

1880, No. 36.

AN ACT to make Provision for the Trial of Election Petitions.

[28th August, 1880.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Election Petitions Act, 1880."
2. In this Act, if not inconsistent with the context,—

ELECTION
PETITIONS.

Short Title.

Interpretation.

“Electoral district” or “district” means a division of the colony in respect of which one or more members are returned to serve in the House of Representatives :

“Roll” means a roll of electors formed for an electoral district :

“Election” means election of a member of the House of Representatives :

“Elector” means any person who shall have a right to vote at any such election :

“Candidate” means any person who shall have declared his intention of offering himself as a candidate for a seat in the House of Representatives :

“Returning Officer” means a person appointed to conduct elections :

“Speaker” means Speaker of the House of Representatives :

“Court” means the Supreme Court :

“Judges” means Judges of the Supreme Court appointed to try an election petition under this Act :

“Rules of Court” means rules to be made under this Act by Judges of the Supreme Court :

“Prescribed” means prescribed by such rules :

“Corrupt practices” means personation, bribery, treating, and undue influence, or any of such offences as defined by Act of the General Assembly, or recognized by the common law of Parliament.

ELECTION PETITIONS.

3. A petition complaining of an undue return or an undue election of a member of the House of Representatives may be addressed to the Chief Justice of the Supreme Court of New Zealand by one or more of the following persons :—

To whom and by whom election petition may be presented.

(1.) Some person who voted, or had a right to vote, at the election to which the petition relates ; or,

(2.) Some person claiming to have had a right to be returned or elected at such election ; or,

(3.) Some person alleging himself to have been a candidate at such election : and such petition is hereinafter referred to as an “election petition.”

4. Every election petition shall allege the specific grounds on which the complaint is founded, and no other grounds than those stated shall be investigated.

Petition to allege specific grounds of complaint.

5. The following enactments are made with respect to the presentation of an election petition :—

Regulations as to presentation of election petition.

(1.) The petition shall be presented within twenty-eight days after the day on which the Returning Officer has declared the candidate to be duly elected, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such publication, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented within twenty-eight days after the date of such payment.

(2.) Presentation of a petition shall be made by delivering it to the Returning Officer.

(3.) At the time of the presentation of the petition, or within three days afterwards, security to the satisfaction of the Returning Officer for payment of all costs, charges, and expenses that may become payable as herein provided—

(a.) To any person summoned as a witness on his behalf ; or,

(b.) To the member whose election or return is complained of, who is hereinafter referred to as the "respondent," shall be given on behalf of the petitioner.

(4.) The security shall be to the amount of two hundred pounds. It shall be given by a bond to Her Majesty the Queen, to be entered into by any number of sureties not exceeding three, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.

Petition to be forwarded to Registrar of Supreme Court, Wellington.

Mode of trial.

6. On presentation of the petition the Returning Officer shall forward the same, together with the bond, to the Registrar of the Supreme Court at Wellington.

7. The following enactments are made with respect to the trial of election petitions under this Act :—

(1.) The trial shall take place before two of the Judges of the Supreme Court, to be named by the Chief Justice for that purpose.

(2.) If any such Judge, before the conclusion of the trial, should be unable to act, the Chief Justice shall name another Judge who shall act in his place.

(3.) The trial shall take place within the district in respect of which the petition has arisen : Provided that, if it shall appear to the Judges that special circumstances exist which render it desirable that the petition should be tried elsewhere than in such district, it shall be lawful for the Judges to appoint such other place for the trial as shall appear most convenient.

(4.) Notice of the time and place at which an election petition will be heard shall be given not less than fourteen days before the day of trial.

(5.) The Judges presiding at the trial may adjourn the same from time to time and from place to place as to them may seem expedient.

(6.) At the conclusion of the trial the Judges who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Speaker ; and, upon such certificate being given, such determination shall be final to all intents and purposes.

(7.) Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judges shall, in addition to such certificate, and at the same time, report in writing to the Speaker as follows :—

(a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice :

(b.) The names of all persons who have been proved at the trial to have been guilty of any corrupt practice :

(c.) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates.

(8.) The Judges may at the same time make a special report to the Speaker as to any matters arising in the course of the trial, an account of which in their judgment ought to be submitted to the House.

(9.) Every certificate and every report sent to the Speaker in pursuance of this Act shall be under the hands of both Judges, and if the Judges differ as to whether the member whose return or election is complained

of was duly returned or elected, they shall certify that difference, and the member shall be deemed to be duly elected or returned; and if the Judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void; and if the Judges differ as to the subject of a report to the Speaker, they shall certify that difference, and make no report on the subject on which they so differ.

Save as aforesaid, any order, act, application, or thing for the purposes of this Act may be made or done by, to, or before one Judge.

The House, on being informed by the Speaker of such certificate and report, if any, shall order the same to be entered on their Journals, and shall give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.

Report of Judges thereon.

When the Judges make a special report, the House may make such order in respect of such special report as it may think proper.

8. On the trial of an election petition under this Act, unless the Judges otherwise direct, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

Evidence of corrupt practices, how received.

9. The trial of an election petition under this Act shall be proceeded with notwithstanding the prorogation of Parliament.

Trial may proceed during recess.

PROCEEDINGS.

10. An election petition under this Act shall be in such form and state such matters as may be prescribed.

Form of petition.

11. An election petition under this Act shall be served, as nearly as may be, in the manner in which a writ or summons is served, or in such other manner as may be prescribed.

Service of petition.

12. Two or more candidates may be made respondents to the same petition, and their cases may for the sake of convenience be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent.

Joint respondent to petition.

13. When under this Act more petitions than one are presented relating to the same election or return, all such petitions shall be dealt with as one petition.

Petitions relating to same election treated as one petition.

14. The Judges of the Supreme Court, or the Chief Justice and any other two of such Judges, may from time to time make, revoke, and alter general rules and orders (in this Act referred to as "rules of Court") for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of election petitions, and the trial thereof, and the certifying and reporting thereon.

Rules to be made by Court.

Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Any general rules and orders made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if the General Assembly be then sitting, and, if the General Assembly be not then sitting, within three weeks after the beginning of the next session of the General Assembly.

JURISDICTION AND EXPENSES.

15. On the trial of an election petition under this Act, the Judges shall, Power of Judges.

subject to the provisions of this Act, have the same powers, jurisdiction, and authority as a Judge of the Supreme Court, and as Judge of *Nisi prius*, and the Court held by them shall be a Court of record.

Attendance on Judges.

16. The Judges shall be attended on the trial of an election petition under this Act in the same manner as a Judge sitting at *Nisi prius*, and the expenses of such attendance shall be paid out of money to be provided by the General Assembly.

WITNESSES.

Summons of witnesses.

17. Witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit, as in a trial at *Nisi prius*, and shall be subject to the same penalties for perjury.

Judges may summon and examine witnesses.

18. On the trial of an election petition under this Act the Judges may, by order under their hand, compel the attendance of any person as a witness who appears to them to have been concerned in the election to which the petition refers; and any person refusing to obey such order shall be guilty of a contempt of Court.

The Judges may examine any witness compelled to attend, or any person in Court, although such witness is not called or examined by any party to the petition.

After the examination of a witness as aforesaid by the Judges, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Witness not exempted from answer on ground of criminating himself.

19. No person who is called as a witness shall be excused from answering any question relating to any corrupt practice at or connected with any election forming the subject of a trial before any Judges on the ground that the answer thereto may criminate or tend to criminate himself.

Protection to witness so answering.

Provided that where any witness answers every question relating to the matters aforesaid which he is required by such Judges to answer, and the answers to which may criminate or tend to criminate him, he shall be entitled to receive from the Judges, under their hand, a certificate stating that such witness was upon his examination so required to answer, and had answered, all such questions.

Judges' certificate to stay proceedings against witness.

If any information or indictment or action be at any time thereafter pending in any Court against any such witness for any offence for corrupt practices under this Act, committed by him previously to the time of his giving his evidence, the Court shall, on production and proof of the certificate, stay the proceedings, and may at its discretion award to such witness such costs as he may have been put to.

Statements of witness not admissible in evidence.

20. No statement made by any person in answer to any question put by or before the Judges presiding at the trial of an election petition shall, except in cases of indictment for perjury, be admissible as evidence in a proceeding civil or criminal.

Reasonable expenses of witnesses to be allowed.

21. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed witnesses on the trial of civil actions by a Judge of the Supreme Court, may be allowed to such person by a certificate under the hand of the Judges.

Such expenses, if the witness was called and examined by the Judges, shall be deemed part of the expenses of providing a Court, and in other cases shall be deemed to be costs of the petition.

WITHDRAWAL AND ABATEMENT OF PETITIONS.

Withdrawal of petition, and substitution of new petitioners.

22. An election petition under this Act shall not be withdrawn without the leave of the Judges, upon special application to be made in and at the prescribed manner, time, and place.

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given, in the district to which the petition relates, of the intention of the petitioner to make application for the withdrawal of his petition.

On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Judges to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The Judges may, if they think fit, substitute as a petitioner any such applicant, and may, if the proposed withdrawal is, in the opinion of the Judges, induced by a corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that, to the extent of the sum named in such security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities, as the original petitioner.

If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

23. In every case of the withdrawal of an election petition under this Act, the Judges shall report to the Speaker whether, in their opinion, the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and, if so, the circumstances attending such withdrawal.

Court to report to Speaker circumstances of withdrawal.

24. An election petition under this Act shall be abated by the death of a sole petitioner, or of the survivor of several petitioners.

Abatement of petition.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the district to which the petition relates; and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Judges, in and at the prescribed manner, time, and place, to be substituted as a petitioner.

The Judges may, if they think fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petitioner.

25. If before the trial of an election petition under this Act any of the following events happen in the case of the respondent, that is to say,—

Admission in certain cases of voters to be respondents.

- (1.) If he dies;
- (2.) If he is summoned to the Legislative Council;
- (3.) If the House of Representatives have resolved that his seat is vacant;
- (4.) If he gives, in and at the prescribed manner and time, notice to the Judges that he does not intend to oppose the petition,

notice of such event having taken place shall be given in the district to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or Judges to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent if there be a respondent, or in place of the respondent, and any number of persons not exceeding three may be so admitted.

Respondent not opposing not to appear as party or to sit.

26. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Representatives until the House of Representatives has been informed of the report on the petition; and the Judges shall, in all cases in which such notice has been given, in the prescribed time and manner report the same to the Speaker of the House of Representatives.

COSTS.

General costs of petition.

27. All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the Judges may determine, regard being had to the disallowance of any costs, charges, and expenses which may, in the opinion of the Court or Judges, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

The costs may be taxed in the prescribed manner, but according to the same principles as costs are taxed between attorney and client in an action in the Supreme Court; and such costs may be recovered in the same manner as the costs in an action, or in such other manner as may be prescribed.

Recognizance, when to be estreated.

28. If a petitioner in an election petition presented under this Act neglect or refuse for the space of six months, after demand, to pay any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be within one year after such demand proved to the satisfaction of a Judge of the Supreme Court, in any such case every person who has entered into a recognizance relating to such petition under this Act shall be held to have made default in his said recognizance, and the same shall be dealt with as provided by "The Crown Debts Act, 1866," in respect of recognizances taken in the Supreme Court.

SPECIAL CASES.

Returning Officer, if complained of, to be respondent.

29. Where an election petition under this Act complains of the conduct of a Returning Officer, such Returning Officer shall, for all the purposes of this Act, except the admission of respondent in his place, be deemed to be respondent.

Petition complaining of no return.

30. A petition under this Act complaining of no return may be presented to the Chief Justice, and shall be deemed to be an election petition within the meaning of this Act; and the Chief Justice may make such order thereon as he may think expedient for compelling a return to be made, or may direct such petition to be heard before the Judges in manner hereinbefore provided with respect to ordinary election petitions.

31. On the trial of a petition under this Act complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was invalid in the same manner as if he had presented a petition complaining of such election.

Recrimination when
petition for undue
return.