

Bribery.

ANALYSIS.

- Title.
1. Short Title.
2. Division of Act.
3. Repeal.
- PART I.**
PRELIMINARY.
4. Interpretation.
- PART II.**
PREVENTION OF CORRUPT PRACTICES AT ELECTIONS.
Offences of Bribery, Treating, and Undue Influence.
5. Bribery defined.
6. Bribery further defined.
7. Treating defined.
8. Vote of person treating to be disallowed.
9. Undue influence defined.
10. Subornation of personation, &c.
11. Penalty on person giving refreshment on day of polling.
12. No cockades, &c., to be given at elections.
13. Paying for conveyance of voters to or from poll illegal. Disqualification of voters offending.
14. No banners, bands of music, &c., to be used at elections.
15. Committee of candidates not to sit at public-house.
- Proceedings to enforce Penalties for Corrupt Practices.*
16. Penalties how recoverable.
17. Contracts or promises relating to elections void.
18. Court may order costs of prosecution to be paid to prosecutor.
19. In case of private prosecution defendant may recover costs.
20. Prosecutor not to be entitled to costs unless he shall have entered into recognizance.
21. Limitations of actions and prosecutions.
- PART III.**
ELECTION PETITION, AND PROCEEDINGS THEREON.
Presentation and Service of Petition.
22. Controverted elections to be tried under Act.
23. How and by whom election petition may be presented.
24. Regulations as to presentation of election petition.
25. Recognizance may be objected to.
26. Determination of objection to recognizance.
27. Further proceedings thereon.
28. Mode of trial of election petitions.
29. Judge may refer questions to the Court of Appeal.
30. House of Representatives to carry out report.
31. House of Representatives may make order on special report.
32. Prosecutions for bribery.
33. Evidence of corrupt practices how received.
34. Resignation not to abate petition.
35. Prorogation not to abate petition.
36. Joint respondents to petition.
37. Judge may employ shorthand writer.
- Jurisdiction and Rules of Court.*
38. Jurisdiction of Court and Judges thereof.
39. Rules to be made by Court.
40. Practice of House of Representatives to be observed.
- Witnesses.*
41. Summons of witnesses.
42. Court may summon and examine witnesses.
43. Evidence of witnesses.
44. Indemnity to witnesses in certain cases.
45. Court in certain cases to stay proceedings against witness.
46. Expenses of witnesses.
- Withdrawal and Abatement of Election Petitions.*
47. Election petition not to be withdrawn without leave of Court.
48. Application for withdrawal of petition not to be made till notice given.
49. Substitution of new petition.
50. Fresh security to be given.
51. Court to report to the Speaker circumstances of withdrawal.
52. Abatement of petition.
53. Notice of abatement to be given.
54. Admission in certain cases of voters to be respondents. Notice of such admission to be given.
55. Respondent not opposing not to appear as party, or to sit.
56. Provision for cases of double return where the member complained of declines to defend his return.
57. Returning Officer, if complained of, to be respondent.
58. Petition complaining of no return.
59. Recrimination when petition for undue return.
- Costs.*
60. Expenses of proceedings.
61. General costs of petition.
62. Costs to be taxed by Registrar of Supreme Court.
- Punishment of Corrupt Practices.*
63. Candidates guilty of bribery, &c., incapable of being elected for same district before next general election.
64. Penalty for employing corrupt agent.
65. Disqualification of persons guilty of bribery.
- Miscellaneous.*
66. Removal of disqualification on proof that disqualification was procured by perjury.
67. Returning Officer may be sued for neglecting to return any person duly elected.

A BILL INTITULED

Title.

AN ACT for the Prevention of Corrupt Practices at Elections of Members of the House of Representatives, and to make provision for the Trial of Election Petitions.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows (that is to say),—

Short Title.

1. The Short Title of this Act is "The Bribery Act, 1879." 5

Division of Act.

2. This Act is divided into the following parts:— 5

PART I.—Preliminary.

PART II.—Prevention of Corrupt Practices at Elections.

PART III.—Election Petitions and Proceedings thereon.

And it shall come into operation on the *first* day of *January*, one thousand eight hundred and *eighty*. 10

Repeal.

3. From and after the coming into operation of this Act—

"The Corrupt Practices Prevention Act, 1858,"

"The Election Petitions Act, 1858," and

"The Election Petitions Act Amendment Act, 1862,"

shall be and the same are hereby repealed, but such repeal shall not affect the validity of anything already done or suffered, or any proceedings taken and in progress, or any offence already committed, or any remedy or proceeding in respect thereof, or the proof of any past act or thing. 15

PART I. 20

PRELIMINARY.

Interpretation.

4. In this Act, if not inconsistent with the context,—

"Election" means an election of a member or members to serve in the House of Representatives.

"Electors" means any person who has a right to vote at any such election. 25

"Candidate" shall mean any person elected to serve in the House of Representatives at an election, and any person who has been nominated a candidate at or before any such election. 30

"Corrupt practices" or "corrupt practice" means bribery, treating, personation, and undue influence, or any of such offences, as defined in this Act, or recognized by the Common Law of Parliament.

"Speaker" means the Speaker of the House of Representatives for the time being, and includes any person acting as Speaker; and, when the office of Speaker is vacant, the Clerk of the House of Representatives, or any other officer for the time being performing the duties of the Clerk of the House of Representatives, shall be deemed to be substituted for and to be included in the expression "Speaker." 35 40

"Judicial district" means a judicial district of the Supreme Court constituted under any law for the time being in force authorizing the constitution of such districts.

"Rules of Court" mean rules to be made as hereinafter mentioned. 45

"Prescribed" means prescribed by the rules of Court.

PART II.

PREVENTION OF CORRUPT PRACTICES AT ELECTIONS.

Offences of Bribery, Treating, and Undue Influence.

5 **5.** The following persons shall be deemed guilty of bribery, and shall be punishable accordingly :— Bribery defined.

- 10 (1.) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure or to endeavour to procure any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election :
- 15 (2.) Every person who, directly or indirectly, by himself or any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place, or employment, or offers or promises to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election :
- 20 (3.) Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure, or to endeavour to procure, the return of any person to serve in the House of Representatives, or the vote of any voter at any election :
- 25 (4.) Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures, or engages or promises or endeavours to procure, the return of any person to serve in the House of Representatives, or the vote of any voter at any election :
- 30 (5.) Every person who advances, or pays or causes to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery or corrupt practices at any election, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election.

35 And any person so offending shall be guilty of a misdemeanour punishable by fine and imprisonment, and shall also be liable to forfeit the sum of *one hundred* pounds to any person who shall sue for the same, together with full costs of suit :

40 But the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bonâ fide* payments for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act.

45 **6.** The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :— Bribery further defined.

- 50 (1.) Every voter who, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, or agrees or contracts for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or
- 55
- 60

agreeing to vote, or for refraining or agreeing to refrain from voting, at any election :

- (2.) Every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election. 5

And any person so offending shall be guilty of a misdemeanour punishable by fine and imprisonment, and shall also be liable to forfeit the sum of *one hundred* pounds to any person who shall sue for the same. 10

Treating defined.

7. The following persons shall be deemed guilty of the offence of treating, and shall be punishable accordingly :—

- (1.) Every candidate who corruptly, by himself, or by or with any other person, or by any other ways or means, on his behalf, at any time, either before, during, or after any election, directly or indirectly, gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays, wholly or in part, any expenses incurred for any meat, drink, entertainment, refreshment, or provision to or for any person in order to be elected, or for being elected; or 15 20
- (2.) Who does any of the acts aforesaid for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting at such election,— 25

And any person so offending shall forfeit the sum of *fifty* pounds to any person who shall sue for the same, in addition to any other penalty to which he may be liable therefor under any other provision of this Act. 30

- (3.) Every voter who corruptly accepts or takes any such meat, drink, entertainment, or provision shall be incapable of voting at such election, and his vote, if given, shall be entirely void and of none effect. 35

Vote of person treating to be disallowed.

8. On the trial of an election petition there shall be struck off from the number of votes given for each candidate as aforesaid one vote for every person who shall have voted and is proved on such trial to have corruptly accepted or taken any such meat, drink, refreshment, or provision. 40

Undue influence defined.

9. The following persons shall be deemed to have committed the offence of undue influence, and shall be punishable accordingly :—

- (1.) Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence, or restraint, or inflicts, or threatens the infliction, by himself or by or through any other person, of any injury, damage, harm, punishment, or loss, or any removal from any office, place, or position; or 45
- (2.) Who in any other manner practises intimidation upon or against any person in order to induce or compel such person to vote or to refrain from voting, or on account of such person having voted or refrained from voting at any election; or 50
- (3.) Who, by abduction, duress, or any fraudulent device or contrivance, impedes, prevents, or otherwise interferes with the free exercise of the franchise of any voter, and who shall thereby compel, induce, or prevail upon any voter either to give or refrain from giving his vote at any election,— 55 60

And any person so offending shall be guilty of a misdemeanour, punishable by fine or imprisonment, and shall also be liable to forfeit the sum of *fifty* pounds to any person who shall sue for the same.

10. Every candidate who corruptly, by himself, or by or with any other person on his behalf, compels or induces, or endeavours to induce, any person to personate any voter, or to take any false oath in any matter wherein an oath is required under this Act, shall be guilty of a
 5 misdemeanour, and shall, in addition to any other punishment to which he may be liable for such offence, be liable to a penalty not exceeding *fifty* pounds.

Subornation of personation, &c.

11. Every person who gives or causes to be given to any elector on the day of polling, on account of such elector having
 10 polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such elector to obtain refreshment shall be deemed to have committed an illegal act, and shall for every such offence be liable to a penalty not exceeding *five* pounds.

Penalty on person giving refreshment on day of polling.

12. No candidate at any election before, during, or after such election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any elector, or to or for any other person whomsoever, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall, for every such
 15 offence, be liable to a penalty not exceeding *five* pounds.

No cockades, &c., to be given at elections.

13. Any candidate, or any person on his behalf, hiring, or promising to pay, or paying for any horse, steam carriage, cab, or other vehicle to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof, at any election, and any candidate, or any
 20 person on his behalf, who pays the travelling or other expenses of any voter in going to or returning from any election shall be deemed to have committed an illegal act, and the person so offending shall, for every such offence, be liable to a penalty not exceeding *five* pounds.

Paying for conveyance of voters to or from poll illegal.

Any voter hiring any horse, steam carriage, cab, cart, wagon, carriage, or other conveyance, for the purpose of conveying any voter or voters to or from the polling-place or places shall, *ipso facto*, be
 30 disqualified from voting at such election, and shall, for every such offence, be liable to a penalty not exceeding *five* pounds.

Disqualification of voters offending.

14. Every person who shall, during such election, display or cause to be displayed any flag, banner, or party emblem, or shall employ or
 35 cause to be employed publicly any band of music or musical instruments, shall, for every such offence, be liable to a penalty not exceeding *five* pounds.

No banners, bands of music, &c., to be used at elections.

15. No Committee or other body organized for promoting the return of any candidate at any election shall sit or hold meetings at
 40 any licensed publichouse, or any building thereto annexed or belonging; and every person, being a member of any such Committee or organized body, who shall attend any such meetings at any such publichouse or building, shall, for every such offence, be liable to a penalty not exceeding *five* pounds.

Committee of candidate not to sit at publichouse.

The licensee of any such publichouse in which any such meeting shall be held shall, for every such offence, be liable to a penalty not exceeding *five* pounds.

Proceedings to enforce Penalties for Corrupt Practices.

16. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence shall be recoverable, together with full costs of suit, by suit in the Supreme Court of New Zealand or in a District Court, at the option of the plaintiff; and all other
 50 penalties by this Act imposed shall be recoverable in a summary manner under the provisions of "The Justices of the Peace Act, 1866," before any two Justices of the Peace.

Penalties, how recoverable.

17. Every executory contract, promise, or undertaking in any way referring to, arising out of, or depending upon any election under this

Contracts or promises relating to elections void.

Act, even for the payment of lawful expenses, or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to receive back any money paid for lawful expenses connected with such election.

Court may order costs of prosecution to be paid to prosecutor.

18. Every indictment for bribery or undue influence shall be tried before the Supreme Court only, and it shall be lawful for the said Court to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution.

In case of private prosecution defendant may recover costs.

19. In case of any indictment or information by a private person for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs to be taxed by the proper officer of the Court, which the defendant shall have sustained by reason of such indictment or information.

Prosecutor not to be entitled to costs unless he shall have entered into recognizance.

20. It shall not be lawful for the said Court to order payment of the costs of a prosecution for any offence against the provisions of this Act unless the prosecutor shall, before or upon the finding of the indictment, or the granting of the information, enter into a recognizance with two sufficient sureties, to be approved of by the Registrar or Deputy Registrar of the Supreme Court, in the sum of one hundred pounds, to be acknowledged before a Judge of the Supreme Court, with the condition following—that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitations of actions and prosecutions.

21. No person shall be liable to any penalty or forfeiture hereby imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall have been committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the Court out of which such writ or other process shall have been issued; and in case of any prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried out without any wilful delay.

PART II.

ELECTION PETITION AND PROCEEDINGS THEREON.

Presentation and Service of Petition.

Controverted elections to be tried under Act.

22. From and after the coming into operation of this Act no election or return to the House of Representatives shall be questioned except in accordance with the provisions of this Act; but until such Act shall come into operation elections and returns to the House of Representatives may be questioned in manner heretofore in use.

How and by whom election petition may be presented.

23. A petition complaining of an undue return or undue election of a member to serve in the House of Representatives may be presented to the Supreme Court in the manner hereinafter provided.

A petition may be presented by any one or more of the following persons:—

- (1.) Some person who voted or who 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.

Regulations as to presentation of election petition.

24. The following enactments shall be made with respect to the presentation of an election petition under this Act:—

(1.) The petition shall be signed by the petitioner or all the petitioners, if more than one.

5 (2.) The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Writs appointed under "The Electoral Act, 1879," of the member to whose election the petition relates :

10 Where the petition questions the return or election upon an allegation of corrupt practices, and specifically alleges a 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 return, in pursuance or in furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of such payment.

15 (3.) An election petition shall be presented at the Supreme Court Office within or nearest to the electoral district in which the election has taken place to which the petition relates.

20 (4.) Presentation of an election petition shall be made by delivering it to the prescribed officer, or otherwise dealing with the same in manner prescribed.

(5.) At the time of the presentation of such petition, or within seven days afterwards, security shall be given for the payment of all costs, charges, and expenses that may be come payable by the petitioner—

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

30 (b.) To the member whose election or return is complained of (who is hereinafter referred to as the respondent).

(6.) The security shall be to an amount of five hundred pounds; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.

35 On presentation of an election petition the prescribed officer shall forthwith send a copy thereof to the Returning Officer of the electoral district in which the election has taken place to which the petition relates, who shall thereupon publicly notify that the same has been
40 received by him, and may be inspected by any person interested, at all reasonable office hours, without payment of any fee.

25. Notice of the presentation of an election petition and of the nature of the proposed security, accompanied with a copy of the petition, shall, within the prescribed time, not exceeding ten days after
45 the presentation of the petition, be served by the petitioner on the Returning Officer, and also on the respondent, and gazetted.

Where the security is given wholly or partially by recognizance the respondent may within a further prescribed time, not exceeding twenty-
50 one days from the date of the service on him of the notice, object in writing to such recognizance on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

55 26. If there is no objection to the security given, the Registrar of the Court shall approve it. Any objection made to the security shall be decided by a Judge of the Court in Chambers in a summary way.

If an objection to the security is allowed, it shall be lawful for the
60 petitioner, within a further prescribed time not exceeding five days, to remove such objection by a deposit, in the prescribed manner, of such

Recognizance may be objected to.

Determination of objection to recognizance.

sum of money as may be deemed by the Court or officer having cognizance of the matter to make the security sufficient.

Further proceedings thereon.

27. If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceeding shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue. 5

Trial of a Petition.

Mode of trial of election petitions.

28. The following enactments are hereby made with respect to the trial of election petitions under this Act:— 10

- (1.) The trial of every election petition shall be conducted before any Judge of the Court to whom has been assigned the judicial district within which any petition has been filed under this Part of this Act. 15
- (2.) The place and date of trial shall be appointed by any Judge to whom the judicial district in which the petition has been filed has been assigned as aforesaid; and the trial shall be held on the date so appointed, subject to the power of adjournment hereinafter contained. 20
- (3.) On the trial of an election petition, if a question of fact arises, the Judge shall allow the same to be ascertained by a jury to be summoned for that purpose, and the decision of such jury upon such question shall be final. 25

The jury shall consist of not less than six persons, nor more than twelve persons, who are qualified to serve as jurors in the Supreme Court; and so far as applicable all the provisions of "The Juries Act, 1868," and any Act amending the same, which would apply to a jury to try civil issues shall extend to a jury summoned under this Act. 30

- (4.) A trial may be adjourned in case it shall be necessary to summon a jury, for such time as may be necessary to give effect to this Act.
- (5.) Notice of the time and place at which an election petition will be tried shall be given, not less than fourteen days before the day on which the trial is held, in the prescribed manner. 35
- (6.) The trial of an election petition shall take place in the judicial district in which the petition is filed: Provided always that, if it shall appear to the Judge that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the aforesaid judicial district, it shall be lawful for the Judge to appoint such other place in some other judicial district for the trial as shall appear most convenient, and to make such order for the transfer of the petition and proceedings as to it shall seem fit. 40 45

The Judge of such last-mentioned district shall have all such jurisdiction in any such case as if the petition had originally been filed within his judicial district. 50

- (7.) The Judge presiding at the trial may adjourn the same from time to time, and from any one place to any other place within the judicial district, as to him may seem expedient. 55
- (8.) At the conclusion of the trial the Judge 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.

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

10 (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;

15 (b.) The names of all persons (if any) 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.

20 (10.) Effect shall be given to the two last foregoing subsections in all cases where any question has been submitted to a jury, subject to the verdict of such jury.

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

30 (12.) Where, upon the application of any party to a petition made in the prescribed manner, it appears to the Judge that the case raised by the petition can be conveniently stated as a special case, he may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the Supreme Court in the same manner as special cases are heard therein, and the decision of the Court shall be final, and the Court shall certify to the Speaker its determination in reference to such special case.

35 29. If at the trial of any petition it shall appear to the Judge presiding thereat that any question of law as to the admissibility of evidence or otherwise requires further consideration, he may postpone the granting of the said certificate until the determination of such question by the Court of Appeal, and for this purpose may reserve any such question in such manner as questions are usually reserved by a Judge on a trial at *nisi prius* in a criminal case under "The Court of Appeal Act, 1862."

Judge may refer questions to Court of Appeal.

45 30. The House of Representatives, on being informed by the Speaker of such certificate and report or reports, if any, shall order the same to be entered in 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.

House of Representatives to carry out report.

50 31. Where the Judge makes a special report the House of Representatives may make such order in respect of such special report as they think proper.

House of Representatives may make order on special report.

55 32. If the Judge states in his report that certain persons named by him have been guilty of bribery or treating, and that such persons have not been furnished with certificates of indemnity as is hereinafter provided, such report, with the evidence taken thereon before the Judge, shall be laid before the Attorney-General with a view to his instituting a prosecution against such person if the evidence should in his opinion be sufficient to support a prosecution.

Prosecutions for bribery.

60 33. On the trial of an election petition under this Act, unless the Judge otherwise directs, any charge of a corrupt practice may be gone

Evidence of corrupt practices, how received.

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.

Resignation not to abate petition.

34. The trial of an election petition under this Act shall be proceeded with notwithstanding the resignation of the member whose return or election is petitioned against. 5

Prorogation not to abate petition.

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

Joint respondents to petition.

36. Two or more candidates may be made respondents to the same petition, and their case 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. 10

Judge may employ shorthand writer.

37. On the trial of an election petition under this Act, the Judge may employ a shorthand writer, and the expenses of such shorthand writer shall be deemed to be part of the expenses of the trial, and shall be defrayed out of any moneys voted for this purpose by the General Assembly. 15

Jurisdiction and Rules of Court.

Jurisdiction of Court and Judges thereof.

38. The Supreme Court and every Judge thereof respectively shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon or relating thereto, as it or he hath by law. 20

Rules to be made by Court.

39. The Judges of the Supreme Court, or not less than three of such Judges, of whom the Chief Justice shall be one, may from time to time make, revoke, and alter general rules and orders 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 therein. 25

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. 30

Any general rules and orders made in pursuance of this section shall be laid before the General Assembly 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 then next session of the General Assembly. 35

Practice of House of Representatives to be observed.

40. Until rules of Court have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which Committees of the House of Representatives have heretofore acted in dealing with election petitions shall be observed as far as may be by the Court and Judges in the case of election petitions under this Act. 40

Witnesses.

Summons of witnesses.

41. 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.

Court may summon and examine witnesses.

42. On the trial of an election petition under this Act, the Court may, by order, compel the attendance of any person as a witness who appears to it to have been concerned in the election to which the petition refers; and any person refusing to obey such order shall be guilty of contempt of Court. 45

The Court may examine any witness so compelled to attend, or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Court, such witness may be cross-examined on behalf of the petitioner and respondent or either of them. 50

The evidence of any person may be examined upon Commission although he may be resident less than two hundred miles from the place of trial.

But such Commission shall only issue by leave of any Judge to whom has been assigned the Judicial District where the petition is filed.

43. No person who is called as a witness on any trial held under this Part of this Act shall be excused from answering any question relating to any corrupt practice at or connected with any election forming the subject of inquiry by such Court on the ground that the answer may criminate or tend to criminate himself.

Evidence of witnesses.

44. Where any witness shall answer every question relating to the matters aforesaid which he shall be required by such Court to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled to receive from the Court, under the hand of the Judge, a certificate stating that such witness was on examination required by the Judge to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all questions or such question.

Indemnity to witnesses in certain cases.

45. If any information, indictment, or action be at any time thereafter pending in any Court against such witness for any offence under this Act, or for which he might have been prosecuted or proceeded against thereunder, committed by him previous to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, such Court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action.

Court in certain cases to stay proceedings against witness.

Provided that no statement made by any person in answer to any question put by or before such Court shall, except in indictments for perjury, be admissible in evidence in any proceeding, civil or criminal.

46. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions in the Supreme Court, may be allowed to such person by a certificate under the hand of a Judge or of the prescribed officer upon the direction of the Court.

Expenses of witnesses.

If the witness was called and examined by the Court such expenses shall be deemed part of the expenses of providing a Court, and shall be defrayed out of moneys appropriated for that purpose by the General Assembly, and in other cases shall be deemed costs of the petition.

Withdrawal and Abatement of Election Petitions.

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

Election petition not to be withdrawn without leave of Court.

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

Application for withdrawal of petition not to be made till notice given.

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 Court to be substituted as petitioner for the petitioner so desirous of withdrawing the petition.

49. The Court may, if it think fit, substitute as a petitioner any such applicant as aforesaid, and may further, if the proposed withdrawal is in the opinion of the Court induced by any 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

Substitution of new petition.

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.

Fresh security to be given.

50. 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. 5

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. 10

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

Where there are more petitions than one, no application to withdraw a petition shall be made except with the consent of all the petitioners. 15

Court to report to the Speaker circumstances of withdrawal.

51. In every case of a withdrawal of an election petition under this Act, the Court shall report to the Speaker whether, in its 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 the withdrawal. 20

Abatement petition.

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

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred. 25

Notice of abatement to be given.

53. On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the electoral 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 in and at the prescribed manner, time, and place to be substituted as a petitioner. 30

The Court may, if it 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 petition. 35

Admission in certain cases of voters to be respondents.

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

- (1.) If he dies; 40
- (2.) If he is summoned to Parliament as a member of the Legislative Council of New Zealand by a writ issued under the hand of the then Governor of New Zealand;
- (3.) If he gives, in and at the prescribed manner and time, notice to the Court that he does not intend to oppose the petition: 45

Notice of such admission to be given.

Notice of such event having taken place shall be given in the electoral 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 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 the place of the respondent; and any number of persons not exceeding three may be so admitted. 50

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

55. 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, 55

and the Court 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.

- 5 **56.** Where an election petition under this Act complains of a double return, and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this Act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer, and upon the receipt of such notice the prescribed officer shall report the fact of the withdrawal of such petition to the Speaker.

Provision for cases of double return where the member complained of declines to defend his return.

- 10 The House of Representatives shall thereupon give the necessary directions for amending the said double return by taking off the file the writ by which the respondent so declining to oppose the petition was returned, or otherwise, as the case may require.

- 15 **57.** 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 respondents in his place, be deemed to be a respondent.

Returning Officer, if complained of, to be respondent.

- 20 **58.** A petition under this Act complaining of no return may be presented to the Court, and shall be deemed to be an election petition within the meaning of this Act, and the Court may make such order thereon as it thinks expedient for compelling a return to be made, or may allow such petition to be heard in manner hereinbefore provided with respect to ordinary election petitions.

Petition complaining of no return.

- 25 **59.** 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 undue in the same manner as if he had presented a petition complaining of such election.

Recrimination when petition for undue return.

Costs.

- 30 **60.** All charges and expenses of and incidental to or upon the trial of a petition under this Act complaining of an undue return, and of the due conduct of proceedings therein in accordance with this Act, shall, except where otherwise provided by this Act, be defrayed out of moneys to be appropriated for that purpose by the General Assembly.

Expenses of proceedings.

- 35 **61.** 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 Court may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and regard being had to the discouragement of all 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.

General costs of petition.

- 40 **62.** The costs shall be taxed by the Registrar of the Supreme Court, but according to the same principles as costs between attorney and clients are taxed in the Supreme Court, and such costs may be recovered in the same manner as the costs of an action in such Court, or in such other manner as may be prescribed.

Costs to be taxed by Registrar of Supreme Court.

Punishment of Corrupt Practices.

- 45 **63.** Where it is found by the report of the Judge upon an election petition under this Act that bribery has been committed by

Candidates guilty of bribery, &c., incapable of being

elected for same district before next general election.

or with the consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and sitting in the House of Representatives during the *five* years next after the date of his being found guilty, and he shall further be incapable during the said period of *five* years— 5

- (1.) Of being registered as an elector, and voting at any election in the Colony of New Zealand ;
- (2.) Of holding any office in any County or Borough Council ; 10
- (3.) Of holding any judicial office, and of being appointed or of acting as a Justice of the Peace.

Penalty for employing corrupt agent.

64. If on the trial of any election petition under this Act any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election any person knowing that such person has within *five* years previous to such engagement been found guilty of any corrupt practices by any competent legal tribunal, or been reported guilty of any corrupt practice by a Committee of the House of Representatives, or by the report of a Judge upon an election petition under this Act, the election of such candidate shall be void. 15 20

Disqualification of persons guilty of bribery.

65. Any person, other than a candidate, found guilty of bribery in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during the *five* years next after the time at which he is so found guilty, be incapable of being elected to and sitting in the House of Representatives, and also be incapable— 25

- (1.) Of being registered as an elector, and voting in the Colony of New Zealand ;
- (2.) Of holding any office in any County or Borough Council ;
- (3.) Of holding any judicial office, and of being appointed or of acting as a Justice of the Peace. 30

Miscellaneous.

Removal of disqualification on proof that disqualification was procured by perjury.

66. If at any time after any person has become disqualified by virtue of this Act, the witnesses or any of them on whose testimony such person shall have so become disqualified shall, upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the Court to order, and the Court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly. 35 40

Returning Officer may be sued for neglecting to return any person duly elected.

67. If any Returning Officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in Parliament for any electoral district, such person may, in case it has been determined on the hearing of an election petition under this Act that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected, or refused duly to make such return, in the Supreme Court, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit : 45

Provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election. 50