

T A S M A N I A



1881.

ANNO QUADRAGESIMO-QUINTO

VICTORIÆ REGINÆ,

No. 18.



AN ACT to further amend *The Electoral Act*. A.D. 1881.
[8 November, 1881.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

Short Title.

1 This Act may be cited as “The Electoral Act, No. 5.” Short title.

Repeal.

2 Sections One hundred and seventeen to One hundred and twenty-eight, both inclusive, of *The Electoral Act* are hereby repealed, and the provisions hereinafter contained are hereby substituted for the provisions contained in the said Sections. Repeal.
21 Vict. No. 32.

Controverted Elections.

3 In the following provisions— Certain ex-
pressions defined.
“Rules of Court” mean rules to be made as hereinafter mentioned :
“Prescribed” means prescribed by the Rules of Court.

4 All disputed returns and elections of Members to serve in the *Council* or *Assembly*, as the case may be, whether such disputes arise out of or relate to— Disputed returns
and elections how
dealt with.

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1. The capability of any person to be elected a Member of the *Council* or *Assembly*, as the case may be, by reason that such person is not qualified as by "The Constitutional Act" or any amendment thereof, is required :
2. Any alleged error in the return of any Returning Officer :
3. The allegation of bribery or corruption against any person concerned in any election :
4. Any other allegation affecting the validity of any election under this Act :

shall be enquired into and determined in manner hereinafter provided.

Mode of presentation of Election Petition.

5 All complaints of the undue return or undue election of Members to serve in the *Council* or *Assembly* shall be made by Petition addressed to the Supreme Court of *Tasmania*, and left with the Clerk of such Court, hereinafter referred to as an Election Petition.

No such petition shall be taken cognizance of nor any proceedings be had thereon unless the same is—

1. Received by the Clerk of the Supreme Court within Twenty-one days next after the declaration of the poll at the election whereof it is alleged that an undue return or undue election has been made or had :
2. Signed by a person who was a candidate at such election ; or
3. Signed by a number of electors who either voted or were qualified to vote at the said election, amounting to not less than one-tenth of the whole number of electors on the roll of the district for which such election took place.

Regulations as to Election Petition.

6 The following enactments shall be made with respect to an Election Petition :—

- (1.) The petition shall be signed by the petitioner, or all the petitioners if more than One :
- (2.) Upon the receipt of the petition by the Clerk of the Supreme Court, or within Three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner—

(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 or petitioners, as the case may be.

- (3.) The security shall be to an amount of One hundred Pounds ; it shall be given either by bond to Her Majesty, 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.

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7 On receipt of the petition by the Clerk of the Supreme Court he shall send a copy thereof to the Returning Officer of the district to which the petition relates, who shall forthwith publish the same in such district and in the *Gazette*, and in one newspaper published in *Hobart*, and in one newspaper published in *Launceston*.

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Copy of petition to be sent to Returning Officer.

8 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 five days after the presentation of the petition, be served by the petitioner on the respondent; and it shall be lawful for the respondent, where the security is given wholly or partially by bond, within a further prescribed time, not exceeding five days from the date of the service on him of the notice, to object in writing to such bond 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 bond, or that a person named in the bond has not duly acknowledged the same.

Security may be objected to.

9 Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time, not exceeding five days, to remove such objection, by a deposit in the prescribed manner of such sum of money as may be deemed by a Judge of the Supreme Court to make the security sufficient.

Determination of objection to bond.

If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings 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.

10 The following enactments shall be made with respect to the trial of Election Petitions:—

Mode of trial of Election Petitions.

1. Every election petition shall be tried by the Judges of the Supreme Court, sitting together in open court without a jury.
2. 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.
3. The Court may adjourn the trial from time to time and from any one place to any other place, as to the Court may seem expedient.
4. At the conclusion of the trial the Court 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 Governor; and upon such certificate being given such determination shall be final to all intents and purposes; and the Governor shall, within Three days after such certificate has been received by him, if Parliament is then sitting, and if Parliament is not sitting then within Three days after the commencement of the next Session, communicate such determination by Message to the

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Legislative Council if such petition related to the election of a Member of the *Council*, or to the House of Assembly if such petition related to the election of a Member of the Assembly.

5. Where upon the application of any party to a petition made in the prescribed time and manner to a Judge of the Supreme Court, it appears to such Judge that the case raised by the petition can be conveniently stated as a special case, the said Judge 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, and the decision of the Court shall be final; and the said Court shall certify to the Governor its determination in reference to such special case; and the Governor shall within Three days after such certificate has been received by him, if Parliament is then sitting, and if Parliament is not sitting then within Three days after the commencement of the next Session, communicate such determination by Message to the *Legislative Council* if such petition related to the election of a Member of the *Council*, or to the House of Assembly if such petition related to the election of a Member of the Assembly.

Certificate to be under hands of both Judges.

11 Every certificate sent to the Governor, 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 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 certificate they shall certify that difference only.

Provision in case Judges differ.

Jurisdiction of Supreme Court.

12 The Supreme Court in hearing and deciding any special case, and in trying any petition, shall have the same powers, jurisdiction, and authority with reference to such special case and petition respectively and the proceedings thereon, as such Court would have if such special case or petition were an ordinary cause within the jurisdiction of such Court at law or in equity.

Evidence of corrupt practices how received.

13 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.

Acceptance of office not to stop Petition.

14 The trial of an Election Petition under this Act shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the Crown.

Prorogation of Parliament.

15 The trial of an Election Petition under this Act shall be proceeded with notwithstanding the Prorogation of Parliament.

Service of Petition.

16 An Election Petition under this Act shall be served as nearly as may be in the manner in which a writ of summons is served, or in such other manner as may be prescribed.

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17 An Election Petition under this Act shall be in such form and state such matters as may be prescribed. A.D. 1881.

Form of Petition.

18 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. Joint respondents to Petition.

19 Where 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, unless the Court shall otherwise direct. Provision in cases where more than one petition is presented.

20 The Judges of the Supreme Court may from time to time make, and may from time to time revoke and alter, General Rules and Orders for 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 of the same force as if they were enacted in 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 Parliament be then sitting, and if Parliament be not then sitting, within Three weeks after the beginning of the then next Session of Parliament.

21 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. Summons of witnesses.

22 On the trial of an election petition the Court may, by order under the hand of a Judge, compel the attendance of any person as a witness who appears to the Court 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. The Court may examine any witness so 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 Court, such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them. Court may summon and examine witnesses.

23 No person who is called as a witness before the Court on the trial of an election petition shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by the Court on the ground that the answer thereto may criminate or tend to criminate himself. Witness not excused from answering questions tending to criminate.

Where any witness shall answer every question relating to the matters aforesaid which he shall be required by the Court to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled to receive from the Court a certificate stating that such witness was, upon his examination, required by the Court 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 such questions or such question ; and if any information 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 under this Act, committed by him previously 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

Court may give certificate that witness had answered questions.
Certificate a bar to proceedings against witness.

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been so examined, such Court shall, on production and proof of such certificate, stay the proceedings in such last mentioned information or action, and may, at its discretion, award to such witness such costs as he may have been put to in such information or action; but no statement made by any person in answer to any question put by or before such Judge shall, except in cases of information for perjury, be admissible in evidence in any proceeding, civil or criminal.

Expenses of witnesses.

24 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, may be allowed to such person by a certificate under the hand of the prescribed officer, and such expenses, if the witness was called and examined by the Court, shall be deemed to be costs of the petition.

Withdrawal of petition and substitution of new petitioners.

25 An election petition under this Act shall not be withdrawn without the leave of the Court or a Judge 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 an 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 Court or a Judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The Court or a Judge may, if it or he 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 or a Judge 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 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.

Abatement of petition.

26 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.

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,

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any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or Judge, in and at the prescribed manner, time, and place, to be substituted as a petitioner. A.D. 1881.

The Court or a Judge may, if it or he 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.

27 If before the trial of any 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 gives in and at the prescribed manner and time notice to the Court 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 a Judge 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.

28 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 *Council* or Assembly until the *Council* or Assembly, as the case may be, has been informed of the report on the petition, 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 Governor. Respondent not opposing not to appear as party or to sit.

29 All costs, charges, and expenses of, and incidental to the trial of an election petition 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 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 not on the whole successful. General costs of petition.

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

30 If any petitioner in an election petition presented under this Act neglects or refuses for the space of One month after demand to pay to 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 Bond when to be enforced, &c.

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to the satisfaction of the Supreme Court, every person who has entered into a bond relating to such petition under the provisions of this Act shall be held to have made default in his said bond.

If election declared void, Governor to issue fresh Writ.

31 If upon the hearing of any special case or petition it is determined by the Court that any person was not duly elected who has been returned as elected by the Returning Officer, the person so decided and declared to have been not duly elected shall, upon the receipt of the certificate by the Governor, cease to be a member of the *Council* or *Assembly*, as the case may be, and vacate his seat accordingly; and if it is determined as aforesaid that any person has been duly elected who has not been returned by the Returning Officer, the person so decided and declared to be duly elected shall, upon the receipt of such certificate by the *Council* or *Assembly*, as the case may be, be and be sworn a member of the *Council* or *Assembly*, as the case may be, and take his seat accordingly; and if it is determined as aforesaid that any election for any District has been absolutely void, which the Court is hereby authorised and empowered to do, the Governor, on the same being certified to him as aforesaid, shall, within Seven days after the receipt of such certificate by him, issue a new Writ for the holding of another election for such District.

Returning Officer if complained of to be respondent.

32 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.

Petition complaining of no return.

33 A Petition under this Act complaining of no return may be presented to the Supreme 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 the Court thinks expedient for compelling a return to be made, or may allow such petition to be heard by the Court in manner hereinbefore provided with respect to ordinary Election Petitions.

Recrimination when petition for undue return.

34 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.

Where "Committee of Elections" &c. referred to, Judges of Supreme Court to be deemed to be intended. Acts to be read together.

35 Wherever in the said Act the "Committee of Elections and Qualifications" is mentioned or referred to, the Judges of the Supreme Court when exercising the powers and jurisdiction conferred upon them by this Act shall be deemed to be intended.

36 This Act, and *The Electoral Act*, and every Act altering or amending the same shall, save so far as the said Acts or any of them may be altered or amended by this Act or any of the said Acts be read and construed together as one Act.