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NEW YORK'S FIRST BAR ASSOCIATION

PAUL M. HAMLIN

THE first Bar Association of New York was established in 1709. This earliest association was active during 1709 and 1710, if not longer, and was the first of a number of bar groups founded in New York during the Eighteenth Century. It was composed of six lawyers of the Province whose practice for the most part centered in the City of New York. In point of time the nearest bar association established in any other English Colony in North America was the *Sodality* formed by lawyers of Boston, Massachusetts, an organization which flourished after 1765.¹ But by that time New York City could boast of a strong, active, Provincial Bar reorganized in 1729; of a Mayor's Court of the City of New York Bar established in 1731; of an Exchequer Bar of the Supreme Court of Judicature of the Province founded in 1732, and of the well known Bars organized in 1756, 1757 and 1764. These Bars and the influential, *The Moot*, will be discussed in subsequent articles.²

The immediate cause for the bringing together of the leaders of the New York bar into a Bar Association in 1709-1710 were attempts on the part of the Legislature of the Province, in conjunction with the Governor and Council, to regulate either by statute or by ordinance

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¹ For an account of the Sodality of Boston, Massachusetts, see Charles Warren, *A History of the American Bar*, Boston: Little Brown and Company, 1911. Consult Index.

² For a brief statement respecting Bars, Bar Groups and Bar Associations of Colonial New York see Paul M. Hamlin, *Legal Education in Colonial New York*. New York: New York University Law Quarterly Review, 1939, pp. 95-97. For additional references to associations of lawyers in New York in the 18th Century see, Henry B. Dawson, *The Sons of Liberty in New York*, "A Paper Read Before The New York Historical Society," May 3, 1850, p. 40. Lieutenant-Governor Cadwallader Colden frequently inveighed against the lawyers of Colonial New York and their associations. For one diatribe see, O'Callaghan, Edmund B., and, Fernow, Bethold, Editors, *Documents Relative to the Colonial History of the State of New York, Procured in Holland, England, and France*. 15 volumes. Albany, N.Y., 1856-1887. (Hereafter Docs. Rel. Col. Hist. N.Y.) VII:705. Also see William Smith, Jr., *History of the Late Province of New York from its Discovery to 1762*. (Earlier editions 1757, 1776, 1814.) New York: The New-York Historical Society, 1829-1830. The New-York Historical Society Collections for 1829 and 1830. (First Series, Vols. IV, V.) II:273, for a reference to an organized Bar in the Colony. For a general discussion of law, lawyers, law practice and the judicial system of the Province of New York consult Indexes in Hamlin, Paul M., and, Baker, Charles E., *Supreme Court of Judicature of the Province of New York 1691-1704*. New York: The New-York Historical Society, 1952-1959. 3 vols., and, Goebel, Julius, and, Naughton, T. Raymond, *Law Enforcement in Colonial New York. A Study in Criminal Procedure (1664-1776)*. New York: The Commonwealth Fund, 1944.

the conditions of the practice of law together with the fees and costs which all public officials, including lawyers, could charge for services rendered. This matter was a vexatious problem not only in each of the then American Colonies, but in England also.³ And in order to understand why it had assumed such importance in 1709, a brief account of fees and fee tables of New York as well as the authority through which they were promulgated after 1665 should be given.

The few members of the legal profession in New York in 1665 had practiced at the bars of the courts sitting at Westminster, England, before coming to America and were familiar with the provisions of the acts of Parliament regulating fees. For some reason not now clear, they did not however see to it that charges and expenses incident to the practice of law were incorporated in the *Duke's Laws* which were promulgated in 1665 for the newly acquired Province although mention of some fees for some services performed by officers of government may be found in that body of laws. Apparently it was planned to allow lawyers to charge whatever fees seemed fair and just based upon the practice at Westminster. More than any other person Mathias Nicolls, the outstanding lawyer of the day, was the chief draftsman of the laws of the new Colony, and can be held responsible for their merits and defects.⁴

On the other hand, the Common Council of the City of New York

³ Not until 1605 did Parliament undertake to standardize and regulate the fees and costs for services rendered by public officials and lawyers. For action taken see Statute 3 James I c.7., and for an enumeration of Parliamentary Acts affecting attorneys and solicitors consult *Crown Court Companion; The Attourney of the Court of Common pleas; or, Directions and instructions concerning his practice therein. Together with fees due to the judges and offices there, and in the King's bench. And also fees and ordinances in Chancery.* (London: printed by E. G. for Mathew Walbanke, 1648.) Subsequent Parliamentary acts prior to 1709 regulating fees may be found in 21 James I C.8, and in 5 and 6 William and Mary C. 11.

⁴ *The Colonial Laws of New York from the year 1664 to the Revolution.* Albany, N.Y., 1894. I:32-35. (Hereafter Col. Laws N.Y.)

It is possible that the failure to include in the *Duke's Laws* (1665) the fees and charges allowable attorneys was a deliberate omission. For the most part the *Duke's Laws* were compiled by Barrister at Law Mathias Nicolls, first Secretary of the Province of New York. He had come to New York with his family intending to live there, and since he probably did not know how much law work there would be in the freshly conquered Province, nor what charges could justly be made for the legal services he and the two or three other lawyers in the Colony would perform, he did not bind himself or the other attorneys by listing their fees in the *Duke's Laws*.

The last regulation of fees under the Dutch of New Amsterdam was ordered by Governor Peter Stuyvesant in 1658. Chester, Alden, and, Williams, Melvin E., *Courts and Lawyers of New York, a History, 1609-1925.* 3 vols. New York: American Historical Society, 1925. I:143-144n; 246-248n.

did establish charges for some services connected with the Mayor's Court of the City and by 1667 had promulgated a Table of Fees.⁵ Supervision of the rates, however, appears to have been lax, and "Divers Complaints" were made to the Court of "exorbitant charges and fees of the Clerks of Sessions and Attorneys, there being no person appointed to inspect their Accounts." As a consequence, an order issued that "No fees be levied by execution, except the acc.^{ts} of the fees be stated or signed by the Worshipp.^l Mayor, or his Deputy."⁶ Resentment against overcharging may have been allayed for the time being, but not for long as the records abundantly show.

There is some reason to believe that Governor Edmund Andros and his Council together with the Mayor and Aldermen of the City of New York completely revised the fees applicable throughout the Province sometime after his arrival in the Colony in 1674. An entry in the *Minutes* of the Mayor's Court of the City of New York under date of September 21, 1677 lends substance to this surmise for on that day the Court "Ordered that all ffees of this Court that are not payd according to y^e table of ffees made by his honour y^e Govern.^r and Councill & May^r & Ald^rmen since y^e Govern^{rs} Arrivall here . . ." were unlawful. In this ruling it is well to notice that neither the representatives of the people nor the members of the legal profession had a part.

And yet the Assembly at its second session went along with the table of fees that appears to have been established for in November 1683 that body resolved that all of the fees "usually taken and received by the Sheriffs Clerks of Court & other officers . . . shall bee and remaine the same as formerly they were & now are, to be received payed and accounted for as formerly, Until any alteracon shall be made therein, or order to the Contrary by act of Generall Assembly."⁷ Thus by acting wisely and warily, New York's first legislature, a body brought into being less than five weeks earlier, acknowledged that the fees already established by the Governor and Council were legal, but served notice that in the future the representatives of the people were to be consulted concerning charges to be paid for services performed by officers of government.

⁵ Berthold Fernow, *The Records of New Amsterdam from 1653 to 1674 Anno Domini*, "Minutes of the Court of Burgomasters and Schepens," VI:77, 363-4.

⁶ *Minutes of the Common Council of the City of New York*, I:63. (Hereafter *Min. Comm. Coun.*)

⁷ *Col. Laws. N.Y.*, I:136.

The next major attempt to regulate the fees of the Province of which anything definite is known occurred in 1691 during the re-organization of the government of New York following the overthrow of Leisler's Rebellion.⁸ Hardly had the new administration under Governor Sloughter been sworn into office before the Assembly took the lead in appointing a committee of its members "to establish the Fees of all the Officers throughout the Province." To their delegation the Assembly asked "that a Committee of the Council be joined," and "that they call to their Assistance, all Persons, or Papers, that are needful, and make Return thereof, to this House, on *Monday* Morning next by 8 o'Clock." To this request the Governor and Council responded by appointing a committee from their membership on which was one Justice of the Supreme Court of Judicature and two lawyers. As directed a report was made whereupon the Assembly ordered, "That the Committee for settling the Fees, be continued, and that they sit and adjourn themselves, from Time to Time, until they have fully completed, and ended all."⁹

After a number of long delays caused partly by two dissolutions of the Assembly which in turn necessitated the appointment of new committees, and by what appears to have been procrastination by Governor and Council, the House of Representatives on September 20, 1693 finally approved a "Catalogue of Fees" and ordered that "it be sent up to the Governor and Council, praying his Excellency that he may establish the same."¹⁰ The response was the naming of another committee of the Council members "to consider of and regulate the table of ffees."¹¹ What this freshly appointed committee did is unknown, but from the records and from what subsequent

⁸ Little or nothing is known as to whether the committee appointed by the New York Council on March 10, 1687 to "Prepare a Bill for the settleing the fees of all the Courts & offices within this Gov^t" did prepare a bill and if so what steps were taken to carry out its purposes. (Journal of the Legislative Council of the Colony of New York begun the 9th day of Ap. 1691 and ended the 3d day of Ap. 1775, I: xviii.) (Hereafter Jour. Leg. Coun.) Nor is it known what was the establishment of fees, if any, during the Leisler Regime, 1689-1691. The Instructions given to Edmund Andros in 1688 upon his appointment to be Governor of the newly created Dominion of New England authorized him to set up an establishment of fees, but what if anything was done to implement the instruction has not been learned. (Docs. Rel. Col. Hist. N.Y. III: 546.)

⁹ Journal of the Votes and Proceedings of the General Assembly of the Colony of New York, 1691-1743; 1743-1765, I: 5,7; (Hereafter Jour. Gen. Assem.); Jour. Leg. Coun., I: 4.

¹⁰ Jour. Gen. Assem., I: 23,33.

¹¹ Jour. Leg. Coun., I: 44.

Governors by letter informed the home authorities, it may be learned that Governor Fletcher and his Council neither approved nor revised the "Assembly's Catalogue of Fees." But on the other hand they did not disapprove of it.¹² Rather, they allowed the Catalogue to be printed by the public printer William Bradford in 1694 as one of the "Laws and Acts of the General Assembly for their Majesties Province of New-York."¹³ It was not that Governor Fletcher was unaware that he had the authority by and with the advice and consent of his Council to ordain and promulgate a table of fees for the Province. Of this he had no doubt. In fact in 1692 while the Assembly was urging the establishment of a list of fees, he produced his "Instructions" in which he was "required, by advice and consent of the Councill, to regulate all sallarys & ffees belonging to places or payd upon emergencyes," and sent a copy of it to the Assembly. However, as the Council Minutes show, both he and the Council agreed that, "for the satisfacon of the Subject," the demand of the Assembly for participation in the construction of a table of fees should be recognized.¹⁴

A Table of Fees, then, was established for the Province. It was largely the work of the representatives of the people and probably encouraged them to believe that in respect to the highly important subject of charges for services of government, their ideas, if not to predominate, were at least to be seriously considered. Uppermost in the minds of the assemblymen at the moment, it would seem, were fees exacted by general officers of government since two items only referred to charges customarily made by lawyers. Under the heading, *Council and Attorneys Fees*, there was the item, "For Attorneys Fees," probably what would be the "Retainer Fee," for which Six Shillings was allowed. The other item, "For Pleading each Cause," carried a like sum of Six Shillings. Those were the only references in the table to lawyers' fees. Apparently the members of the bar were to be trusted, as they seem to have been previously, to make reasonable and fair charges for the services they rendered.¹⁵

¹² For comments by Governor Hunter regarding the validity of the Table of Fees drawn up in 1693 see Docs. Rel. Col. Hist. N.Y., V: 216.

¹³ Facsimile of the Laws and Acts of the General Assembly for their Majesties Province of New-York, etc., etc. At New-York Printed and Sold by William Bradford Printer to their Majesties King William & Queen Mary, 1694. New York: The Grolier Club of New-York, 1894. The title page reads: A Catalogue of Fees Established by the Governour and Council At the Humble Request of the Assembly.

¹⁴ Jour. Leg. Coun., I: 33,38. See also Docs. Rel. Col. Hist. N.Y., V: 216.

¹⁵ Few competent lawyers were in practice in the City of New York in the

The situation, however, seems to have changed during the late 1690's. At all events the members of the Assembly began to assert themselves not only regarding fees but also upon a number of matters. For more than ten years the executive branch of the government of New York had been in weak or corrupt hands, and a general laxness in the administration of the laws had prevailed throughout the Province. The expenses of government as well as the cost of securing simple justice and of having minor matters attended to were high, or so it was claimed by the Assembly. And since a price tag was attached to every activity or service, significant or otherwise, suggestions as to what should be done to relieve the situations were forthcoming. For one thing, vexatious lawsuits and unwarranted delays in the handing down of decisions by the courts should be curtailed or eliminated. Then, too, one party to a lawsuit must be forbidden to employ all of the few able lawyers who were practicing in the Province leaving only the ignorant or the pettifogging practitioners for the other party.¹⁶ Not these matters alone must be regulated by statutes, but maximum sums which each and every government official was authorized to charge for each service rendered must appear in print. In particular, the fees and charges which the members of the legal profession might make, especially when their Bills were submitted for taxation, must be carefully estimated and set forth in a statute. On the subject of charges, in other words, the New York House of Representatives believed that it had the constitutional right, as did the House of Commons at home, to determine the fees of officials of the Province. Lawyers and the fees for the services they performed fell squarely within this view.¹⁷

1690's. Three, James Emott, William Nicolls and Edward Antill dominated the scene, while John Tudor, David Jamison and James Graham attracted a number of clients. As the decade closed, a number of attorneys newly arrived from England and the West Indies opened offices in the City.

¹⁶ Attempts were made to regulate these matters. Consult *Jour. Leg. Coun.*, I: 82,84,137,143; *Col. Laws. N.Y.*, I: 351-352; *Jour. Gen. Assem.*, I: 59,61,63; *Calendar of Historical Manuscripts in the Office of the Secretary of State*, Edmund B. O'Callaghan, Compiler. Albany, N.Y. (Parts I-IV). Part II: 234,250,258. The portions of these historical manuscripts which were saved in the 1911 Albany fire, known as New York Colonial Manuscripts, are located in the Manuscripts and History Section of the New York State Library, Albany, N.Y. Before the fire Edmund B. O'Callaghan made a calendar of all of the originals. Reference to the portions saved in the fire is usually *New York Colonial Manuscripts*, (N.Y. Col. Mss.); reference to O'Callaghan's summaries is *Cal. Hist. Mss. N.Y.* Part II includes *English Manuscripts for the years 1664-1776*, and is referred to as *English Manuscripts*, (Eng. Mss.).

¹⁷ On September 11, 1708 the Assembly "Resolved, That for any Officer whatsoever, to extort from the People extravagant and unlimited Fees, or any Monies whatsoever,

It is quite possible that the legal profession of the day had lost perspective and a sense of balance in the matter of costs in the bills rendered clients. As noted, the two items in the 1693 Table of Fees regulating attorneys' charges restricted members of the profession hardly at all. Not that alone, but they were so indefinite as to be capable of wide interpretation. Scores of potential fees were not provided for thereby giving to each individual practitioner the privilege of determining what was a proper charge. And it is possible to believe that the charges made approximated what each attorney, and the Judge who taxed the Bill of Costs, thought the public would bear. The few Bills, and the Account Books of lawyers and public officials of that day that have been preserved, show that the charges set forth in the Table of Fees of 1693 were exceeded in nearly every instance. The 1693 Table, it would appear, was either out of date or there was an understanding that its requirements need not be followed. How widespread this attitude may have been among the lawyers, particularly Edward Antill, James Emott, David Jamison, William Nicolls and John Tudor, who had held official positions or who were in practice in 1693 and who were still prominent as the new century opened, is unknown since neither papers, manuscripts, nor record books of these attorneys at law have been preserved.

The newly arrived "practisers of the law" who accompanied Governors Bellomont and Cornbury across the Atlantic in 1698 and 1701 as well as other lawyers who arrived in New York within those years probably felt not at all bound by the Table of 1693. There were fourteen of these newcomers ten of whom were Barristers at Law. These professionals, William Atwood, Leigh Atwood, May Bickley, Sampson Broughton, Sampson Shelton Broughton, Samuel Clowes, Barne Cosens, John Guest, Robert Milward, Roger Mompasson, Paroculus Parmyter, John Rayner, Jacob Regnier and Thomas Weaver came to take part in the reorganization of the Government of New York then under way as well as to share in the upsurge of business activity expected to follow the new policies being instituted. They knew what fees were charged for legal services in England and appear to have thought that similar rates ought to apply in New York. Under their guidance a Provincial High Court of Chancery

not positively established and regulated, by Consent in General Assembly, is unreasonable and unlawful, a great Grievance, and tending to the utter Destruction of all Property in this Plantation." (Consult Volume I of Jour. Leg. Assem. under date given.)

was proclaimed in 1701 by ordinance with fees, clerks, registers, purse bearers and other officers all modeled after the Westminster court of the same name, and before it respected citizens of long standing were hailed. The public was aghast and the reaction so strong, especially over the fees charged, that a year later the Governor suspended the court "until his said Excellency, with the Advice of Her Majestys Council, should appoint and determine such Regulations of Fees, and Proceedings therein, as should be most agreeable to Justice and Equity."¹⁸

The need for a court of equity was great, however, and by 1704 another High Court of Chancery was in operation with a new establishment of fees and with a revised procedure. Nevertheless conditions under the revamped court seem not to have improved very much and by 1708 it had ceased to function.¹⁹ This time the Assembly came to the conclusion that the fees being charged throughout the Colony were the main issue, and decided to make a frontal attack upon them. In early September it began operations by resolving:

That for any officer whatsoever, to extort from the People extravagant and unlimited Fees, or any Monies whatsoever, not positively established and regulated, by Consent in General Assembly, is unreasonable and unlawful, a great Grievance, and tending to the utter Destruction of all Property in this Plantation.²⁰

This pronouncement was followed by the passage of "An Act to Relieve this Colony from Divers Irregularitys and Extortions," really an act to regulate the legal profession and the practice of law, and

¹⁸ Revised Laws of the State of New York 1813, I: Appendix.

A portion of the Ordinance of 1704 reopening the High Court of Chancery of the Province of New York states: "Whereas the High Court of Chancery held within the Province of New-York, by an Ordinance of his said Excellency in Council, bearing date the 13th Day of June, Anno Domini 1702. hath been suspended until his said Excellency, with the Advice of her Majestys Council, should appoint and determine such Regulations of Fees and Proceedings therein, as should be most agreeable to Justice and Equity; by which Ordinance the Chief Justice and second Justice of the said Province were ordered duly to consider of such Method as would render the said Court most useful and least burdensom to the subject, and to lay before his Excellency in Council, for their Approbation, such a Table of Fees as would be just and reasonable to be allowed in the said Court . . ." "An Ordinance of His Excellency Edward Viscount Cornbury, . . .", November 7, 1704. Library of Congress, Washington, D.C. Photostatic copies of the ordinances of the period 1701-1711 may be found in the Library of The Association of the Bar of the City of New York, New York, N.Y.

¹⁹ Consult Orders in Chy. Mar. 1705-Sep. 1708, Chancery Room, Court of Appeals Hall, Albany, N.Y. Orders in Chy. Sep. 1701-May 1702 are also located in the same room.

²⁰ Jour. Gen. Assem., I: 223-224.

by inviting the Governor and Council to "appoint a Committee of that Board, to confer with a Committee of this House, in Order to the drawing a Bill for the establishing and regulating of Fees." Such a committee was named by the Governor, joint sessions were held, and as a consequence a new Table of Fees was drawn up and approved by Lieutenant-Governor Ingoldesby who, on May 24, 1709, proclaimed the new table by ordinance.²¹

But not without strong and stubborn opposition by the leading members of the Bar of the City of New York. These lawyers, each of whom was dependent upon his law practice for his livelihood, sometime between the 24th of May and the 5th of July 1709 organized themselves into a bar association.²² They formed this organization not only to protect their rights, but also to demonstrate that without their services the daily activities of the citizenry of the Province would be curtailed and unprotected legally. Implicit also was a desire to affirm that the Profession of the Law was an old and honored vocation not to be treated with contempt even in a community the cultural attainments of which might be somewhat meagre. These Counselors and Attorneys at Law were ambitious, spirited men, proud of their calling and of their work. They did not oppose the custom that dictated that the practice of law and those who were engaged in it should be regulated to some extent. The establishment by statute or ordinance of the fees and charges which they might make for their services likewise was not objected to, not so long at least as such fees were reasonable in amount and that in their constitution members of the Bar were consulted. They knew that nearly every profession, craft and calling of the day was regulated more or less. Control of the legal profession to a point prevailed in England, and as members of the Bar of New York they expected some supervision. Drastic changes in the rules of practice, in the fees which might be charged for work done, and in the status of the legal profession in the social structure of the Province were, however, matters not expected to be regulated or altered in detail. Consequently, when incisive changes in such institutions were being discussed, or when there was a possibility that rules and orders

²¹ The Ordinance of May 24, 1709 may be found in some of the extant copies of The Laws of New York as printed in 1726 by Bradford. See also Col. Laws N.Y., I: 638-653, especially pp. 644, 652-653.

²² On July 5, 1709 Attorney General John Rayner sailed from New York for England carrying with him a petition to the Board of Trade from the lawyers of New York in which the restrictions upon the practice of law and the profession of the law as passed by the Assembly and the General Assembly were vigorously opposed.

concerning them might be signed into law, as seemed about to be done, or when a proposal which restricted and regulated professional activities to the point of disbarment, and that permanently, was on the point of becoming the law of the land, then in such circumstances the lawyers of the City of New York believed that they should organize for their protection, and set about doing so.

Why the leaders of the Bar had not exposed the purposes of the Assembly during the time that body was considering the legislation which would when enacted restrict them so decidedly, is at this late day impossible to determine. But when John Rayner, the recently appointed Attorney General of the Province, heard that the Council had the Assembly's measure before it, and that they were inclined to give it their approval, he wrote Lieutenant-Governor Richard Ingoldesby. His petition dated the very day the bill was signed into law reads:

The Humble Petition of John Rayner Esq.^f That he being a Barrister at law & haveing the Honour to serve her Matys as Attorney Gen.^{ll} of this Province understands there is a Bill now before y^e Hono^{ble}. Council to ascertain y^e fees in relation to his Profeshen and office—

He therefore prays y.^t he may have a Copy of y.^e s.^d Bill y^e Justice and be heard by your Honours & a Reasonable time appointed him for y.^t Purpose before y^e Bill passes.

J.^{on} Rayner.²³

This request was received and Rayner given an opportunity to be heard, but without success. Disillusioned the Attorney General returned to England where he continued to oppose the law. As a part of his campaign he sent a "petition to the Council of Trade and Plantations from the lawyers of New York, protesting against a recent Act of that province for regulating their fees, if not retained before,

²³ English Manuscripts in the Office of the Secretary of State in the Manuscripts and History Section of the New York State Library, Albany, N.Y., 53:81. (Hereafter Eng. Mss., NYStL.)

John Rayner had been commissioned Attorney General of New York on March 24, 1709. (Calendar of New York Colonial Commissions 1680-1770, Abstracted by the Late Edmund B. O'Callaghan. New York: The New-York Historical Society, 1929, p. 15. (Hereafter O'Callaghan, Col. Comm.) In writing the Lords of Trade on July 5, 1709 Lieutenant-Governor Ingoldesby stated: "One principal Motive for the Attorney General's [John Rayner] going is that the Assembly have not thought convenient to give him the Salary which his predecessors had." (Docs. Rel. Col. Hist. N.Y., V: 84.) Two days after Rayner departed, the Lieutenant-Governor appointed May Bickley to be Acting Attorney General. (Ibid.) Although he did not return to New York, Rayner was the Attorney General until 1719. (Ibid. 18.)

at a retaining fee not exceeding 6s., and in no case to have more than £5 from first to last."²⁴

It is more than likely that the entire act, promulgated on May 24, 1709, not alone the provisions of it called to the attention of the Committee of Trade and Plantations, was disapproved of by the legal profession of New York. But doubtless the section which was particularly objectionable and which probably was more responsible than any other part for causing the First Bar Association of New York to be organized, was that portion that asserted in its concluding paragraph:

. . . that if any Lawyer or Attorney shall take or Exact any more or other fees than is Limited in This Act, or Refuse to Serve any person for the aforesaid Fees, not being Retained by the adverse party, Shall forfeit Fifty pounds Current money of this Colony and for Ever be Debarred from Practising in any Court within This Colony. . . .²⁵

Not only was this section harsh in the extreme, but added to it was the further restrictive clause, "That Upon Any Bill of Costs The Supream Court Shall tax no more than Fifty Shillings for Lawyers Fees."²⁶ Apparently the occupation of an attorney at law was to be reduced to that of a tradesman. The Profession of the Law with its rights, privileges and obligations were to be sharply curtailed.

If enforced the provisions of this law cited above would have a crippling effect upon the orderly growth of the legal profession and the rational development of the practice of law in the Colony. Fortunately the home authorities recognized the potential harm which the law would cause and persuaded Queen Anne to void it. At the same time she ordered the reestablishment of the Table of Fees of 1693.²⁷

While waiting for the home authorities to act in response to their appeals, the New York Bar, now organized, put into effect during

²⁴ Alfred E. Jones, *American Members of the Inns of Court, With a Foreword by the Honorable William H. Taft*. London: 1924. Consult "John Rayner."

²⁵ Col. Laws. N.Y., I: 638-653, especially 644,652-652; Doc. Rel. Col. Hist. N.Y., V: 170,184.

²⁶ Ibid.

²⁷ The Act of May 24, 1709 regulating fees and the practice of law in New York was repealed by Queen Anne in Council on December 15, 1709 with orders to reinstate the 1693 table of fees until a new table could be worked out by the newly appointed Governor Robert Hunter and his Council. At the same time the Act of October 6, 1708 to "Relieve this Colony [New York] from Divers Irregularitys and Extortions" was also vetoed. Ibid. VI:143, 157; Jour. Leg. Coun., I:282; Calendar of State Papers (England), 1708-1709, Nos. 621, 629, 768, 769, 804, 818, 851, 879; Journal of the Commissioners on Trade and Plantations (1704-1715), pp. 79, 80.

the Summer of 1709 what today might be called "a sit-down strike." As reported by Lieutenant-Governor Ingoldesby to the Lords of Trade, "that although he and the Council were opposed to the rates set" in the Act of May 24, 1709, nevertheless, not desiring to antagonize the Assembly because of the contemplated Canadian Expedition, the Act had been approved and signed. ". . . I am sensible," he wrote, that "there was Reason for Moderating the Fees in some Instances, but I think the Assembly have run into Extravagancies far greater on the other hand, of which I am since by daily experience convinced, for the lawyers have Declined their practice in every Court, . . . And as to the Establishing of Fees I humbly recommend it to Your Lord^{ps} consideration and Directions, that Offices may be capable of Maintaining Gentlemen of Understanding and Probity suitable to the nature and quality of each office, without being Dependant on the humour of the Country, and that the practicers of the Law may have an Encouragement to proceed as near as may be in the order and method used in England, and not *Oretenus*, as in some of Her Majesty's Plantations in the West Indies, and they may thereby have a maintenance suitable to the Education and Profession."²⁸

It is quite likely that Acting Attorney General May Bickley assumed the leadership of the New York Bar mentioned above by Lieutenant-Governor Richard Ingoldesby, and that he was primarily responsible for drawing up a table of fees which would be satisfactory to the profession. Certainly he took a leading part in bar and legal activities during the Summer and Autumn of 1709 as well as throughout the ensuing fifteen years. In any event, on the next to the last day of the year a "Table of ffees, Most Humbly offered by the Councill and Attorneys of the Supreme Court as reasonable to be allowed them in the prosecutions of Actions and Suites in the Said Court, According to the Different Natures of the pleadings and entrys in Such prosecutions . . ." was presented to the Governor and Council.²⁹ The names of the practitioners who presented this petition in respect to the fees applicable in the Supreme Court of Judicature of the Province of New York are unknown since only remnants of the petition survived the Albany fire of 1911. That it was signed by those lawyers of the Province admitted to practice before the Supreme Court

²⁸ Docs. Rel. Col. Hist. N.Y., V: 82.

²⁹ Eng. Mss., NYStL, 53:90. O'Callaghan Papers, "Attornies and Counsellors," (Ms.), New-York Historical Society. Prior to the Albany fire of 1911, Edmund B. O'Callaghan, the well-known historiographer, had calendared this Memorial.

of Judicature of the Colony is reasonable to assume from its contents. What should not escape attention, however, is that this memorial shows conclusively that there was an organization of lawyers of New York functioning within the first decade of the Eighteenth Century, and that its members were opposing a law the provisions of which regulated matters most vital to them, namely,—charges to be allowed for legal services rendered, and the right of a member of the Bar to refuse to serve anyone seeking his talents and learning without being heavily fined and disbarred forever should he decline to serve. The members of the newly established Bar Association were unreservedly opposed to these restrictions knowing full well that a profession that is regulated to such an extent as to deny to its members incomes sufficient in amount to maintain themselves relatively free of financial worries soon degenerates badly. It is probable that the leaders of the New York Bar of 1709 believed that this possibility might soon become a reality and that consequently they would do what they could to prevent it from arising. Thus they presented a table of fees which to them seemed reasonable.

The records fail to disclose what action the Governor and Council took in response to this latest petition from the members of the Bar. But in view of the known fact that at the time it was presented, Lieutenant-Governor Ingoldesby and his advisers were not working together harmoniously, it is probable that no action at all was taken upon it. The organized Bar, however, did not cease its activities especially after the rejection by the Queen of the Fee Bill of May 1709 became known in New York, and after news of the appointment of Colonel Robert Hunter to be Governor of the Province was received. He arrived in June 1710 amply empowered and able to settle the matter of fees, and on the following September ninth

. . . told this Board [burned] thinke, it highly Requisite that a Regulation [burned] ffees be made which her Majestie has Co [burned, (Commanded?)] be done by him with Y^e Councill, That y^e Officers and Lawyers have Given in Tables of [burned (Fees?)] Which his Excellency Referrs to y^e Gentlemen of this Board or any ffive of them who are to Re [burned (examine?)] the said ffees and Draw upp Tables there [burned (of and make?)] their Report thereon to this Board.³⁰

³⁰ Minutes [originals] of the New York Council, (Ms.), X:539. Mss. and Hist. Sect., NYStL, Albany, N.Y. (hereafter Min. N.Y. Coun.) A calendar of these minutes was published by the University of the State of New York as, New York State Library,

The chairman of the committee of the lawyers making the report referred to above was May Bickley; his fellow members were David Jamison and Thomas George. Only two sheets of their proposed table of fees have been preserved, one of which is badly charred. The other sheet is in fair condition and at the bottom has the notation, "Agreed to by the Committee," followed by the signatures of the three committeemen. The fees and charges listed on this second sheet appear to have been worked over considerably, probably as a result of conferences with the new Governor and Council, and with members of the Assembly, and are considerably more comprehensive and generous than were similar items of the May 1709 Table of Fees.

Governor Hunter, as stated above, was prepared to carry out that part of his Instructions requiring him to settle upon a table of fees for all of the offices of the government of the Province, and to proclaim them by an ordinance. Accordingly when the House of Representatives met, he notified them that he had referred the matter of fees "to a Committee of the Council, and directed them to regulate the same, that they may be established by an Ordinance of his Excellency and Council, which he hopes may be done in such a manner, as may be satisfactory to this House, and entirely answer the End." Some weeks later he wrote the Lords of Trade that "A Table of fees has been prepared in Council and an ordinance ordered to be drawn for establishing it."

Passed on the 19 of October 1710, this Ordinance was printed by William Bradford as *An Ordinance for Regulating and Establishing Fees . . . 1710*. In its eight pages, judicial as well as all other offices in the Province, and practitioners of the law, were covered. "The Assembly," Hunter wrote home, "were going to prepare a Bill for that purpose, but this has put a stop to it at present, but they seem very intent to have their Concurrence in it and pass it into law." Such a concurrence the Assembly attempted to achieve one month later by submitting to the Governor "another Bill of Fees much like that Her Majesty disapproved last year reduceing the Fees so low that no Officer could live, Tho' the ordinance for that purpose had reduced them enough in all consience. This the Council have ordered to lye upon the Table."³¹

Bulletin 58, April 1901, History 6, Calendar of Council Minutes 1668-1783. (Hereafter Cal. Coun. Min.)

³¹ Jour. Gen. Assem., I:274, 283, 286; Jour. Legis. Coun., I:298, 301, 303, 304, 308; Docs. Rel. Col. Hist. N.Y., V:143, 170, 184, 283, 296, 298.

While the Table of Fees ordered by Governor Hunter was being processed, the Bar Association of New York was presenting its ideas in respect to what matters should be in it, as mentioned above, to the new administration. Apparently consultations concerning a new table were held without members of the Bar being present, and items of importance to the profession were either eliminated altogether or were accorded very low rates. Learning of this situation six of the leading lawyers of the Colony became greatly disturbed and in a petition to the Governor requested a hearing. The document they presented is of such importance that it is being reproduced in full. It is dated October 12, 1710, and reads:

TO HIS EXCELLENCY ROBERT HUNTER,
ESQ^r Captain Generall and Commander in Cheife of the
Province of New York and Territories theron Depend-
ing in America & Vice Admirall of the Same &c

The Humble Memorial of the Practicers
of the Law in the said Province.

Sheweth

THAT (as they are informed) a Table of ffees
is shortly intended to be laid before your Excell^{ty}:
for your Excell^{ty}s: approbation relateing to the
said profession by a Committee of Councill for that
purpose appointed.

AND (as they are also informed) The said
table is prejudiciall to these Memorialists and
the said profession of the Law, as also to the
publick in Generall.

They therefore humbly pray your Excellency that
the said Table of ffees may not be approved of
by yo^r: Excell^{ty}: Untill the said Memorialists have
a copy thereof in Order to inspect the same and
time allowed to give their reasons against the said Establishment.

Tho. George
H. Wileman

M: Bickley
Ja: Regnier
S: Broughton
David Jamison⁸²

That this *Memorial* was signed by only six of the dozen or more lawyers in practice in the City of New York in 1710 is an arresting fact, although not necessarily an all-important one. In their long history, Bar Associations have never attracted to membership more

⁸² N.Y. Col. Mss., 53:90; 54:80. I.N. Phelps Stokes, *Iconography of Manhattan Island (1498-1909)* . . . 6 vols. New York: R. H. Dodd, 1915-1928, 1710 Oct. 19.

The Humble
 of the Law in this
 as they are informed
 the said profession by a
 disappointed.
 And as they are also informed
 these Memorials and the said profession of the said
 Republic in general.
 They therefore humbly pray your Excellency that the said
 Table of Fees may not be approved of by his Excellency until the said
 Memorials have been reviewed in order to inspect the same and
 time allowed to give their reasons against the said Establishment.
 J. W. Jones
 W. L. Mearns
 J. R. ...
 D. ...
 David, ...

(Courtesy of the Library of the State of New York, Albany, New York)

Memorial of the members of New York's First Bar Association made October 12, 1710 to Governor Robert Hunter regarding a Table of Fees for the Province of New York.

than a small number of those licensed to practice law, and the Bar Association of New York of 1709-1710 is no exception to the tradition. It might be expected, however, that the signatures of three or four other lawyers then prominent in the legal and judicial life of the Colony would be found on this petition. There was, for instance, William Nicolls, wealthy landowner-politician who through heritage and marriage was allied to some of the more consequential families of the Province, and whose law practice was quite substantial. James Emott, wealthy lawyer and real estate operator, likewise stood in the front rank. It is possible, however, that Emott had suffered a loss in prestige by his championship of illegal traders and pirates in the 1690's, not the least notorious of whom was William Kidd. And then there was Barrister at Law Roger Mompesson of impressive background in England where he had served two terms in Parliament and more than six years as Recorder of Southampton. Currently Mompesson was the Chief Justice not only of New York, but also of Pennsylvania and New Jersey. His practice in Chancery and before the Governor and Council sitting as a Court of Errors and Appeals was noteworthy. Impecunious as he always seemed to be, a table of fees responsive to services rendered would surely have redounded to his benefit. Possibly he was out of the Province at the time the *Memorial* was drawn and signed; or possibly his membership on the Governor's Council and his judicial positions precluded his taking part in the appeal. Assuredly his signature would have added weight to it. This could not be said of Paroculus Parmyter, Colonial New York's errant Attorney at Law, with a trial for forgery in Bristol, England, besmirching his reputation, and already in New York admitted to practice four times and disbarred three times. It is quite likely that this impulsive yet shrewd solicitor was not even asked to sign admitted though, as he was, to practice in all of the courts of the Province. If the number of papers of actions filed with the Clerks of Courts is indicative of the reputation of an attorney in the community in which he lives, then this brash lawyer stood high for, with the exception of James Emott, he had more cases pending than any other practitioner between 1698 and 1706 in the courts of the Colony.

Whatever the size of the Bar of New York may have been in the first decade of the Eighteenth Century, and howsoever few lawyers signed the *Memorial* of October 12, 1710, the results obtained from the appeal seem to have been reasonably satisfactory, though not com-

pletely so.³³ The Table of Fees that evolved was signed by the Governor, and eight days following the presentation of the *Memorial* by the Bar Association an Ordinance containing the new Table was promulgated.³⁴ In it the Retainer Fee of an attorney, six shillings, was the same as it had been in the 1693 Table, but the item in the earlier table, "For Pleading each Cause," was greatly fragmented to cover a number of situations not so much as even mentioned before. All told the 1710 Table listed thirty-eight items applicable to lawyers practicing in the Province. Not that alone, but the 1710 Ordinance rewrote the statutory Fee Table of May 24, 1709 entirely. Gone was the offending provision limiting a practitioner's Bill of Costs to fifty shillings. Likewise deleted was that section which stated that if a lawyer should charge more than the fees prescribed, or refuse to serve for the established fees, "not being Retained by the adverse party," he should "for Ever be Debarred from Practising in any Court within This Colony." The provisions of the 1710 Table were more realistic than were those of the table of the preceding year. That relating to the taxing of costs and Bills of Costs reading:

The Fees for the Lawyers, to be taxed pursuant to the Table of Fees above regulated, provided that upon Taxing any Bill for Costs in a Cause tried, there shall not be allowed for the whole above Four Pounds, unless in case of Special Verdict, Demurrer to Evidence, or special Pleadings, and then to be allowed according to the particulars

³³ Writing to the Commissioners of Customs in 1711 Governor Hunter stated: "I am sensible the Fees of all the officers are reduced to low but the Council not being of that opinion I was forc't to pass it [1710 Fee Table] in this manner or to leave the officers without a legal authority to demand any and thereby not obey the Queens commands." (Docs. Rel. Col. Hist. N.Y. V:231.)

In 1711 the Secretary of the Province George Clarke also mentioned the October 19, 1710 Ordinance. He said: "The Fees of all the Officers as well as the Practicers of the Law, are, by this Ordinance, Reduced to Law [too Low], but the Council could not be brought to make them higher, so his Excellency was obliged to establish them as they are, or not at all." (Ibid., V:238.)

The 1710 Table of Fees remained in effect with only a few changes until 1768. Changes were always established by ordinance. Not until Province became State did a comprehensive table of fees adopted (1786) by the representatives of the people go into effect.

³⁴ Docs. Rel. Col. Hist. N.Y., V:170, 177, 184, 946.

By 1733 Governor Cosby could report that the establishment of fees by Governor and Council was "not so great an eye sore" to the Assembly as it had been, but that the people thought that their representatives should "have the power in their hands" over them. (Ibid., V:947.)

For disagreement in New Jersey over lawyers, the practice of law, and fees see Ibid., V:461; Ricord, Frederick W., and Nelson, William, Editors, Documents Relating to the Colonial History of the State of New Jersey. (Various volumes.) Trenton and Paterson, N.J., 1880—. (Cited as N.J. Archives.) V: 378-395, 404-405; XIV: 370, 388, 473.

herein before mentioned, provided that the whole do not Exceed Five Pounds Ten Shillings. . . .³⁵

By the promulgation of this Ordinance the basic endeavor of the First Bar Association of New York had been crowned with success. Its members had caused a Table of Fees, reasonable in the amounts prescribed, to be adopted, and had prevailed in having the more obnoxious restrictions and penalties upon the practice of law removed. Thereafter lawyers could pursue their callings secure in the knowledge that the rules of procedure and the relationships between counselor and client would not be altered without notice and a chance to be heard. They were also reassured that if changes subsequently were made they would emanate from the Chamber of the Governor and Council, not from the Hall of the House of Representatives.

The answer as to whether the disposition made in 1710 of some of the proscriptions of the practice of law and of the issue of fees for legal services was wise and desirable must be sought in the Colonial History of New York. There can never be any question, on the other hand, of the glorious nature of the establishment in 1709 of New York's First Bar Association. This earliest bar organization has been the progenitor of numerous other Bar Associations each of which over the years has contributed to the growth and development of American Law.³⁶

Six "Practicers of the Law" signed the *Memorial* of 1710. In any account of the legal profession in an American Legal History, those six lawyers and the Association they formed, should be remembered. Their action was a significant extension beyond the British Isles of the idea that a group of Attorneys at Law could join together for mutual advantage and for the welfare of the public. When they collaborated, the English had been in control of New York less than fifty years, and the City of New York was a sparsely settled community of a few thousands of people living one step removed from the frontier. Since that day more than two centuries have elapsed. In fact this very year, 1959-1960, constitutes the Two Hundred and Fiftieth Anniversary of the formation of that First Bar Association of New York. In any period of man's recorded history, such an event would be an important circumstance, while in the growth of American Law it is of such significance that it may suggest that a celebration of

³⁵ Consult citations under note 34 supra.

³⁶ See Hamlin and Baker, *Op. Cit.*, p. 276.

some sort should be observed in commemoration of it. If Bar Associations fulfill a function in the jurisprudential life of a people as well as serve the legal profession in many practical ways, as it is believed they do, then those six lawyers who long years ago organized themselves for the protection of their rights merit unstinted acclamation from every member of every Bar Association wherever the Common Law prevails.

(Biographical sketches of the six lawyers who established New York's First Bar Association will be published in a forthcoming issue of the FORUM.)