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Rules under "The Election Petitions Act, 1880."

Colonial Secretary's Office,
Wellington, 30th December, 1881.

THE following rules, made by Judges of the Supreme Court under "The Election Petitions Act, 1880," are published for general information at the request of his Honor the Chief Justice.

THOMAS DICK.

RULES UNDER THE FOURTEENTH SECTION OF "THE ELECTIONS PETITIONS ACT, 1880."

In pursuance of the provisions of "The Election Petitions Act, 1880," it is ordered by us, the Chief Justice and two other of the Judges of the Supreme Court, that the following shall be general rules under the said Act for the purposes mentioned in the fourteenth section thereof:—

Interpretation.

1 In these rules, if not inconsistent with the context,—

"Court" means the Supreme Court of New Zealand:

"Judge" means a Judge of the said Court:

"Judges" means the Judges appointed under the said Act to try an election petition:

"Petitioner" includes petitioners:

"Respondent" includes respondents:

"The Act" means "The Election Petitions Act, 1880;":

"Returning Officer" means the Returning Officer of the electoral district to which an election petition has relation:

And generally, where in these rules expressions or terms are used corresponding to like expressions or terms used in the Act, such first-mentioned expressions or terms shall

be deemed to have the meanings attached thereto respectively by the Act:

"Registrar" means a Registrar of the Supreme Court, and includes a Deputy-Registrar:

And where in these rules the expression "the Registrar" is used alone, it shall be understood to mean the Registrar or Deputy-Registrar of the Supreme Court whose office is situate in the town where, according to the rules hereinafter prescribed, the petitioner or respondent, as the case may be, shall have given or would have to give an address for the service of notices and proceedings.

Petition, and Proceedings thereon.

2 The presentation of an election petition shall be made by leaving it with the Returning Officer of the district in which the election has been held, and such Returning Officer shall, if required, give a receipt, which may be in the following form:—

RECEIVED on the _____ day of _____, at _____, a petition touching the election of A.B., the member for _____, purporting to be signed by [Insert the names of the petitioners].

C.D.,
Returning Officer.

3 Within seven days after the presentation of the petition, the petitioner shall, at his own expense, cause the same to be published in some newspaper circulating in the district, unless such publication be excused by the Court or a Judge.

4 An election petition shall contain the following statements:—

1. It shall state the right of the petitioner to petition under section 3 of the Act.

2. It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

5 The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined

to a distinct portion of the subject, and every paragraph shall be numbered consecutively; and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court or a Judge.

6 The petition shall conclude with a prayer, as for instance that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, as the case may be, and shall be signed by all the petitioners.

The following form, or one to the like effect, shall be sufficient:—

In the Supreme Court of New Zealand. The Election Petitions Act, 1880. Election for [State, the place], holden on the day of, 18.

To his Honor the Chief Justice of the said Court.

The petition of A, of [or of A, of, and B, of, as the case may be], whose names are subscribed.

1. Your petitioner, A, is a person who voted [or had a right to vote, as the case may be] at the above election [or claims to have had a right to be returned at the above election, or was a candidate at the above election], and your petitioner B [Here state in like manner the right of each petitioner].

2. And your petitioners state that the election was holden on the day of, 18, when A.B., C.D., and E.F. were candidates, and the Returning Officer has returned A.B. as being duly elected [or declared duly elected].

3. And your petitioners say that [Here state the facts and grounds on which the petitioners rely].

Wherefore your petitioners pray that it may be determined that the said A.B. was not duly elected or returned, and that the election was void [or that the said E.F. was duly elected and ought to have been returned, or as the case may be].

(Signed) A.
B.

7 Evidence need not be stated in the petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial, in the same way as in ordinary proceedings in the Supreme Court, and upon such terms as to costs and otherwise as may be ordered.

8 When a petitioner claims the seat for an unsuccessful candidate; alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the Registrar, and also at the address for service, if any, given by the petitioner and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote.

9 When the respondent in a petition under the Act complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue pursuant to the thirty-first section of the Act, such respondent shall, six days before the day appointed for the trial, deliver to the Registrar aforesaid, and also at the address for service, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely.

10 The Registrar shall allow inspection and office copies of the lists provided for in the two last preceding rules to all parties concerned, and no evidence shall be given against the validity of any vote nor upon any head of objection not specified in the list, except by leave of the Court or Judge, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

11 The petitioner shall indorse or cause to be indorsed upon the petition the name of some practising solicitor of the Court whom he authorizes to act as his solicitor, or stating that he acts for himself, as the case may be, and in either case

giving an address at which notices addressed to him may be left.

Such address shall name some place in that town in the provincial district within which the electoral district to which the petition has relation is wholly or partly situate, and which town was formerly the chief town of the province corresponding to such provincial district:

If the electoral district shall be within that part of the Provincial District of Otago formerly included in the Province of Southland, the place shall be some place in the Town of Invercargill; and, if the electoral district shall be in that part of the Provincial District of Auckland which is included in the Judicial District of Wellington, the place shall be some place in the Town of Napier.

12 If no such indorsement be made or address given, then all notices and proceedings may be given and served by sticking up the same at the office of the Registrar.

13 Where there are more petitioners than one, each petitioner may have a different solicitor, or may jointly appoint one solicitor to act for them.

14 Any person returned or declared elected as a member may, at any time after he is returned or declared elected, send to, or leave at, the office of the Registrar, at the town where, according to Rule 11, the petitioner's address for service would have to be, a writing signed by him or on his behalf appointing a practising solicitor of the Court to act as his solicitor in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving such an address as hereinbefore provided at which notices may be left.

In default of such writing being left before the service of a petition, or within a week thereafter, notices and proceedings may be given and served respectively by sticking up the same at the office of the Registrar aforesaid.

15 The Registrar shall keep a book at his office in which he shall enter all addresses and the names of solicitors given under any of the preceding rules, which book shall be open to inspection by any person during office hours.

16 A copy of the petition shall be served upon the respondent in the manner in which a writ of summons is served when issued out of the Supreme Court.

If there be more than one respondent a copy shall be served upon each such respondent.

17 Service of such copy petition shall not be effected until the Registrar at Wellington has given notice to the Returning Officer of the district in relation to which the petition has been presented; by telegram or otherwise, that he has received the original petition, and the said Returning Officer shall forthwith notify the petitioner at his address for service that he has received such notice.

18 If the Returning Officer be absent from his usual place of abode, or ill, or unable to act, the Registrar at Wellington shall give the prescribed notice to the Registrar, and such last-mentioned Registrar shall inform the petitioner accordingly.

19 The time for service of a petition shall be not more than seven days from the date of the delivery at the address for service of the petitioner of the notice from the Returning Officer or Registrar.

20 Where a Judge, on an application made to him not later than fourteen days after the petition is presented, on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, the Judge may order that what has been done shall be considered

sufficient service, subject to such conditions as he may think reasonable.

21 In case of evasion of service, the sticking up a notice in the office of the Registrar of the petition having been presented, stating the name of the petitioner and the prayer, shall be deemed equivalent to personal service, if so ordered by a Judge.

22 If security is given by deposit of money, the same shall be made by payment into the nearest branch of the Bank of New Zealand, to an account to be opened there by the description of "The Election Petitions Act, 1880, Security Fund," and a bank receipt or certificate for such payment shall be forthwith left with the Returning Officer, to be transmitted by him to the Registrar of the Court at Wellington.

And the said fund shall be vested in the Chief Justice of the Court for the time being, and may be drawn upon by him from time to time for the purposes of the Act.

23 The Registrar at Wellington shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

24 All claims at law or in equity to money so deposited or to be deposited pursuant to these rules shall be disposed of by the Court or a Judge.

Money so deposited shall, if and where the same is no longer needed to secure payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by order of the Court or a Judge.

Such order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court or a Judge may require.

The order may direct payment either to the party by or on whose behalf the sum is deposited, or to any person entitled to receive the same.

25 Upon such order being made the amount may be drawn for by the Chief Justice for the time being.

The draft of the said Chief Justice shall in all cases be a sufficient warrant to the Bank of New Zealand for all payments made thereunder.

26 If security is given by bond, it shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be in the following form or to the effect thereof, subject to the approval of the Returning Officer:—

Know all men by these presents that we [or I (Names of sureties or surety in full, adding residences and occupations)], (hereinafter called "the sureties"), are held and firmly bound unto Her Majesty Queen Victoria in the sum of two hundred pounds of good and lawful money of Great Britain, to be paid unto our said Lady the Queen, her heirs and successors. For which payment well and truly to be made we bind ourselves and every of us, jointly and severally, for and in the whole, and the heirs, executors, and administrators of us, and every of us [or I bind myself, my heirs, executors, and administrators] firmly by these presents, sealed with our seals [or my seal]. Dated this _____ day of _____, in the year of our Lord one thousand eight hundred and _____

WHEREAS _____ hath [or have] presented a petition to his Honor the Chief Justice of the Supreme Court of New Zealand, under the provisions of "The Election Petitions Act, 1880," in respect of an election for the Electoral District of _____, held on the _____ day of _____: And whereas it is required that a bond should be entered into on behalf of the said petitioner, in accordance with the provisions of the said Act, for the purposes hereinafter mentioned: And whereas the Returning Officer for the said electoral district hath approved of the said sureties [or surety] for that purpose:

Now the condition of this obligation is such that if the said petitioners (or any of them) shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [or them, as the case may be] relating to the said election, which shall become payable by him [or them, or any of them], under or by virtue of the said Act, or any rules made

thereunder, to any person or persons, then this obligation shall be void, otherwise shall remain in full force.

Signed, sealed, and delivered by the above bounden [Insert names as above].

[Each signature must be attested by one witness, who must sign his name, and add his residence and occupation.] [Signature of each person opposite a seal, to be affixed at time of signature.]

27 There may be one bond executed by all the sureties, or separate bonds by one or more, as may be convenient.

28 The bond or bonds shall, after being executed, be forthwith transmitted to the Registrar at Wellington, or left at his office, by or on behalf of the petitioner, in like manner as before prescribed for the leaving of a petition.

Trials of Petitions.

29 When the Chief Justice has named the Judges of the Supreme Court before whom trials or any trial are or is to take place under the Act, he shall cause a notification thereof to be published in the *New Zealand Gazette*.

30 The time and place of the trial of each election petition shall be fixed by the Judges appointed to try the petition; and notice thereof shall be given in writing by the Registrar, by sticking notice up in his office, sending one copy by the post to the address, if any, given by the petitioner, and another to the address, if any, given by the respondent, at least fourteen days before the day appointed for the trial.

31 The sticking-up of the notice of trial at the office of the Registrar shall be deemed and taken to be notice of trial within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

32 The notice of trial may be in the following form:—

"Election Petitions Act, 1880."
Election Petition of _____
Electoral District of _____
TAKE notice that the above petition [or petitions] will be tried at _____, on the _____ day of _____, and on such other subsequent days as may be needful.
Dated the _____ day of _____, 18 ____.
By order, _____
A.B.,
Registrar of the Supreme Court at _____

33 The Judges appointed to try the petition may from time to time, by order made upon the application of a party to the petition, or by notice to be given in such form as such Judges may direct, postpone the beginning of the trial to such day as they may name, and such notice, when received, shall be forthwith made public in the manner in which the original notice of trial was given.

34 In the event of the said Judges not having arrived at the time appointed for the trial or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

35 No formal adjournment of the Court for the trial of an election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

36 The title of the Court held for the trial of an election petition may be as follows:—

Court for the Trial of an Election Petition for the Electoral District of _____
In the matter of "The Election Petitions Act, 1880."
BETWEEN { _____, Petitioner,
and _____, Respondent.

And it shall be sufficient so to entitle all proceedings under the Act.

37 Upon application made for that purpose by or on behalf of the petitioner or respondent, the Court or a Judge may, upon such terms or conditions as the said Court or Judge may prescribe, order that the original petition transmitted to the Registrar at Wellington, and any other document, instrument, or proceeding relating thereto, may be transmitted by the said Registrar to the Registrar of any other judicial district for the purpose of being used at the trial of an election petition or otherwise.

Witnesses.

38 The order of the Judges to compel the attendance of a person as a witness may be in the following form:—

Court for the Trial of an Election Petition for the Electoral District of

In the matter of "The Election Petitions Act, 1880."

BETWEEN { , Petitioner, and , Respondent.

To A.B. [Describe the person].

You are hereby required to attend before the above Court, at [place], on the day of , at the hour of [or forthwith, as the case may be], to be examined as a witness in the matter of the said petition, and to attend the said Court until your examination shall have been completed.

As witness our hands this day of , 18 . A.B., C.D.,

Judges of the Supreme Court named for the trial of the said petition.

39 The reasonable costs of any witness shall be ascertained by the Registrar, and the certificate allowing them shall be under his hand.

Withdrawal and Abatement of Petitions.

40 Notice of an application for leave to withdraw a petition shall be in writing, and signed by the petitioners or their solicitors. It shall state the ground on which the application is intended to be supported, and shall be left at the office of the Registrar. The following form shall be sufficient:—

"The Election Petitions Act, 1880." Electoral District of

Petition of [State the petitioners], presented the day of , 188 . The petitioner proposes to apply to withdraw his petition upon the following ground [Here state the ground]; and prays that a day may be appointed for hearing his application.

Dated this day of , 188 . (Signed.)

41 A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and shall be forthwith published by the petitioner in at least one newspaper circulating in the district.

42 The following may be the form of such notice:—

"The Election Petitions Act, 1880."

In the election petition for , in which is petitioner, and is respondent.

NOTICE is hereby given that the above petitioner has, on the day of , 18 , lodged at the office of the Registrar of the Supreme Court at , notice of an application to withdraw the petition, of which notice the following is a copy [Set it out]: And take notice that, by the general rules made under the said Act, any person who might have been a petitioner in respect of the said election may, within seven days after publication by the petitioner of this notice, give notice in writing of his intention, on the hearing, to apply for leave to be substituted as a petitioner.

Dated this day of , 18 . (Signed.)

43 Any person who might have been a petitioner in respect of the election to which the petition relates may, within seven days after such notice is published by the petitioners, give notice in writing, signed by him or on his behalf, to the Registrar of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall

not defeat the application if, in fact, made at the hearing.

44 The time and place for hearing the application shall be fixed by the Judges, or by the Court or a Judge, not less than a week after the notice of the intention to apply has been given, as hereinbefore provided; and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the said Registrar of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the Judges, or the Court or a Judge, directs.

45 Notice of abatement of a petition by death of a petitioner or surviving petitioner, under section twenty-four of the Act, shall be given by the party or person interested, in the same manner as notice of an application to withdraw a petition; and the time within which application may be made to the Judges, or to the Court or a Judge, by motion or summons at chambers, to be substituted as a petitioner shall be one calendar month, or such further time as upon consideration of any special circumstances the Judges, or the Court or a Judge, may allow.

46 If the respondent dies, if he is summoned to the Legislative Council, or if the House of Representatives have resolved that his seat is vacant, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates may give notice of the fact in the district by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the Returning Officer, and a like copy with the Registrar.

47 The manner and time of the respondent's giving notice to the Judges that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Registrar, signed by the respondents, ten days before the day appointed for trial, exclusive of the day of leaving such notice.

48 The time for applying to be admitted as a respondent in either of the events mentioned in the twenty-fifth section of the said Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Judges, or the Court or a Judge, may allow.

Costs and Fees.

49 Costs shall be taxed by the Registrar upon the order of the Judges who tried the petition, and costs when taxed may be recovered by execution issued upon such order, after making such order a rule of the Supreme Court, and issuing execution upon such rule against the person by whom the costs are ordered to be paid; or, in case there be money in the bank available for the purpose, then to the extent of such money, by order of the Chief Justice for the time being upon an office copy of the rule of Court.

50 The office fees payable for inspection office copies and other proceedings under the Act and these rules shall be the same as those payable, if any, for like proceedings according to the present practice of the Supreme Court.

Miscellaneous.

51 In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a Court holden on , at , for the trial of an election petition for the Electoral District of before , two of the Judges of the Supreme Court, named for the trial of such petition pursuant to "The Election Petitions Act, 1880."

WHEREAS A.B. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof: The said Court does therefore sentence the said A.B., for his said contempt, to be imprisoned in the public prison at for

calendar months, and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said prison until the said fine be paid: And the Court further orders that all constables and officers of the peace where the said A.B. may be found shall take the said A.B. into custody, and convey him to the said prison, and there deliver him into the custody of the Keeper thereof to undergo his said sentence: And the Court further orders the said Keeper to receive the said A.B. into his custody, and that he shall be detained in the said prison in pursuance of the said sentence.

Witness our hands this day of , 18
 A.D., } Two of the Judges of the said Court
 C.E., } named as above mentioned.

52 Such warrant may be made out and directed to all constables and officers of the peace of the place where the person adjudged guilty of contempt may be found; and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

53 Any person whose name is upon the roll of solicitors for the time being, and being in actual practice, shall be entitled to appear and act upon behalf of any petitioner or respondent, or for any other person in any proceeding whatsoever under the Act or these rules.

54 A solicitor employed for the petitioner or respondent shall forthwith leave written notice at the office of the Registrar of his appointment to act as such solicitor; and service of notices and proceedings upon such solicitor shall be sufficient for all purposes.

55 No proceedings under the Act shall be defeated by any formal objection.

56 All days set apart or declared to be holidays of the Supreme Court under the rules of the said Court, in its ordinary jurisdiction, shall be deemed to be holidays for the purposes of these rules.

And in computing time for the doing of any act or taking any proceeding under these rules, time shall be reckoned in the manner prescribed by the said rules or practice of the Supreme Court.

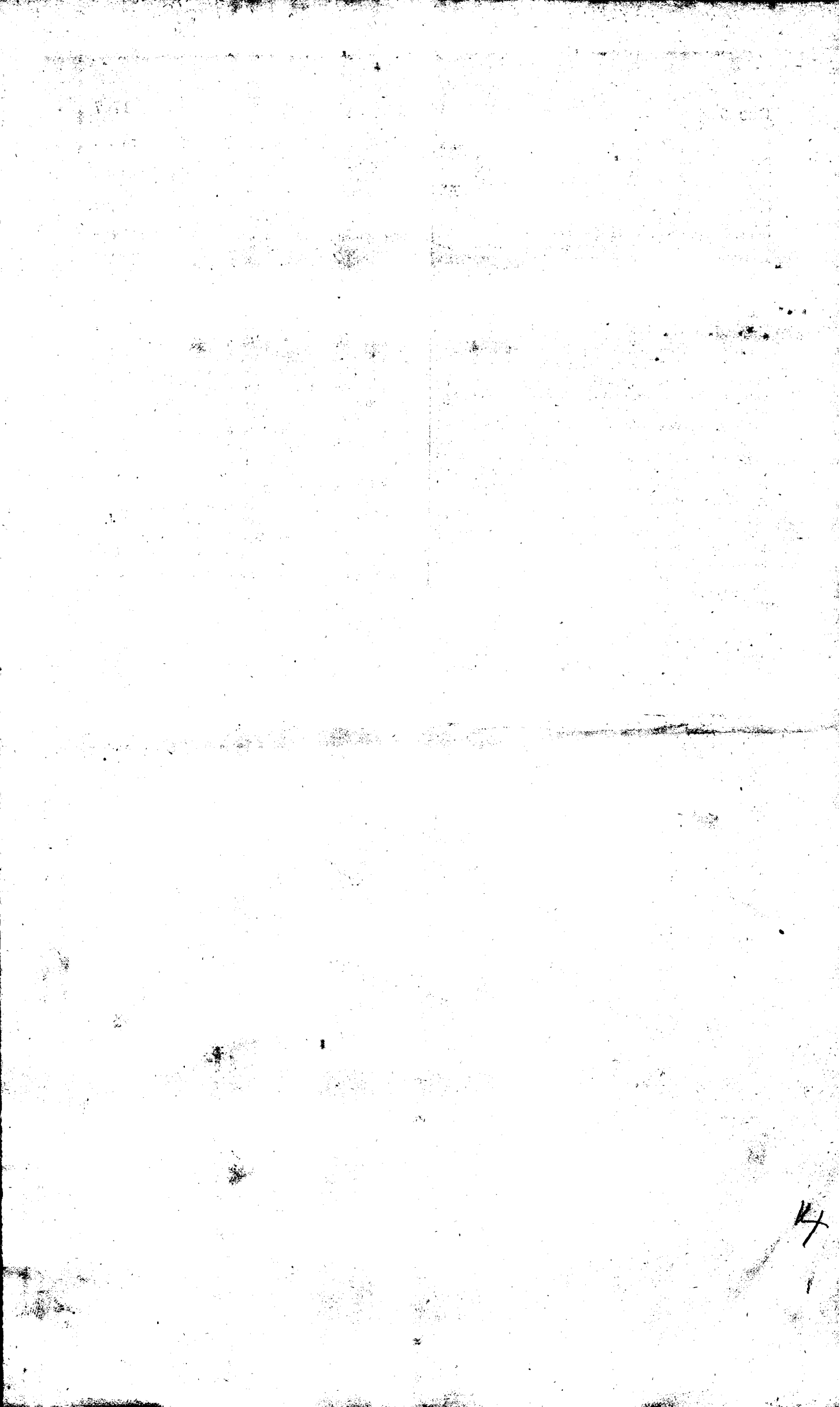
57 All rules heretofore made for the purposes of the Act shall, upon the publication of these present rules in the *New Zealand Gazette*, be and be deemed to be revoked.

Provided that all petitions, bonds, and instruments of every kind then presented, executed, filed, or lodged under any rules theretofore in force shall be deemed to have been presented, executed, filed, or lodged under these rules; and all proceedings whatsoever then pending may be continued and carried on under these rules as if the same had originally been commenced hereunder.

Dated December, 1881.

J. PRENDERGAST, C.J.
 ALEXANDER J. JOHNSTON, J.
 JOSHUA S. WILLIAMS, J.

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