foregoing discussion is intended as a substantial answer to appellant's one serious contention, it may be proper to add by way of specific answer to his reasons, stated as grounds (24), for appeal, that

1. An implied contract to pay plaintiff was brought home to defendant by the proof, and the

right of action thereupon is plainly given by Section 9 of the Practice Act as amended.

2. Services for advocacy were proved separately from services rendered by plaintiff as attorney and solicitor, but under the amendment either may be recovered without an express contract. Assuming such several services to have been commingled, however, appellant's contention is without supporting authority, even under the section of the Act in question before it was amended. The case of *Bently v. Fidelity & Deposit Company,* 75 Law, 828, has apparently been read by appellant as authority that there can be no recovery for either class of service where the two are mingled. But that case does not so hold. The Court there gave separate and distinct reasons for disallowing the recovery of attorney's services and for those of advocacy, in the first case because no bill of costs had been served, and in the second, because no express authority from the client had been proven. Thus the Court indicated that the two kinds of services were separate and distinct and the decision was, therefore, rather authority for the proposition that recovery of an attorney's services may be had where recovery of the services of a counsel is denied, than authority for appellant's contention.

3. Appellant's third ground is not supported by any of his cited cases. The only one that seems to favor him, so far as he quotes it, is *Katz v. Eldredge,* 96 Law, 382; 97 Law, 123; 98 Law, 125. This is the decision overthrowing the VanNess Act in 1921. The title to that Act was held wanting in the familiar constitutional requirement, in that it failed to "express a single object embraced in the Act it-

self, but that the Act embraces more than one object" (97 Law, at p. 134). Immediately following the portion of Chancellor Walker's opinion quoted in appellant's brief, however, is a paragraph in reference to the decision of this Court in *State v. Twining,* 73 Law, 683, already discussed in this brief, and the Chancellor therein says, "In passing it may be well to remark that counsel * * * is doubtless correct in his assertion that a prohibition Act properly entitled might constitutionally provide penalties for its violation."

The Act then *sub judice* had but just been promulgated. Its title was plainly insufficient. But this is not authority for upsetting the title to an Act in force in this State since 1799, and held again and again in this Court to be a proper "label, not an index," of what it contains. Yet appellant's attack upon the amended section is in effect an attack upon the title, since, as shown earlier in this brief, his objection being to the alleged creation of a substantive right, that objection goes as fully against every other such right recognized or created in other sections of the Act—of which there are many. But this Court has found these other sections unobjectionable, and each reason, pointed to in support of its findings in decided cases, must be recognized, to the extent of its manifest application, as supporting the amendment upon which appellee here relies. If the setting of county prison bounds by the Common Pleas Judge is a matter judicially recognized as "practice," and regulated by the Act under review, surely the removal of the ban against the maintenance of actions by counselors for earned fees can be so recognized, and with much less effort of the reasoning faculty.

It is therefore respectfully urged that appellant's fourth affirmative defense in the Court below was

properly stricken, and that the trial Court did not err in refusing to direct judgment for defendant.

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