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### Rules of Court of Allegheny County from 1879 to 1889

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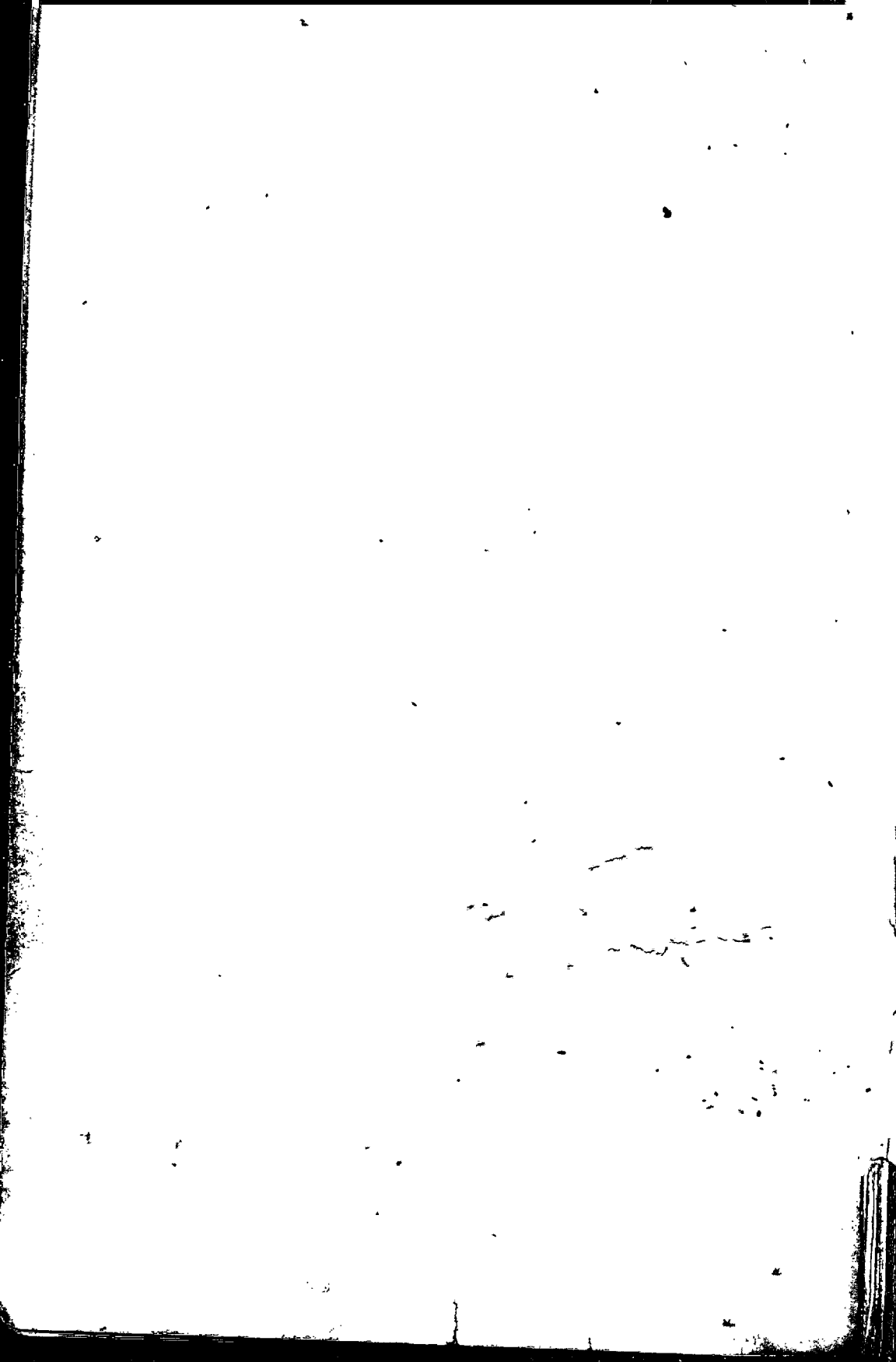


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RULES OF COURT  
OF  
ALLEGHENY COUNTY

FROM

1879 TO 1889

SUPPLEMENTARY TO

ANDERSON'S RULES OF COURT

BY

PERCIVAL G. DIGBY

*Law Librarian*



PITTSBURGH  
FREDERIC G. KAY

1889

It is thought better to print these Additional Court Rules and Notes on one side of the leaf only, to provide for pasting them on the blank pages of the previously published volume of Court Rules, if so desired.

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# RULES OF THE COURTS OF COMMON PLEAS.

## Rule 65½.

All applications for Charters of Incorporation shall be filed in the Prothonotary's office and be properly entered and numbered before publication, and shall remain in the office for examination until presented to the judge for approval.

Adopted by C. P. Nos. 1 and 2, on April 7th, 1884.

*Section 2. No application shall be filed as required by the foregoing rule until the same is ordered by the court or a judge thereof (res. et) adopted May 20, 1885.*

## Rule 147.

Hereafter all notices which relate to proceedings in Court, the publication of which is required by law or by Rules of Court, shall be published in the *Pittsburgh Legal Journal* during the time required by law, in addition to any other papers which may be specially ordered, or which may be selected by the parties.

BY THE COURT.

March 18, 1885, above Rule adopted and entered of record, at No. 112, June Term, 1885.

## Rule 148.

In all applications for appointments to fill a vacancy in an Election Board or in the office of District Assessor, the petition shall be presented in Court and filed with the Prothonotary, and notice of the application shall be given to the citizens of the proper district, by written or printed hand-bills.





RULES OF THE COURTS OF COMMON PLEAS.

posted in three or more conspicuous places in the district, at least five full days before the day fixed for making the appointment. And due proof by affidavit of the giving of such notice shall be made and filed before the appointment shall be made.

Adopted January 21st, 1880.

**Rule 149.**

In cases where the plea is payment, payment with leave, and in other cases where the pleas confess and avoid the plaintiff's case, as *also* where under the rules of Court the plaintiff's case as set out in his affidavit of claim is admitted and the legal effect thereof is sought to be avoided by facts and circumstances which *non obstante* constitute a sufficient defence, the defendant shall in his argument to the jury, have the conclusion.

(C. P. No. 1. Adopted January 10th, 1882.)

**Rule 150.**

And now, January 8, 1881, on and after this date, objections to the acknowledgement of Sheriff's Deeds may be made in open Court when in session, and with the Sheriff when the Court is not in session at any time before 10 o'clock A. M. of Wednesday following the acknowledgment thereof, and no deed shall be delivered by the Sheriff before said time. Exceptions to be filed as at present required by Rule 13. This Rule only applies to No. 1 Court.

BY THE COURT.

**Rule 151.**

And now, June 8, 1883, it is hereby ordered that the Prothonotary shall not receive or enter of record any order granted by the Court unless it is delivered to the Prothonotary



RULES OF THE COURTS OF COMMON PLEAS.

or one of his clerks in open Court or a special order directing same to be filed is entered thereon, signed by one of the Judges of this Court.

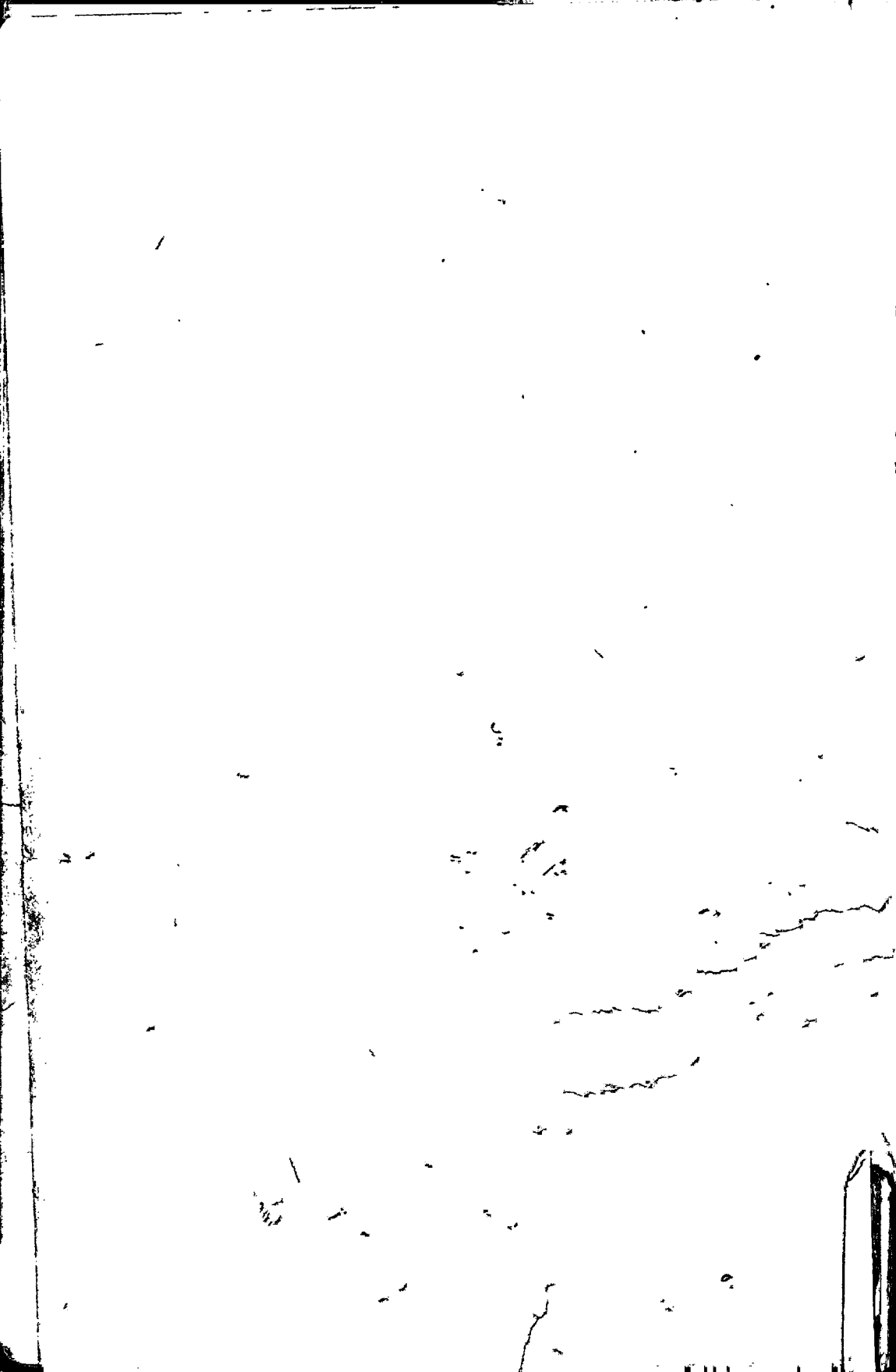
BY THE COURT.

Above Rule entered of record at No. 28 September Term, 1883.

July 9, 1887, the Rules of Practice of the Court of Common Pleas No. 1 are hereby modified and repealed so far as the same are inconsistent with the Act of Assembly approved the 28th day of May, A. D. 1887.

BY THE COURT.

No. 287 September T., 1887. Filed July 9, 1887.



## AMENDMENTS

Made to the Rules of Court of Common Pleas No. 1, and Court of Common Pleas No. 2, of Allegheny County, for conformity to and in uniformity with the Act of Assembly, approved 25 May, 1887. P. L. 271 and 272. Adopted January , 1888.

### Rule 8 is amended

A. By striking out in the eighth and ninth lines the words, "where the debt or damages can be liquidated without the aid of a jury."

B. By substituting "fifteen days" for "ten days," wherever the same occurs in the printed rule.

### Rule 9 is amended

By substituting "fifteen days" for "ten days," wherever it occurs in the printed rule.

### Rule 9½, (new rule.)

1. The term "declaration" in these rules shall be held to include the "statement" provided for in the Act of Assembly approved 25 May, 1887, relative to forms of actions and pleadings therein.

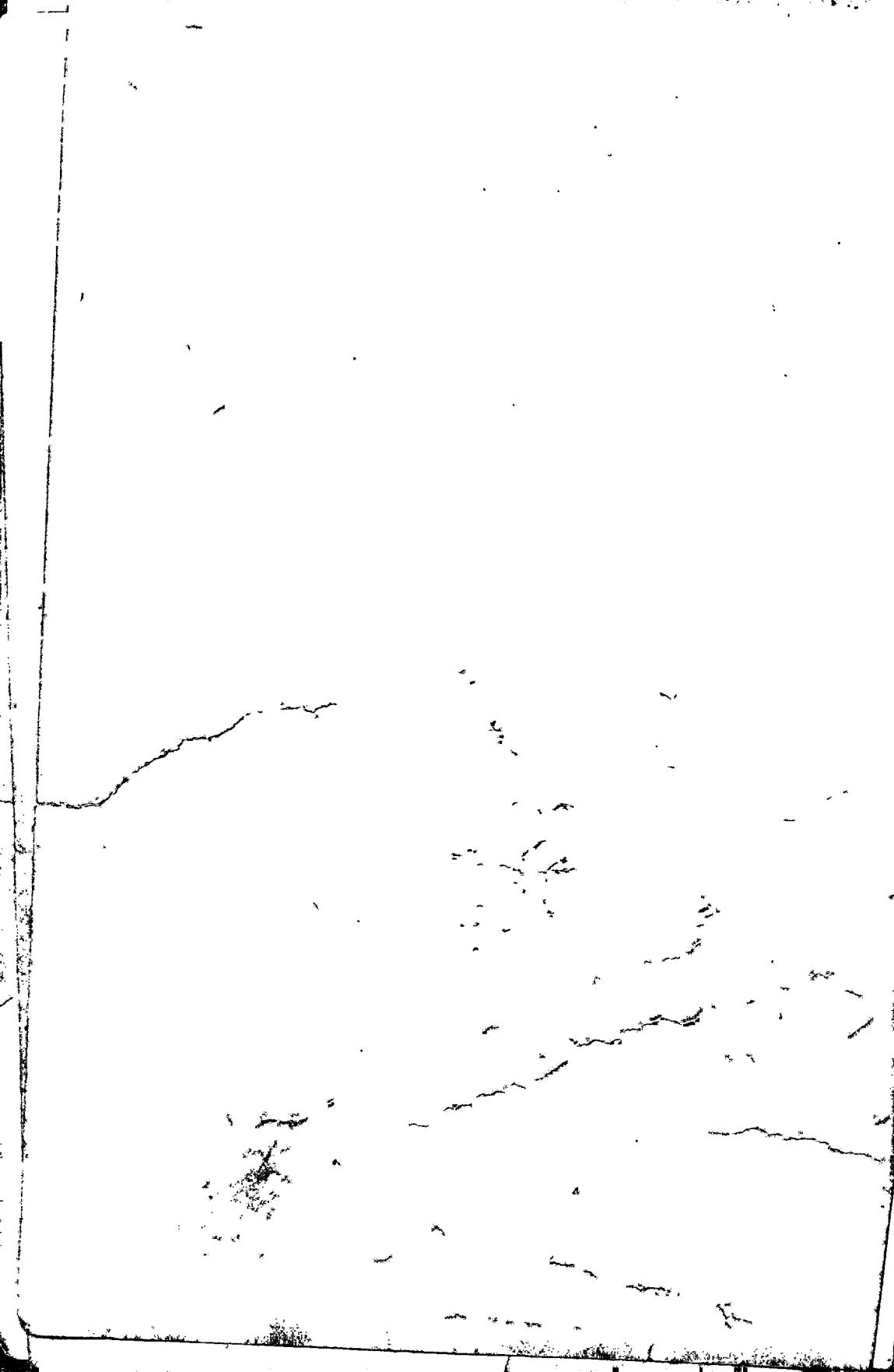
2. If the statement provided for in said Act shall also conform to the requirements of rules eight and nine, no additional affidavit of claim or statement of facts will be required.

### Rule 10 is amended

By substituting "fifteen days" for "ten days," in the sixth line.

Note.—Rule 9 is not affected by the statute of 1887.

The act does not extend the time within which the defendant is bound to appear.



### Rule 92 is amended

By substituting "fifteen days' notice" for "ten days' notice," in second line. See Sec. 7 of Act of 1887. -27/

### Rule 96 is amended to read

Judgments by default shall be entered by the prothonotary on precipe of the party entitled thereto, or his attorney, which precipe shall be filed. *Provided, That no judgment in default of an affidavit of defense to a statement filed by the plaintiff, shall be entered under this rule, unless such statement shall be verified by affidavit, and shall conform to the rules of Court.*

## PLEADINGS.

### Rule 117 is amended

By substituting "fifteen days' notice" for "ten days' notice," in fourth line.

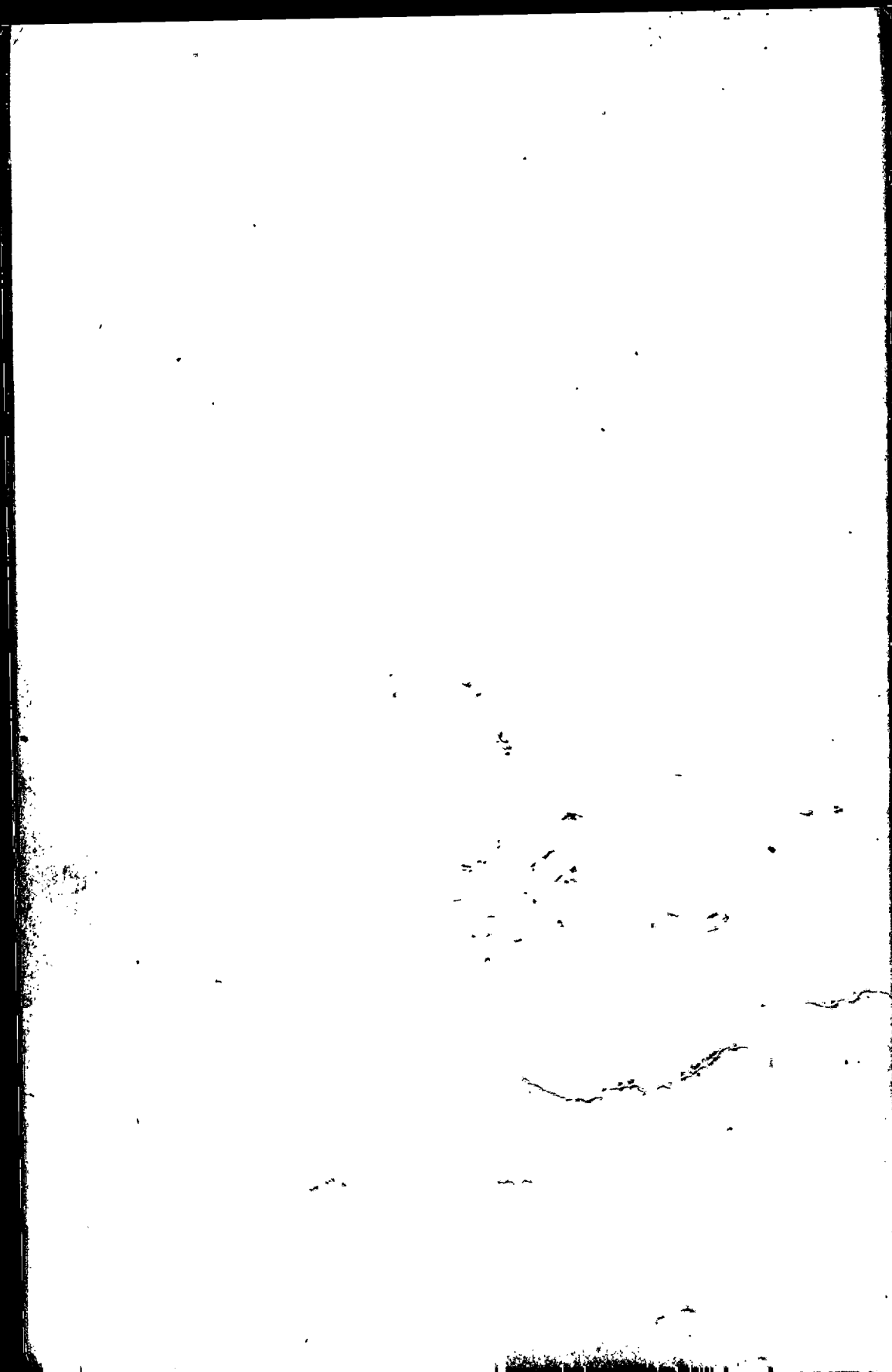
### Rule 119,

Is suspended by the statute as to actions of Assumpsit and Trespass, and is amended by the addition of paragraph—

2. In action of Assumpsit and Trespass, the plaintiff may, at any time, before the cause is put on the trial list, and thereafter by leave of Court, rule the defendant to furnish him with a bill of particulars of his defense. And in default thereof, for twenty days after notice, judgment may be entered against the defendant on proof of notice and default; and on trial the defendant shall be confined to the defense he may have set forth in answer to the rule, unless amendment be allowed by the Court for cause shown.

Rules 122, 123, 124, 125 and 126 are suspended by the statute.





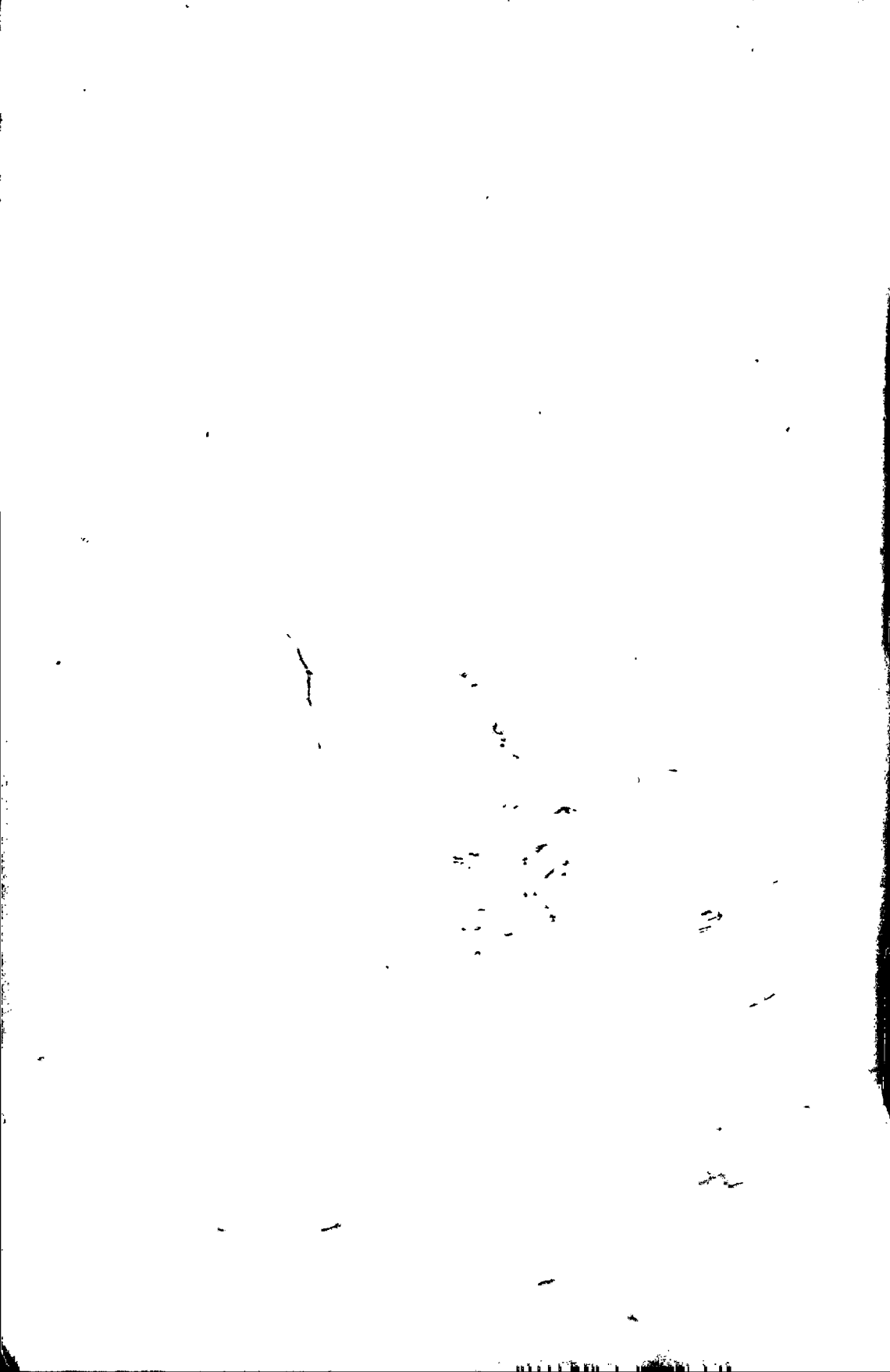
## APPENDIX A.

### DECISIONS UNDER THE PROCEDURE ACT OF 1887.

P. L., 271, MAY 25.

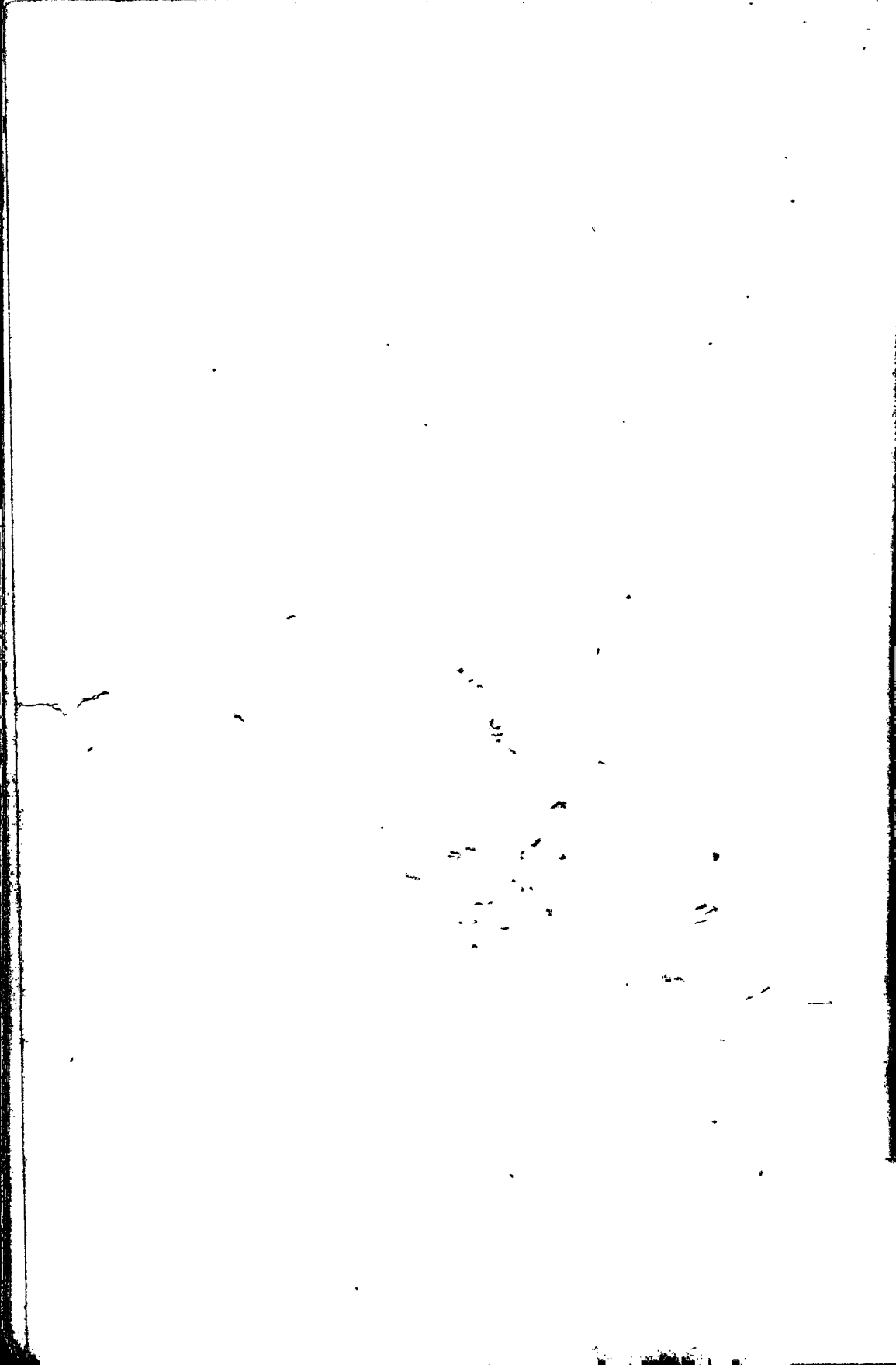
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1. Krause *et al* vs. Penn. R. R. Co., 4 Co. Ct. Repts., page 60, Constitutional law, Demurrer to Statement, Actions *ex contractu* and *ex delicto*, See also Vol. 20, W. N. C., 111.
2. Morse vs. Clem, 4 Co. Ct. R., 118. Practice, Assumpsit Writ, Amending form of Action, Variance, Costs, Continuance, Acts of May 10, 1871, May 25, 1887.
3. Humphrey *et al*, Adm'rs vs. Smith, Vol. 4 Co. Ct. R., 169. Practice, Judgment for want of an appearance, Act of May 25, 1887.
4. Goldbeck *et ux* vs. Brady, Vol. 4 Co. Ct. R., 169, Practice, Statement of Claim, Joinder of Husband, Endorsed Note, Acts of May 25 and June 3, 1887.
5. Bloomsburg Banking Co. vs. Mourey, Vol. 4, Co. Ct. R., 247, Practice, Procedure, Time of taking judgment by default under Act of May 25, 1887, Affidavit of defence. ✓
6. Jones vs. Rocket, 4 Co. Ct. R., 480. Practice, Act of May 25, 1887, Statement.
7. Susquehanna Mutual Fire Ins. Co. vs. Reinoehl & Meily, Vol. 4, Co. Ct. R. 161, Practice, Pleas under Act of May 25, 1887, Notice of special defence under general issue.
8. Smith vs. Weyant, 4 Co. Ct. R. 386, Assumpsit, Covenant in Mortgage, under Act May 25, 1887.
9. Blair vs. Warden, 4 Co. Ct. R., 464, Judgment for want of Affidavit of defence, under rules of Court. See also Com. vs. McCutcheon, 4 Co. Ct. R., 309.



APPENDIX—COMMON PLEAS.

10. Zimmerman vs. Kuebler, 4 Co. Ct. R., 607, Practice, Procedure under Act May 25, 1887, Judgment for want of affidavit of defence, Copy of lost instrument. ✓
11. Kauffman vs. Jacobs, 4 Co. Ct. R., 462, Statement under Procedure Act of May 25, 1887.
12. Breman vs. Francy, 5 Co. Ct. Reports, 212, Practice, Procedure, Affidavit of defence, Sufficiency of Statement, Policy of Insurance under said Act.
13. Tombler vs. Dinan, 5 Co. Ct. Rep., 309, Practice, Procedure, Affidavit of Claim, Rule of Court, Act of May 25, 1887.
14. Lincoln *et al* vs Martin *et al*, 5 Co. Ct. R., 333, Practice, Act of May 25, 1887. Statement of demand, Particularity.
15. Fix *et al*, vs. Pa. Schuylkill Valley R. R. Co., 5 Co. Ct. R., 420, Procedure and Practice, Pleas in Abatement. The Act of May 25, 1887, abolishing special pleading, has no application to pleas in abatement.
16. Paff vs North Bangor Co., 5 Co. Ct. R., 543, Practice, Foreign attachment, Affidavit of defence, Act of May 25, 1887.
17. Biddle v. Stuckey, Vol. 3, Co. Ct. R., 377, Practice, Act of May 25, 1887, Amending form of Action.
18. Marquez vs. Cresswell, 3 Co. Ct. R., 378, Practice, Act May 25, 1887, Amending form of Action.
19. Bank vs. MacCalla, Vol. 3, Co. Ct. R., 378, Practice, under Act 1887, Amending form of Action.
20. Van Dusen vs. Edwards, 3 Co. Ct. R., 379, Practice under Act of May 25, 1887, Amending form of Action.
21. Noll vs. Crosscup, 3 Co. Ct. R., 431, Practice under Act of May 25, 1887, Amending form of Action.
22. Markeze vs. Cresswell, 3 Co. Ct. R., 559, Corporations, Corporate Seal, Lease, Practice, Act of May 25, 1887.



APPENDIX—COMMON PLEAS.

23. Gould vs. Gage *et al*, Practice, Act of May 25, 1887, P. L. 271, Statement Affidavit of Defence. Warrant, Vol. 3, Supreme Court Digest, page 71. Same case reported in 118 Pa. St. Reports, page 559. Same case in 20 W. N. C., page 553. Same case reported in Vol. 45, Leg. Int., 56.

24. Comm. vs. McCutcheon, Vol 20, W. N. C., 365. New Procedure Act, 1887. Does not abrogate affidavit of defence rules. An action of Assumpsit will lie on a forfeited recognizance from the Quarter Sessions.

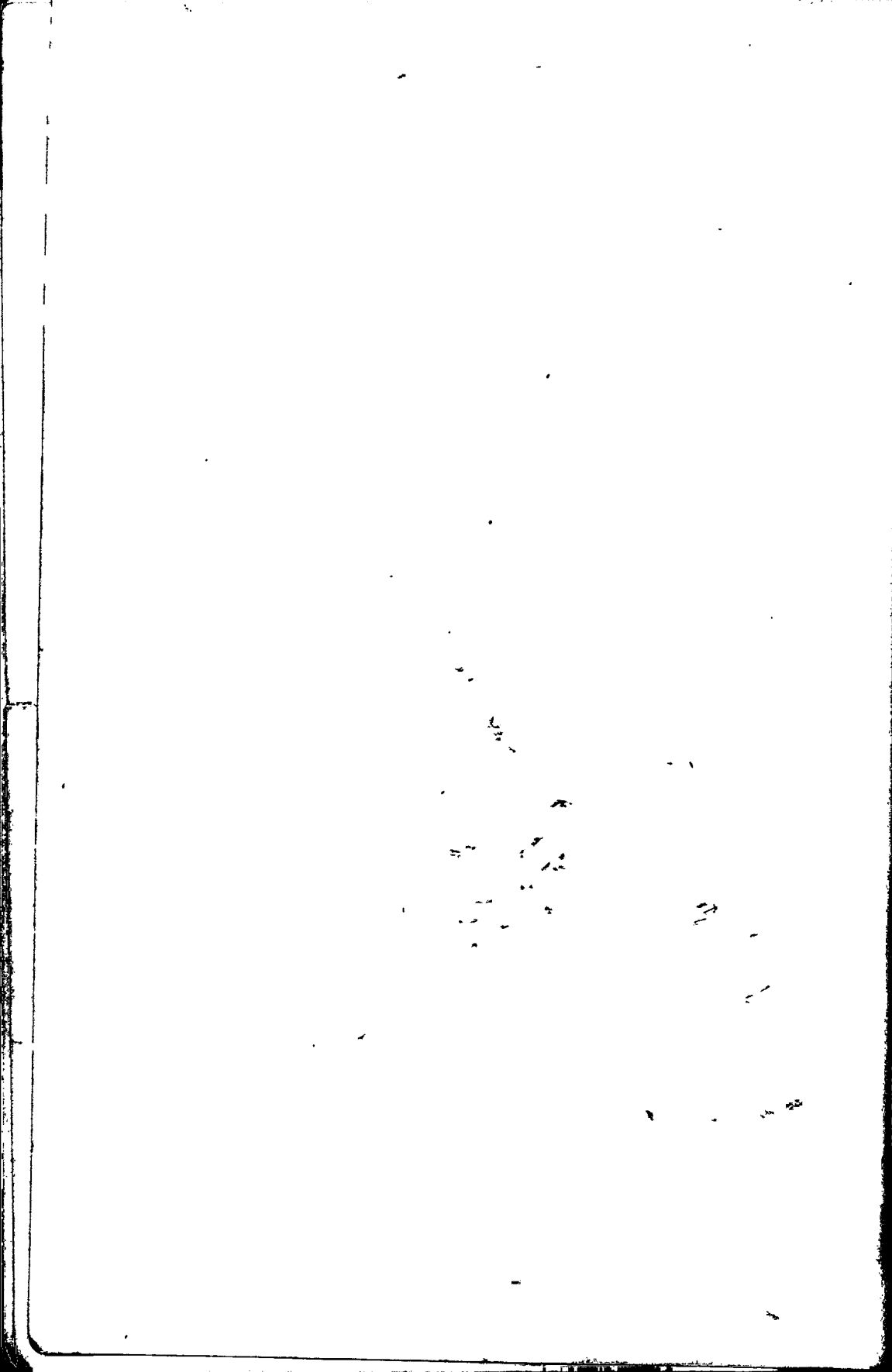
25. Third National Bank vs. McHenry, Vol. 20, W. N. C., 366, Practice, Judgment by default under Act of March 28, 1835 (P. L. 89). This Act not repealed by the new Procedure Act of May 25, 1887.

26. Schick to use, etc. vs. Goenner, 21 W. N. C., 63, Practice, Statement under Act of May 25, 1887, (P. L. 271), What is sufficient statement in assumpsit on a promissory note. Who may make the affidavit.

27. Grossman vs. Huber, 21 W. N. C., page 96, Act of May 25, 1887, Special pleas filed before the passage of the Act.

28. Roseman vs. Hydock, Vol. 21, W. N. C., 121, Practice, Act of May 25, 1887. If the copy of plaintiff's statement be served fifteen days before the return day, he is entitled thereafter to judgment for want of a sufficient affidavit of defence, although the writ was served within fifteen days of the return day.

29. Drake vs. Phila. & Reading R. R. Co., 21 W. N. C., 122, Practice, Statement under Procedure Act of May 25, 1887, Affidavit of defence. When a copy of a written contract is filed, it is not necessary to repeat in the statement any of the matters which appear in the copy of contract filed. Suretyship. An agreement to guarantee the punctual payment of the debt of another when due is a contract of suretyship, on which suit may be maintained before suing the principal debtor. Same case in 5 Co. Ct. R., 21 S. C., 45 Leg. Int., 35.



APPENDIX—COMMON PLEAS.

30. Schnable vs. Schmidt, Vol. 21, W. N. C., 153, Practice, Statement under Act of May 25, 1887. Sufficiency thereof.

31. Forepaugh *et al*, vs. Baker, Vol. 21, W. N. C. 299, Sup. Ct., Negotiable notes, Affidavit of Defence. Material facts of a statement drawn under the Act of May 25, 1887, must be traversed or denied in the affidavit of defence. Holder for value. Same case reported in Vol. 45, Leg: Int., 322.

32. McCullough vs. Boyd, Vol. 21, W. N. C., 497, Contracts for sale of land; Action for recovery of purchase money paid under, Affidavit of defence law, Affidavit of claim under Act of May 25, 1887.

33. Fahlnecker vs. Harrington, Vol. 21, W. N. C., 541, Practice, Affidavit of defence, Sufficiency thereof, Where the plaintiff makes an amended statement after a sufficient affidavit filed by defendant to the original statement the Court will not give judgment. Act May 25, 1887.

34. Sundstrom vs. Schofield, Vol. 21, W. N. C., 541, Practice, Act of May 25, 1887: Statement under must lay venue. Venue may be added by amendment. Slander a cause of action within the Act.

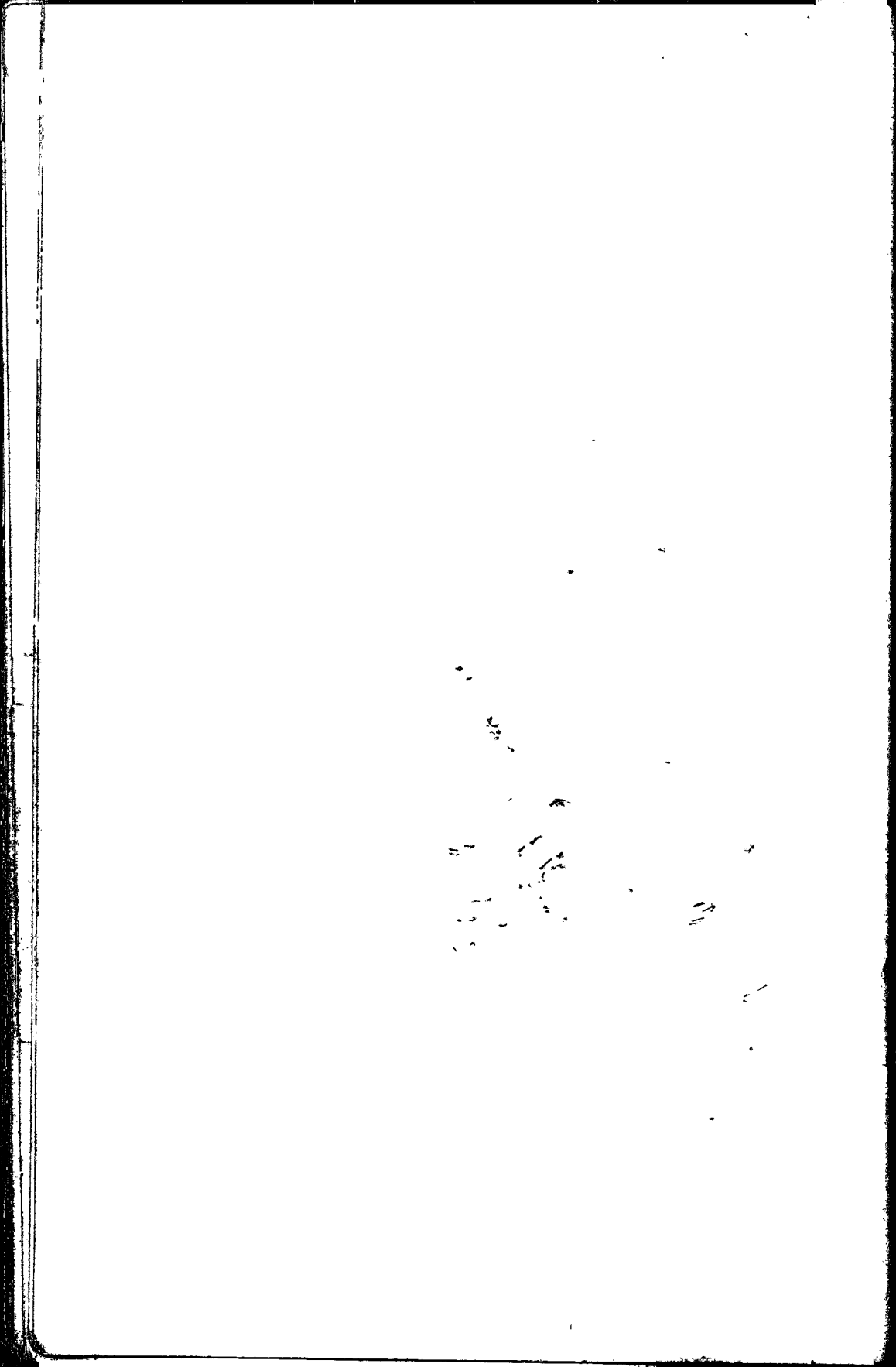
35. Slatteny vs. Penna. R. R. Co., Vol. 21, W. N. C., 556, Practice, Act of May 25, 1887, Pleas in abatement, Rule to strike off, Demurrer.

36. Commonwealth vs. Moore, Vol. 21, W. N. C., page 572, Practice, Sworn Statements under Act of May 25, 1887, may be filed within fifteen days of return day.

37. Grimley vs. Receveuve, Vol. 21, W. N. C., page 573, Slander, What words actionable, Whether they sustain the innuendo a question of fact, Statement and Affidavit under the Practice act of May 25, 1887. When sufficient upon information and belief.

38. Grist *et al*, vs. Mundell, Vol. 3, Supreme Ct. Digest, page 144, Affidavit of defence, Contract and Averments filed





APPENDIX—COMMON PLEAS.

held not to make a case within the Act of May 25, 1887, requiring an affidavit of defence.

39. Friederich vs. Anderson, Vol. 22, W. N. C., 524, Practice, Procedure Act of May 25, 1887. Sufficiency of statement, a statement which is merely a copy of book of original entries is insufficient.

40. Schafer vs. Brotherhood of Carpenters, etc., Vol. 22, W. N. C., 312, Statement, Demurrer, Act of May 25, 1887, Practice, Specific Statement of amount claimed to be justly due.

41. Warnecke vs. Sherman, Vol. 22, W. N. C., 225, Practice, Affidavit of Defence, Procedure Act of May 25, 1887. Copy of instrument in writing. Rule to produce original. Practice where the accuracy of the copy is denied. The defendant is entitled to see the original before he is called on to file his affidavit of defence.

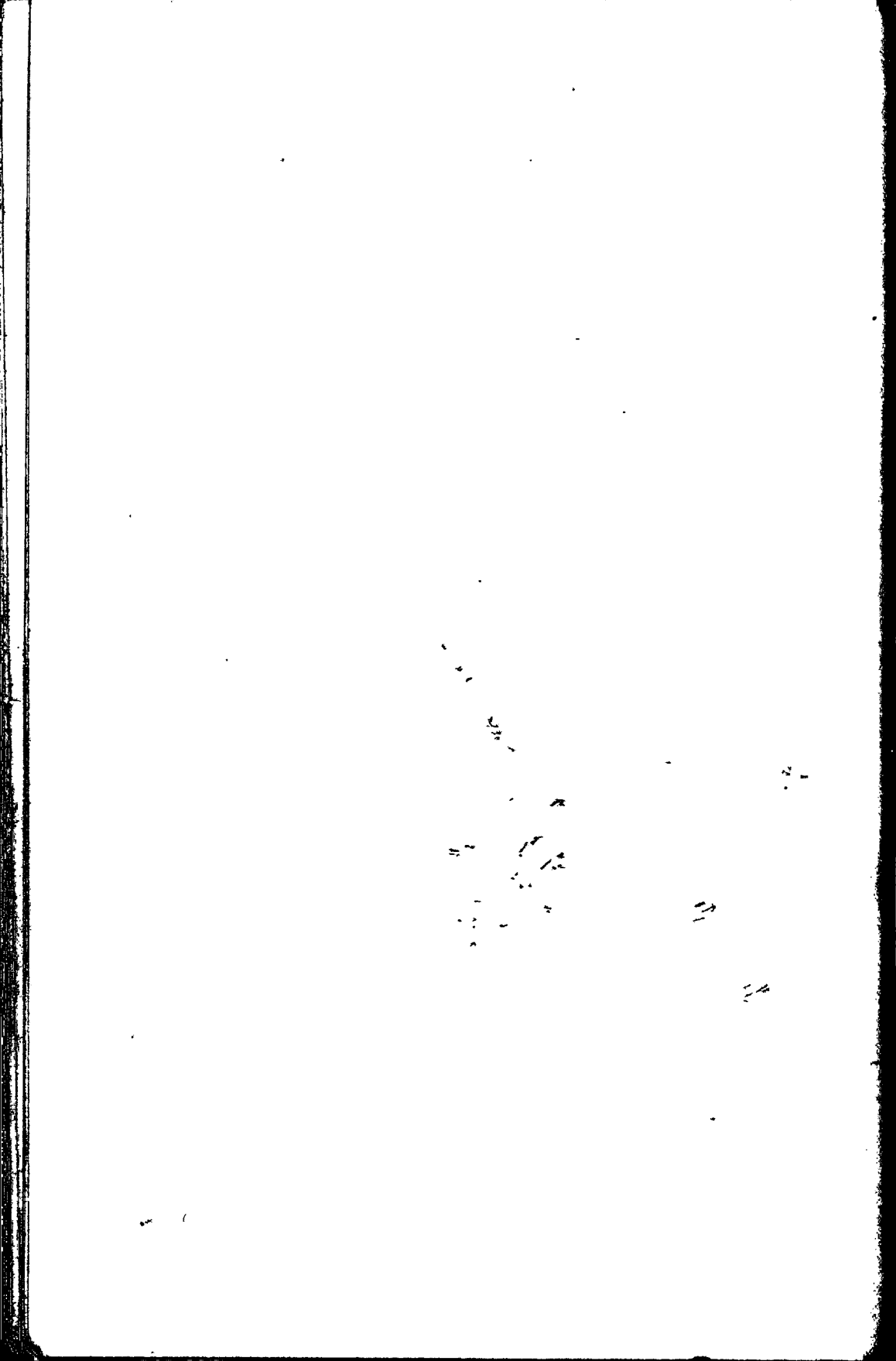
42. Krauskopf vs. Stern, Vol. 45, Leg. Int., 4. Under the present rules of Court all declarations, whether in actions *ex contractu* or *ex delicto*, must be supported by affidavit.

43. Merchants' National Bank vs. Brooks & Co., 23 W. N. C., page 67.

Statement, Act of May 25, 1887, Practice, Signing of Statement, Married Woman, Act of June 3, 1887. The debt or obligation of a married woman, which she is under a moral obligation to pay, is a sufficient consideration to support her express promise to pay made after the passage of the Married Persons' Property Act.

44. A policy of insurance is within the provisions of the Procedure Act of May 25, 1887, in regard to affidavits of defence, the Act requiring an affidavit of defence in all actions of assumpsit, without regard to the cause of action.

Where the insurance company neglects to attach to the policy a correct copy of the application, as required by the Act of May 11, 1881, it cannot object that a copy of the application

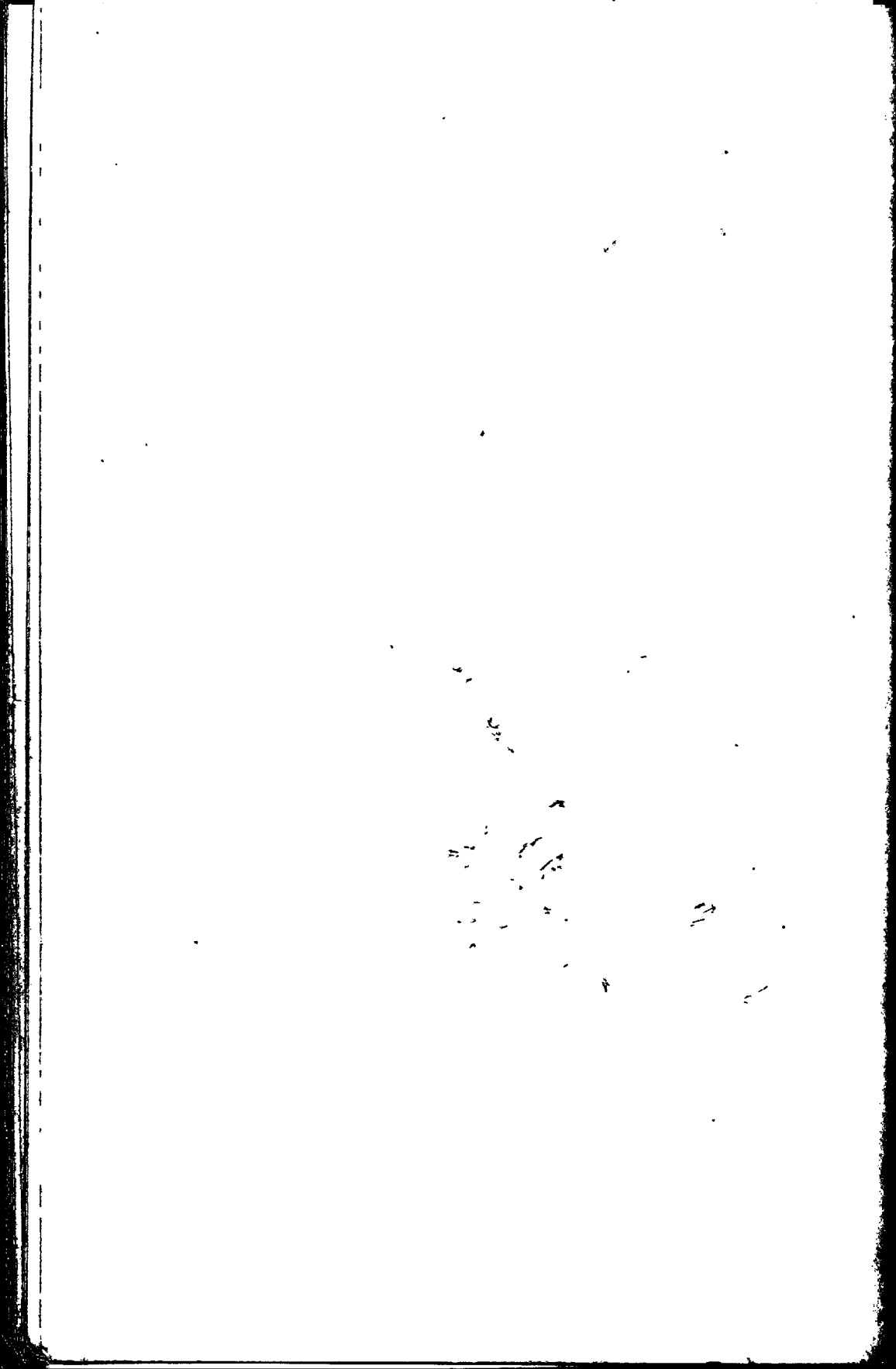


APPENDIX—COMMON PLEAS.

has not been filed in the case. Coburn vs. Life Association, Vol. 5, Common Pleas Reporter, page 23. McPherson, P. J.

45. Marshall vs. Neiman, Vol. 6, Co. Ct. Repts., page 176. There is no provision in the Act of May 25, 1887, for taking judgment for want of an affidavit of defence, on appeal from the judgment of a justice of the peace.

The local Act of March 5, 1872, as to York County, providing for thirty days' notice in writing, in case of such judgment, is not affected by the Act of 1887. Gibson, P. J.



# RULES OF THE EQUITY PRACTICE.



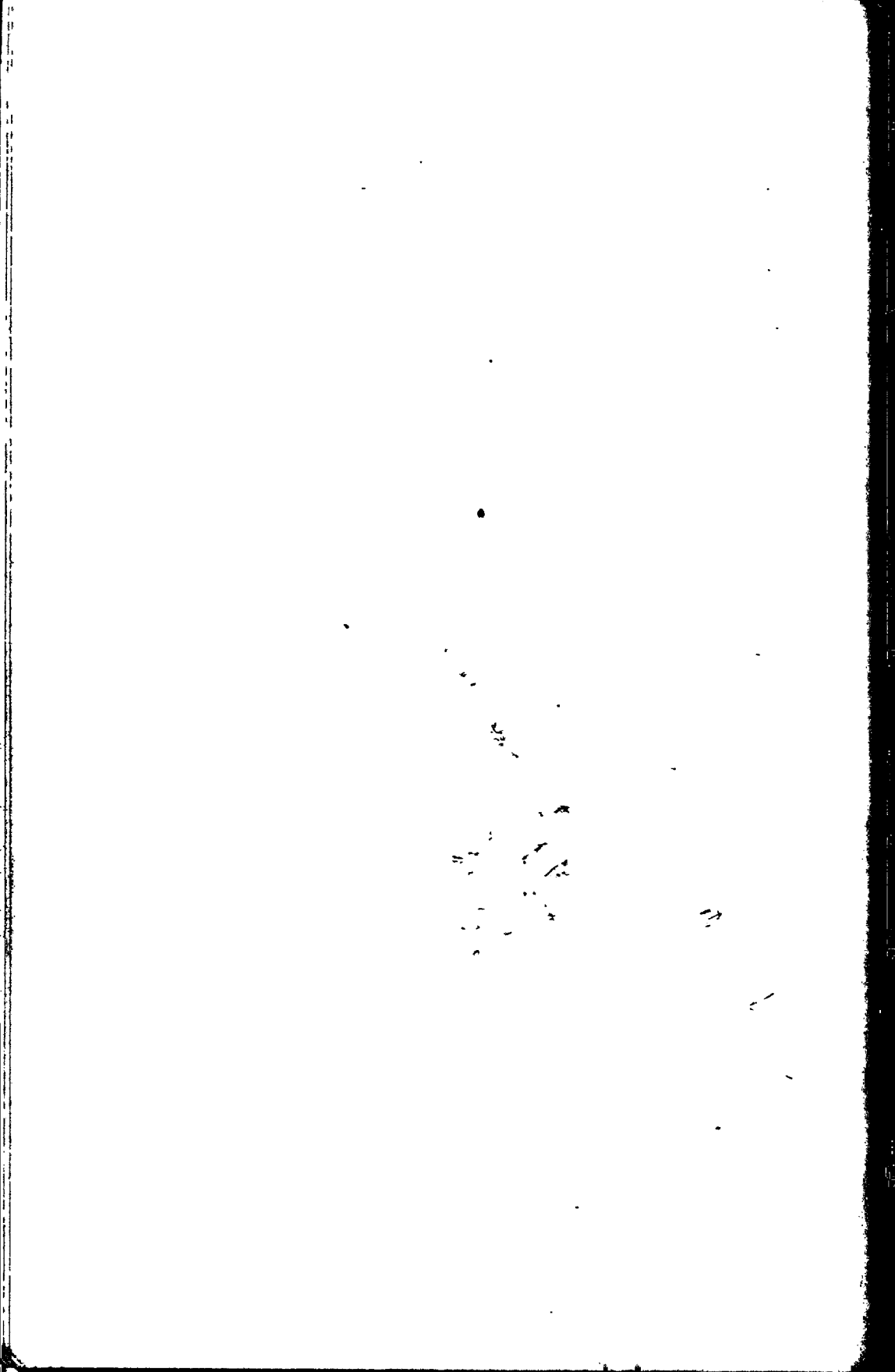
Ordered October 20, 1879, that a special list be made, to be termed the Equity List, upon which shall be placed all causes in equity, as soon as the bill shall be filed, and which shall contain a brief abstract of the Appearance Docket, setting out the various orders, rules, &c., taken in the cause, and the disposition thereof. And the Court, while in session, shall always be open for the purpose of hearing all matters specified in Rule No. 1 of Rules in Equity. Orders, general and special, will be made from time to time, with reference to hearing causes on said list, on their merits. (C. P. No. 1, No. 373, December T., 1879.)

The equity sides of the Court shall always be open for the purpose of hearing applications by counsel for the fixing of a special time for hearing causes in equity upon their merits, and no cause shall be so heard unless a time be fixed by the Court for the hearing thereof not less than five days from such application, of which time the opposing counsel shall have at least three days' notice, unless the same be waived. (C. P. No. 1, Dec. 24, 1880.)

## Rule 17.

Whenever reference of any matter shall be made to a master to examine and report thereon, if the parties shall fail to present to him for hearing the matter referred for twenty days after such reference, the order appointing the master shall become and be null and void and the same be taken as vacated without further order.

The master after such reference is brought before him shall proceed without delay to hear the matter referred and make report thereon to Court within six months; the master, how-



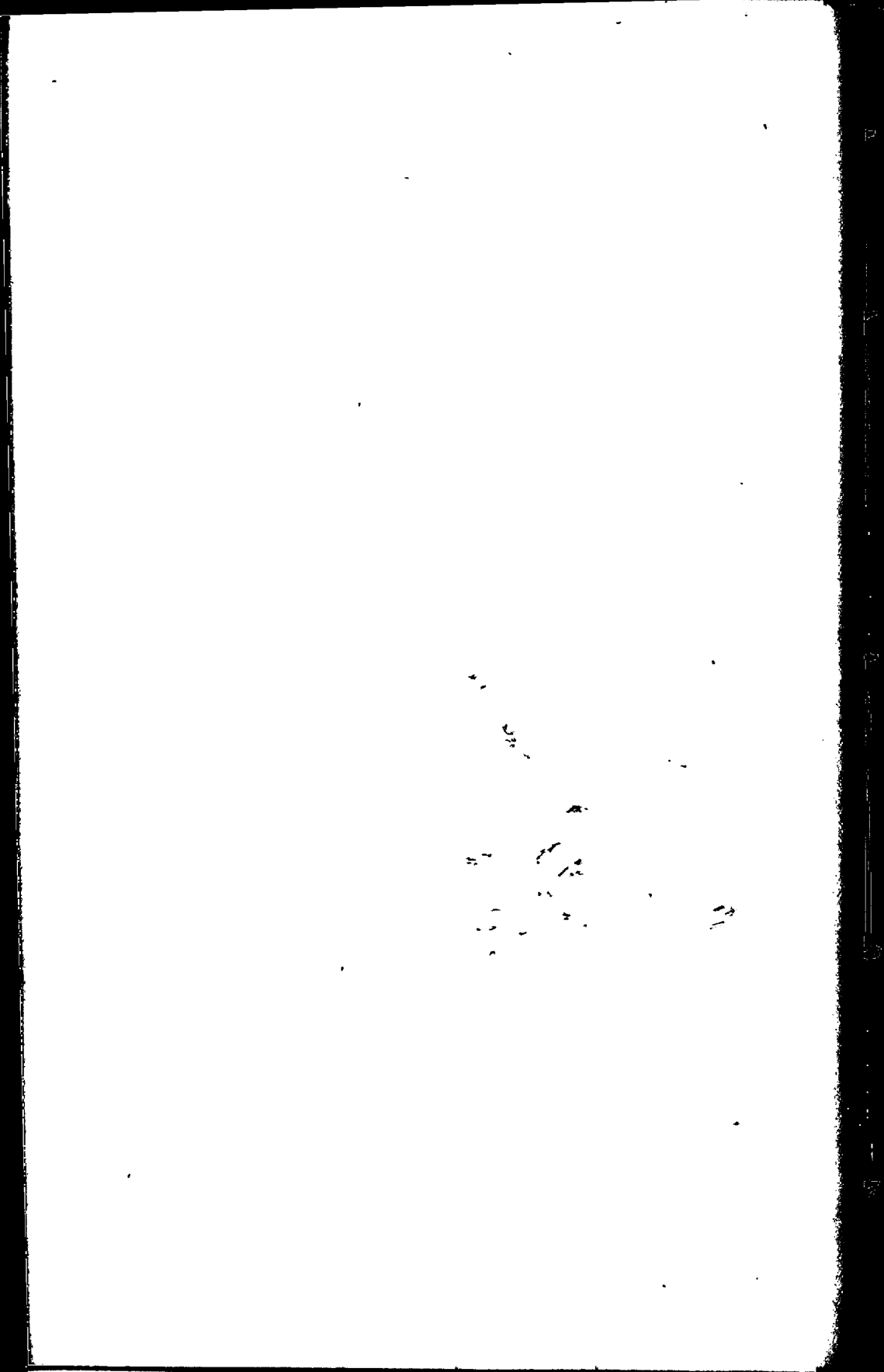
RULES OF THE EQUITY PRACTICE.

ever, having the right, with the written consent of the parties in interest, or their attorney, to extend the time for a further term of sixty days. The time for hearing and making report will not be extended by the Court, except upon petition filed setting out proper cause therefor. The master shall keep and return regular minutes of his proceedings, showing the different sessions and the length of time actually consumed and the names of the witnesses examined at each meeting and the cause of the delay, if any, so that the Court may adjust the amount for costs and expenses and direct how the same be paid.

No amount will be fixed for the fees of any master, trustee, attorney or other person whose compensation it shall be the duty of the Court to determine, except on motion and notice to the parties in interest or their attorneys, unless said master, trustee, attorney or other person shall file an affidavit of the amount he believes would be a reasonable and proper compensation for the services rendered; also, a statement in writing signed by said parties or their attorneys, that they consider the sum claimed to be reasonable and proper. In all cases where such statements are not filed at the time, any person may move to have his compensation fixed; such person shall file a detailed statement under oath of the services rendered by him, so far as the same may be practicable and necessary to enable the Court to properly determine said compensation, and the person for whose benefit the application is made shall give the parties interested, or their attorneys, five days' notice that such motion has been made, and of the time fixed by the Court for hearing thereof, proof whereof shall be filed in the case in which service was performed at or before the hearing.

Adopted in Common Pleas No. 1 as a part of the Equity Practice, January 10, 1885. These rules adopted and filed January 10, 1885, at No. 279, March Term, 1885.





RULES OF THE EQUITY PRACTICE.

**Rule 18.**

No argument on exceptions to Master's Report will be heard within ten days of the last day on which an appeal can be taken to the Supreme Court, to the term next ensuing.

BY THE COURT.

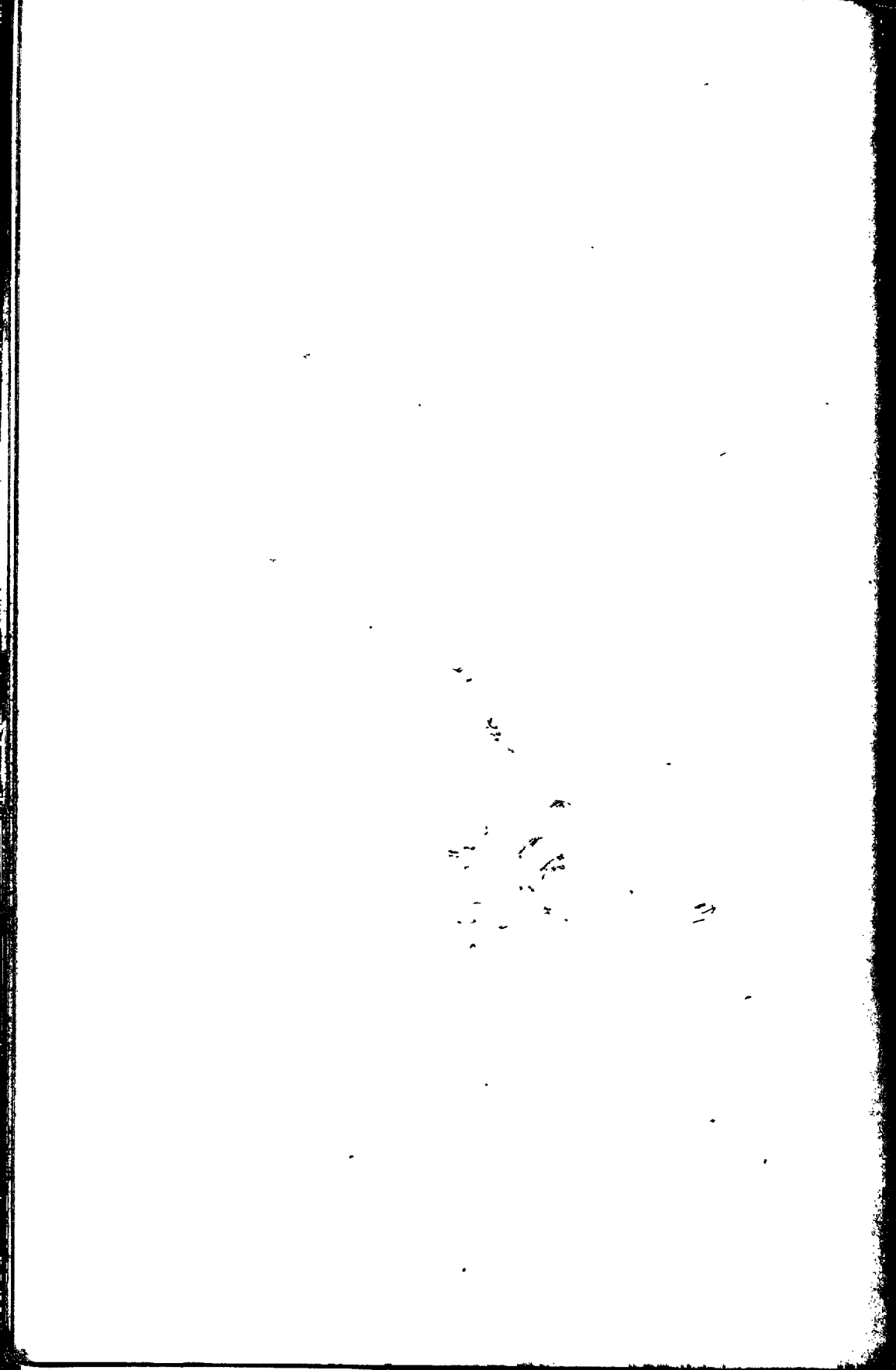
Adopted January 24, 1885.

**Rule 19.**

No cause will be heard upon its merits unless the time of hearing shall have been previously fixed by the Court.

BY THE COURT.

Adopted February 27, 1885.



# RULES OF THE SEPARATE ORPHANS' COURT.



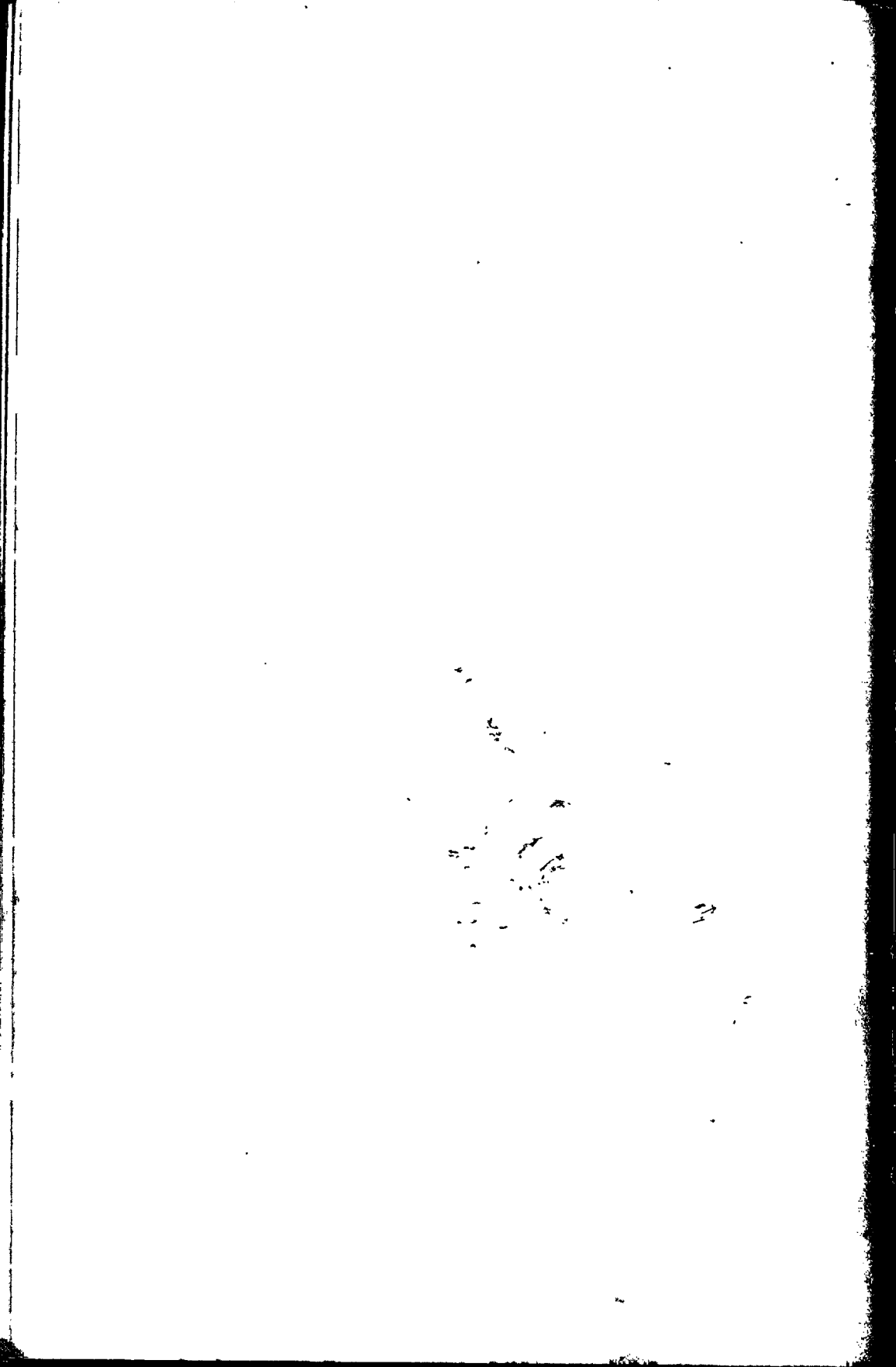
## ADDENDA.

And now, to wit, July 19, 1879, the following is adopted as a Rule of this Court :

All commissions to take testimony shall be returned within sixty (60) days from the issuance thereof, except where otherwise specially ordered. This order shall apply as well to commissions heretofore issued and now out, as to those hereafter issued.

And now, to wit, October 24, 1883, it is hereby ordered that the following clause be prefixed to Section 22 of Rule 5 of this Court, viz : All trustees' accounts not required by law to be filed in the Register's office, shall be filed with the Clerk, [after having been examined and passed by him], who shall give notice thereof by publication, and present said accounts for confirmation *nisi* to this Court at the same time and in the same manner as the Register's list of accounts of administrators, executors and guardians are now by law published and presented, and upon such confirmation, the clerk shall copy said accounts into a docket to be kept by him for that purpose.

And now, January 31, A. D. 1884, it is ordered that in all cases in partition, the attorney for petitioner shall give the parties interested, or their attorneys, seven days' notice of his intention to make application to this Court on a day named, to have his fee taxed, as provided by law in such case, and the amount claimed by him ; and shall thereupon file proof of such notice with the clerk of this Court.



RULES OF THE SEPARATE ORPHANS' COURT.

And now, to wit, December 8, 1885, it is ordered that the bill of costs for services of Clerk of Orphans' Court, made February 18, 1879, be amended by adding the following :

For filing and entering petition for appointment of guardian for the person of minor, \$1.00.

The following shall be substituted for Section 41, Rule 11 :

The first Mondays of June, September, December and March shall be the regular argument days, and entry on the argument list, (except in cases otherwise provided for), shall be sufficient notice to all parties for whom appearance has been entered; to all other parties five (5) days' notice before hearing shall be given. But cases may be called for argument on any Wednesday or Saturday upon five days' special notice to parties interested, or their attorneys of record.

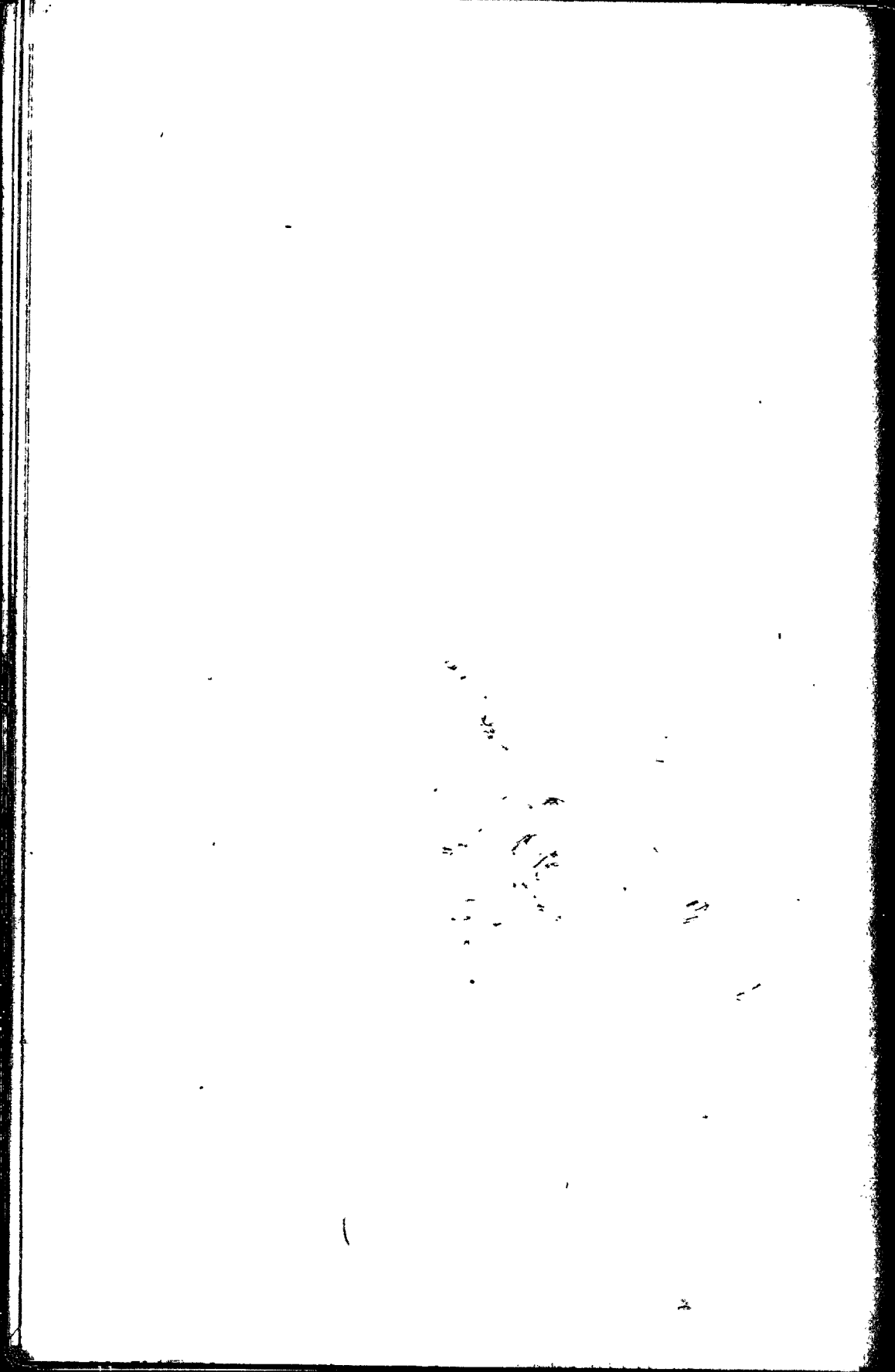
And now, to wit, January 23d, A. D. 1889, it is ordered that on and after the first Monday of March next, the following Rules of Practice shall be substituted for Section 27, Rule 6, and Sections 60, 61 and 62 of Rule 17, as Rules of this Court :

## Rule 6.

SECTION 27. The Clerk shall append to each advertisement of the Register's list of accounts notice to parties interested :

(a) That an audit list will be made up of all accounts (except guardians) which shall show balances for distribution and all accounts to which exceptions shall be filed; and

(b) That such audit list will be taken up on the third Monday of the succeeding month, and continued thereafter each day (Saturday and Sunday excepted) until the whole list shall have been disposed of.



RULES OF THE SEPARATE ORPHANS' COURT.

**Rule 17.**

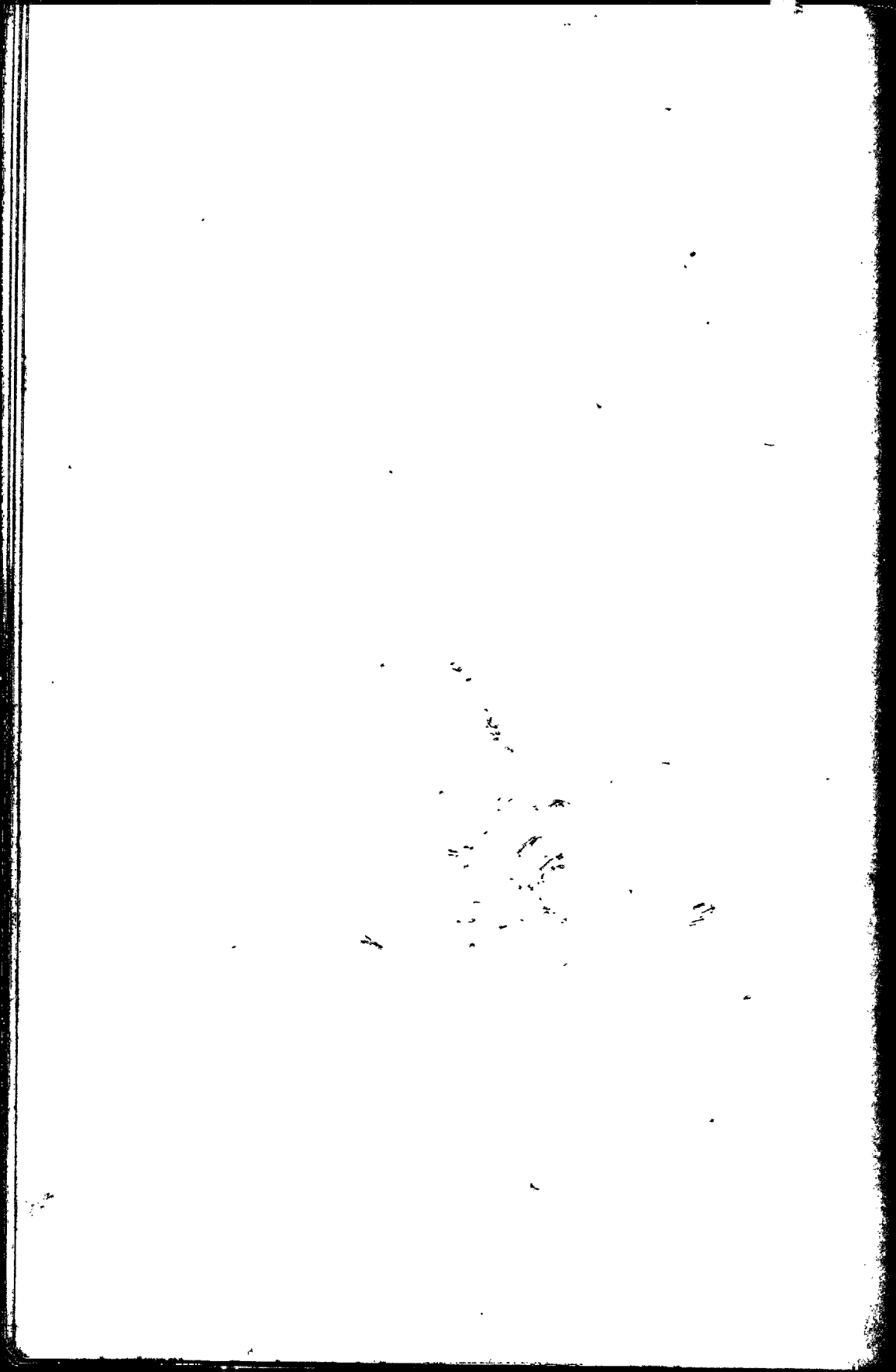
SECTION 60. That there shall be ten regular terms of this Court held in each year, to be known and designated as the March, April, May, June, September, October, November, December, January and February Terms; said terms shall begin on the first Monday of each of said months, to continue, if necessary, until the commencement of the next succeeding term:

SECTION 61. Court will be held on the first Monday of each term and at such other times as may be necessary and proper.

SECTION 62. The regular return day, when not otherwise specified, shall be the first Monday of each month.

BY THE COURT.





R U L E S  
OF THE  
COURTS OF OYER AND TERMINER,  
QUARTER SESSIONS, ETC.

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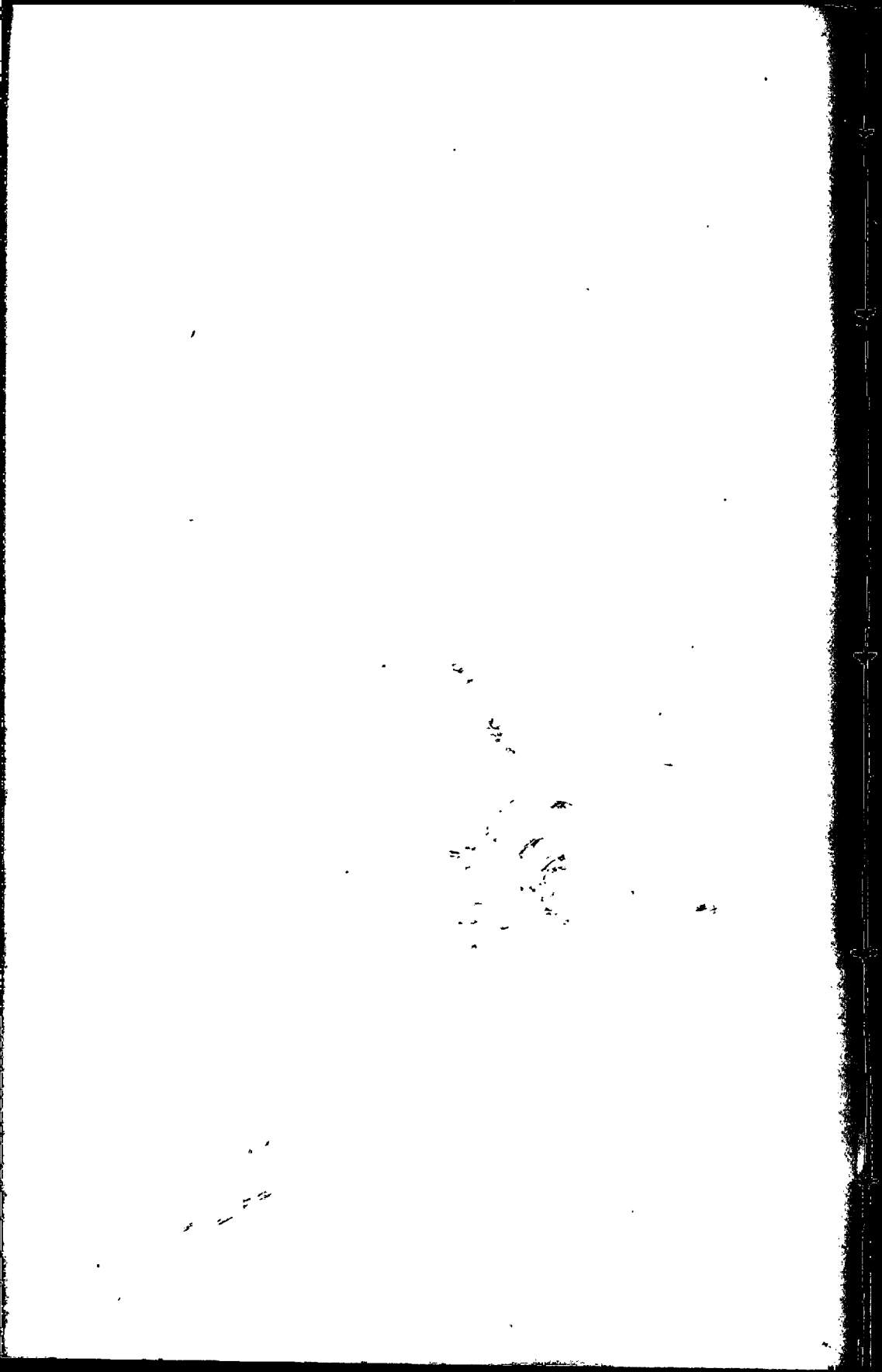
ADDENDA.

And now, March 3, 1883, it is ordered that, at the June and December Sessions, cases of surety of the peace and of desertion shall be called upon Saturdays, in the order in which they appear upon the calendar, and shall be disposed of upon first call, whether the parties be present or absent, unless otherwise ordered.

Magistrates must specially report upon their returns that they have notified the parties of this order, and the Clerk shall see that this requirement is complied with. (No. 33, December Term, 1882.)

And now, September 19, 1883, it is hereby ordered:

1. That hereafter, in all cases where a party is sentenced to pay a fine and costs, or costs only, the same shall be paid to the Sheriff, unless otherwise ordered by the Court.
2. That all processes for the collection of fines and costs, unless otherwise specially ordered by the Court, shall be issued to the Sheriff and executed by him.
3. That the Sheriff should make a tabulated statement, under oath, and return the same to Court the last day of each



RULES OF THE COURT OF OYER AND TERMINER.

term, showing the disposition of all processes put into his hands during the term, and the amount of fines and costs attached in each case.

BY THE COURT.

And now, September 19, 1883, it is hereby ordered:

1. That no witnesses shall be empowered on behalf of the Commonwealth to appear before the Grand Jury, or in Court, unless directed or authorized by the District Attorney, Assistant District Attorney or County Detective.

2. That the Clerk of Court shall enter on the record, in the Minute Book, the names of all witnesses sworn for the Commonwealth in each case.

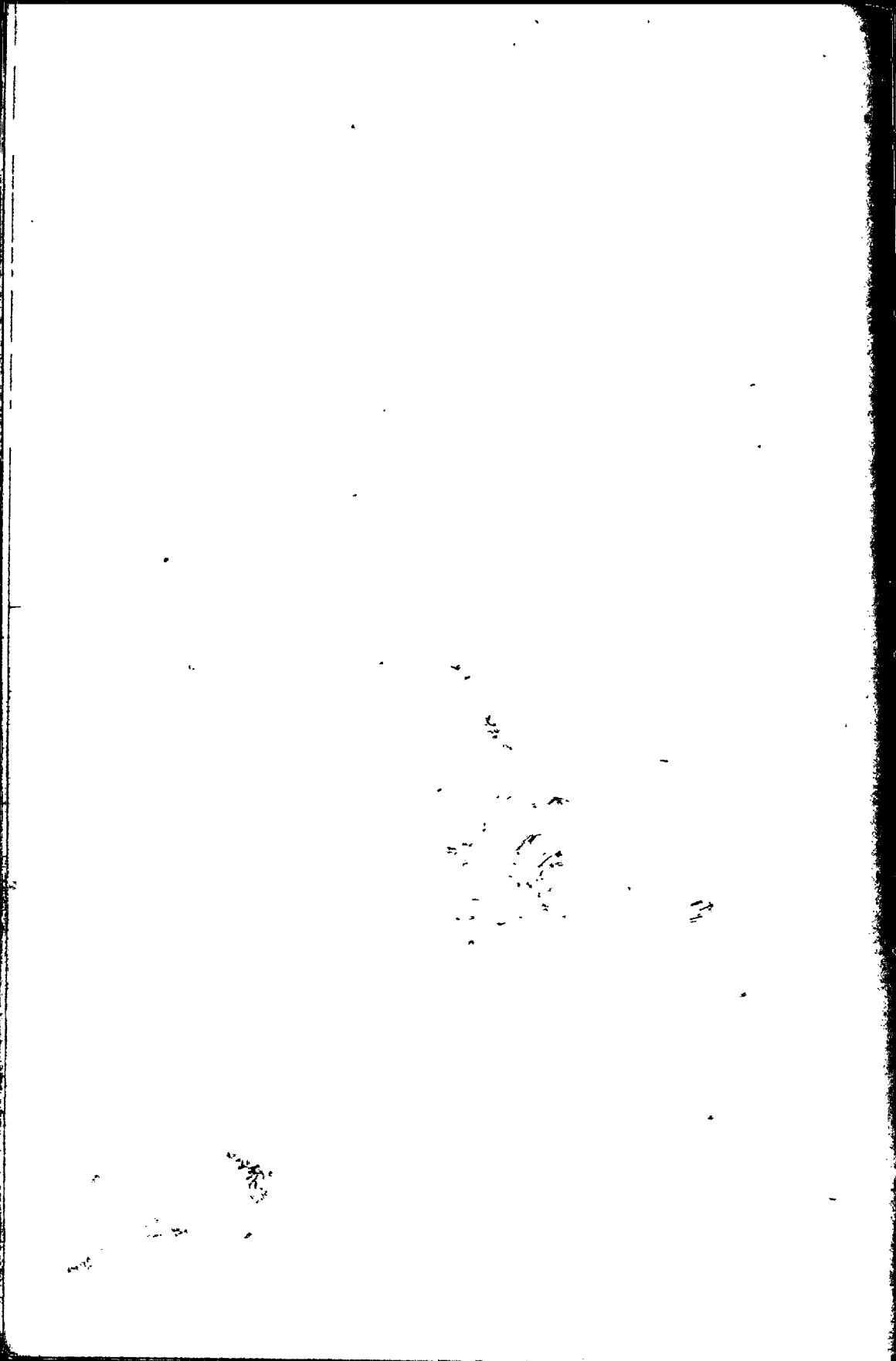
3. That all subpoenas for the Commonwealth shall be returned to Court by the officer directing or authorizing the same, and shall have indicated thereon the witnesses who were in attendance at Court.

4. That the Clerk shall not tax any fees for serving subpoenas except those thus endorsed; nor shall he tax, without the order of Court, any fees of witnesses as for the Commonwealth, who were not sworn before the Grand Jury or in Court, unless their name appear on such subpoena and are marked as in attendance at Court.

BY THE COURT.

And now, to wit, January 6, 1885, the following rule is adopted by this Court and ordered to be entered upon the record:

In all actions upon recognizances, whether said recognizances shall have been taken for the appearance of any person in Court or for any other purpose whatsoever, and in all actions upon bonds or recognizances entered into in connection with the granting of any license to sell liquors, the Commonwealth shall be entitled to judgment at any time after the re-



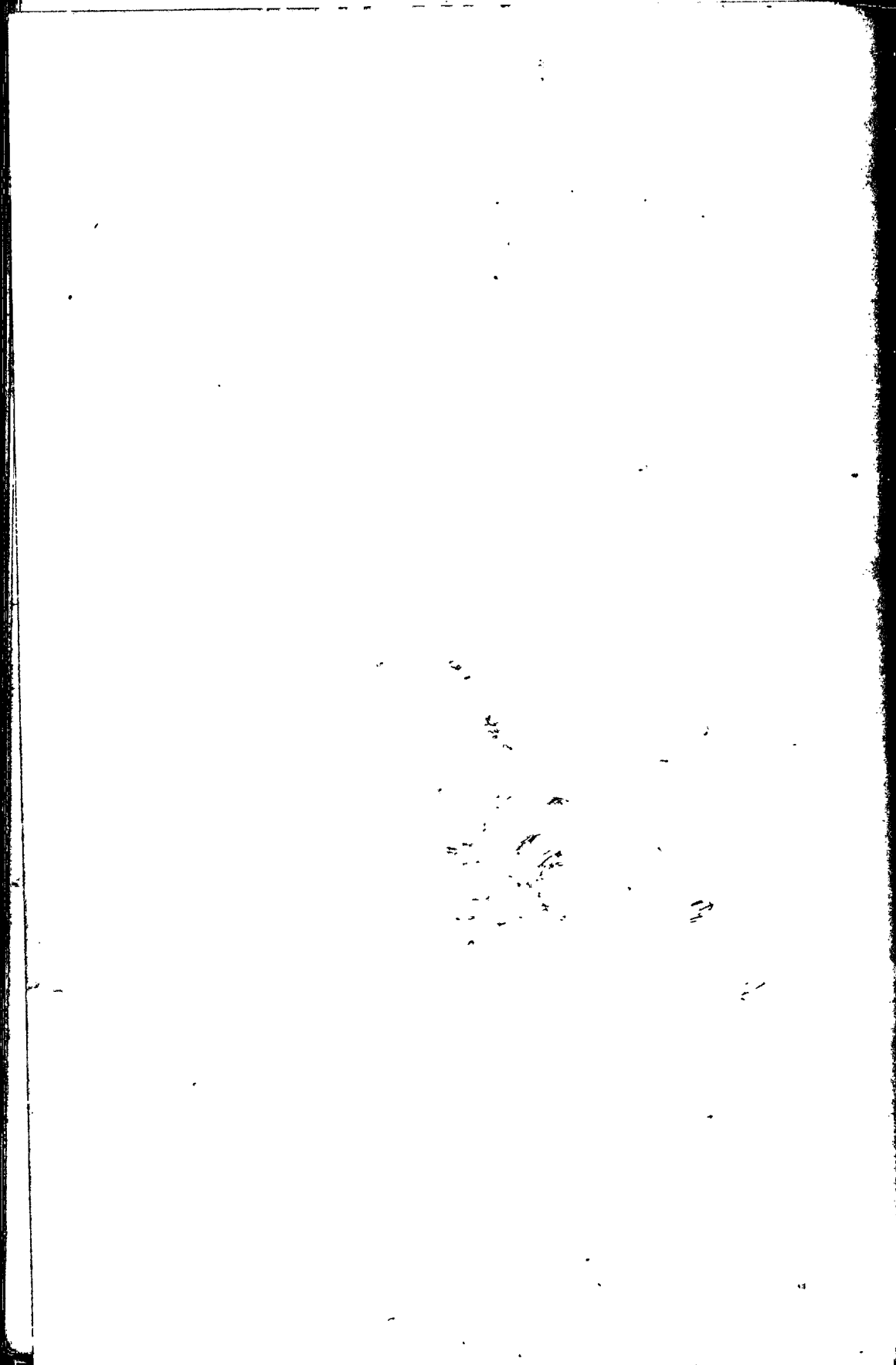
RULES OF THE COURT OF OYER AND TERMINER.

turn day and ten days' service of the writ, against all the defendants, except such as shall have by themselves or their agents filed an affidavit of defense, stating therein specifically and at length the nature and character of such respective defenses. And when the District Attorney considers any affidavit of defense insufficient he may enter a rule of course on defendant to show cause why judgment should not be entered for want of a sufficient affidavit of defense, and at the same time shall specify in writing wherein the affidavit is insufficient. And if the Court shall be of opinion that the affidavit is insufficient as a defense, judgment shall be entered against the defendant for want of a sufficient affidavit of defense.

But no such rule shall be called for argument unless the defendant or his attorney shall have had one full day's notice in writing of the intention to so call the same.

BY THE COURT.

No. 22, December Sessions, 1884, *in re* rule of court in regard to taking judgment on forfeited recognizances.



A M E N D M E N T S  
OF  
RULES IN THE SUPREME COURT  
OF PENNSYLVANIA.

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PER CURIAM :

It is ordered that Rule 7, in regard to the admission of attorneys from other States be hereby abolished; and in lieu thereof, the following Rule is substituted :

Attorneys from other States, who have been admitted to the Court of Common Pleas of this State, may immediately thereafter be admitted in this Court, provided That they are in good standing, and have practiced for five years in the State from which they have removed.

RULE RELATING TO PAPER BOOKS.

PER CURIAM :

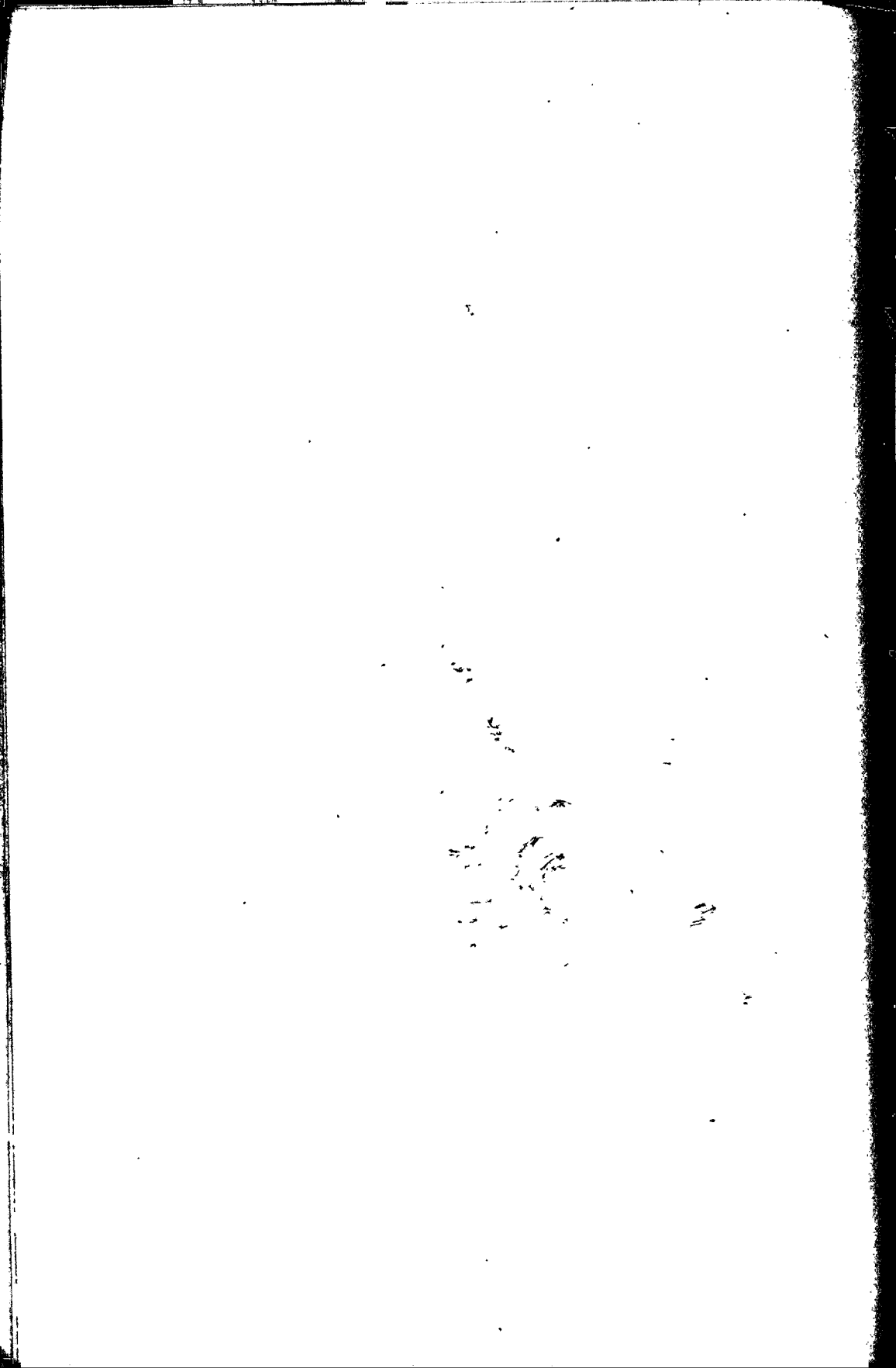
It is ordered that the following addition be made to Rule (XVII and) XIX in regard to Paper Books :

10. Counsel citing decisions of this Court from legal periodicals, shall certify, at the end of their briefs, that such cases are not reported in the State Reports. In the absence of such certificate the cases cited will not be considered.

Filed February 6, 1888.

And now, October 8, 1883, it is ordered, that the hour list be suspended in the Western District during the time assigned to the argument of cases from the county of Allegheny. The argument of each case shall be limited to one hour, unless the Chief Justice, upon an examination of the paper-books, shall





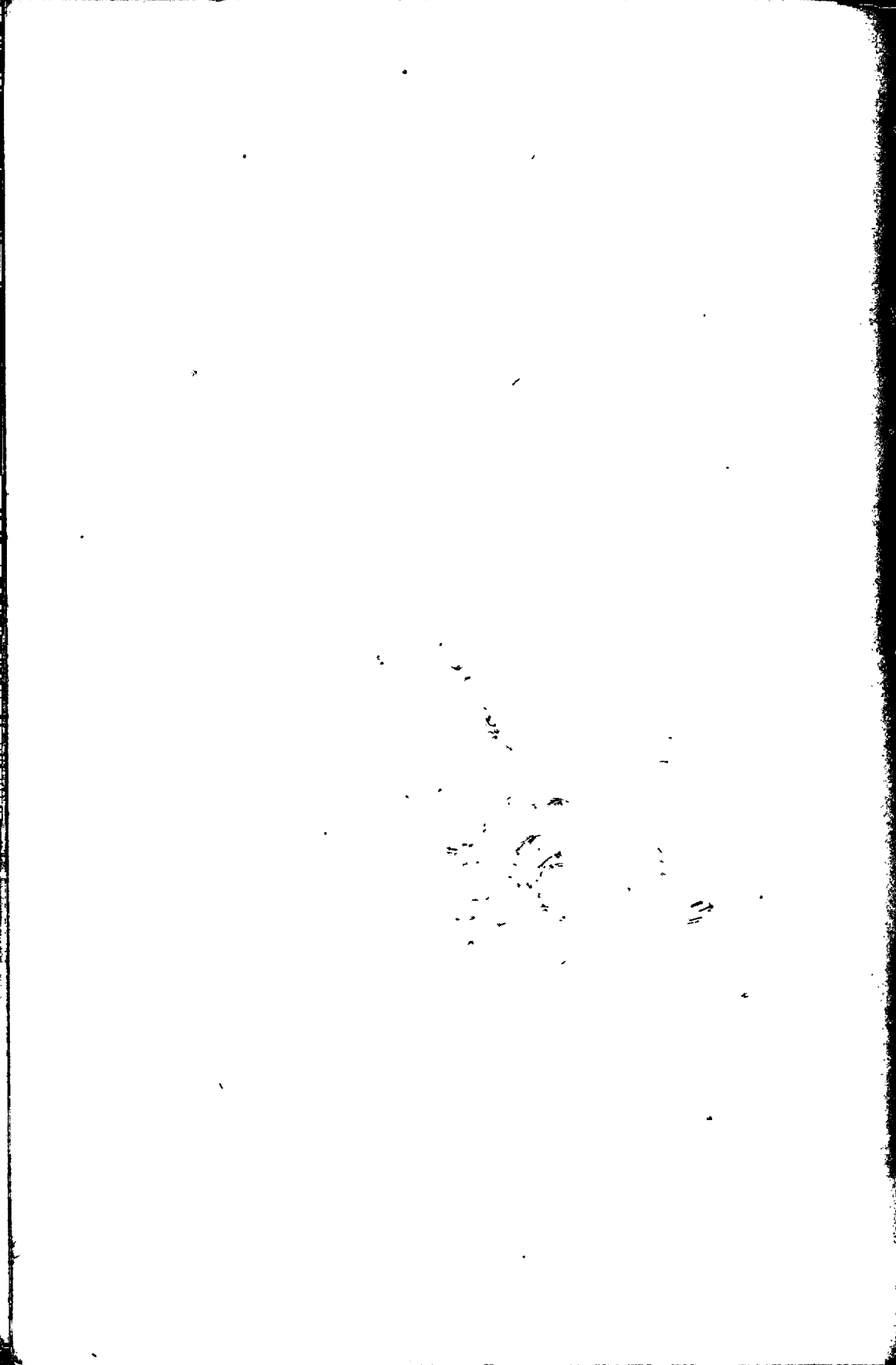
AMENDMENTS—SUPREME COURT.

consider more time to be necessary. Fifty causes shall be assigned to each week, and a list thereof shall be made up and published by the Prothonotary on the Saturday preceding; said causes shall be set down in the order of their term and number, and shall be numbered on said list consecutively. The first fifteen cases on said weekly list shall be assigned for argument on Monday and for each succeeding day of the week, except Saturday, the first twelve cases theretofore undisposed of on said list shall be assigned for argument.

No cause on said list shall be continued when reached, except for sufficient cause. Engagements of counsel in the lower Court will not be recognized as a sufficient reason for the continuance or postponement of a cause, except where they are actually engaged in a trial which has been commenced on a previous week and is unfinished. The short list and the rules in regard to capital cases shall remain as heretofore. This order shall take effect forthwith.

Adopted October Term, 1883.

PER CURIAM,  
ULYSSES MERCUR,  
*Chief Justice.*



# RULES OF THE BOARD OF PARDONS.

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## Rule 1.

The Board will meet in open session to consider applications on the third Tuesday of each month.

## Rule 2.

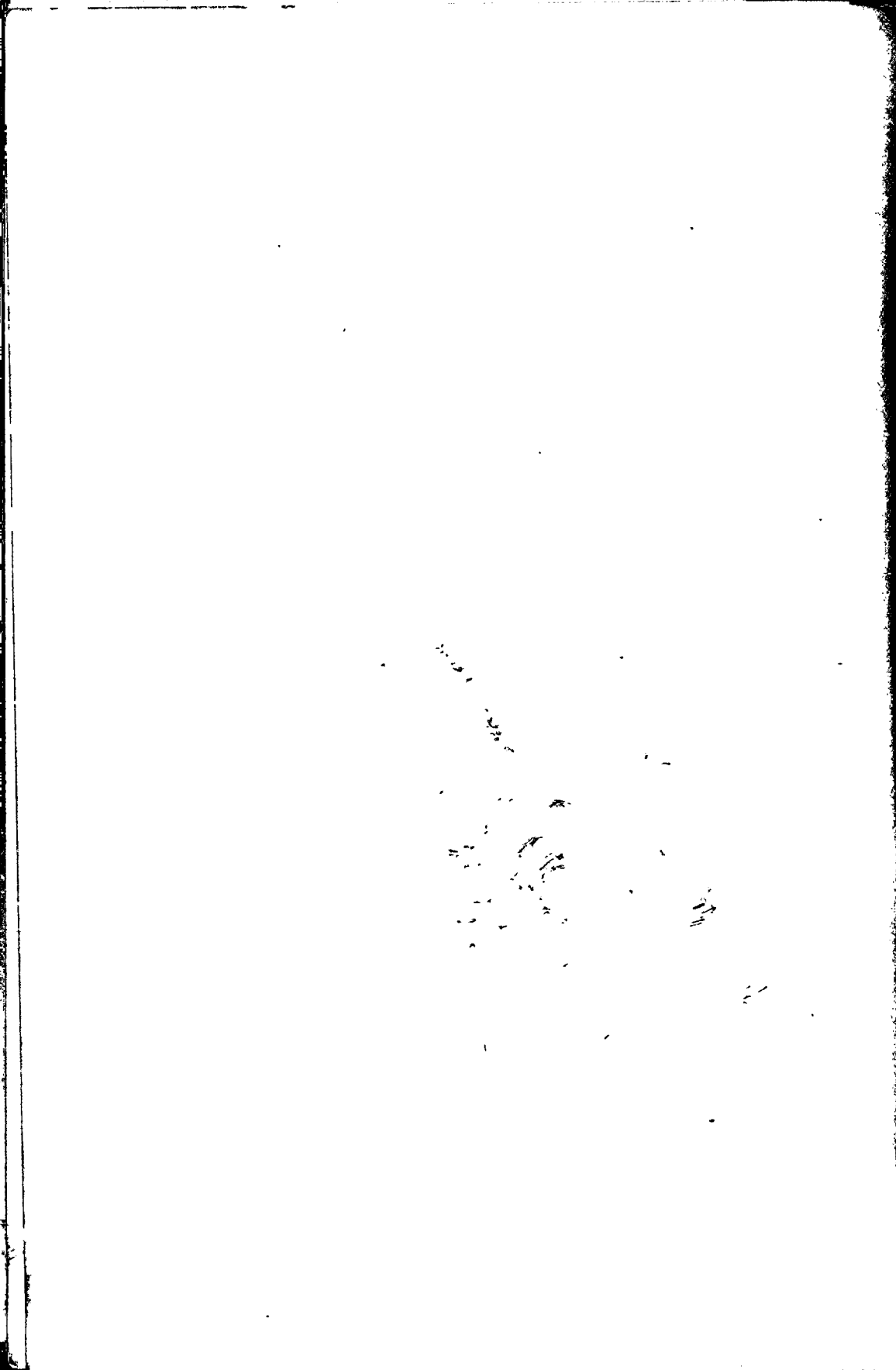
The Board must be furnished with proof that notice of application for pardon has been published once a week for two consecutive weeks in a newspaper printed in the county or city in which conviction was had, said proof to be made by the affidavit of the publisher of the newspaper that the publication has been made as required by this rule.

## Rule 3.

Notice of the application must be given to the Judge who tried the case and to the District Attorney, or attorney who prosecuted, stating when the application will be made, and the grounds or reasons upon which the application is based, and no grounds other than those contained in such notice will be entertained by the Board. Proof must be made that such notice was served by giving a copy to said Judge, District Attorney, or attorney who prosecuted.

## Rule 4.

Notices of applications for pardon of persons convicted in the cities of Philadelphia and Pittsburgh must be given to the Mayors and Chiefs of Police of said cities respectively, and proof of the service of such notice be filed in each case.



### Rule 5.

The following papers, written in a clear and distinct hand, must accompany every application for pardon :

1. A certified copy of the whole record, including docket entries, minutes of the Court, copy of indictment, pleas and all other papers on file relating to the case.

2. A brief statement of the reasons sustaining the application, the facts in the form of a history of the case, and a schedule of papers will be required in every application; the notes of evidence taken on the trial, letters from responsible persons in the community where the crime was committed, should also be furnished.

### Rule 6.

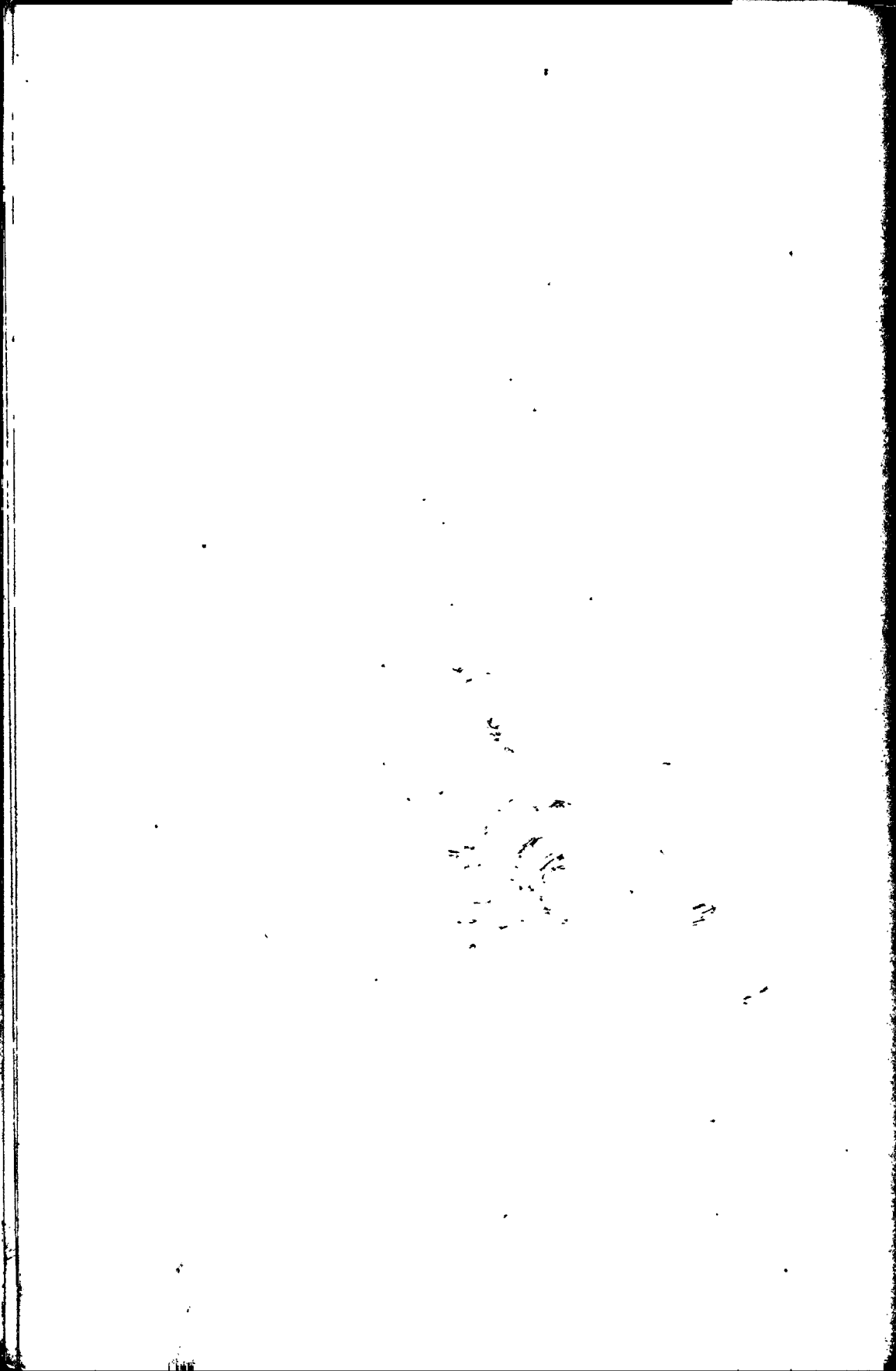
All applications and correspondence must be addressed to or filed with the Recorder of the Board at Harrisburg, that the same may be prepared for presentation to the Board at its next session. No application will be heard or considered unless the same, and the papers upon which it is based, including proof of notice required, have been filed at least ten days before said session, and in no instance will this rule be relaxed.

### Rule 7.

No application that has been refused by the Board will be reheard or reconsidered unless substantial grounds for reopening the case are formally presented and approved by the Board, and when submitted again the publication and notices required by Rules 2d, 3d and 4th must be made anew, and proof thereof, together with the additional reasons filed with the original papers, according to the provisions of Rule 6th.

### Rule 8.

All facts relied upon to sustain any allegation as a ground for pardon must be proved by depositions taken within the



## RULES OF THE BOARD OF PARDONS.

jurisdiction of the Court in which the conviction was had, before some person authorized to administer oaths, upon notice to the district attorney and to the attorney who assisted in the prosecution of the case (if any), and no fact will be considered by the Board unless so proved, except such as appear in the record and notes of evidence taken on the trial, the statement of the Judge before whom the case was tried, or of the officers or persons connected with the prison in which the applicant shall be detained.

### Rule 9.

In applications for pardons based upon the ground of a mis-trial or improper conviction, the allegations should be sustained by such reasons and evidence as would have been good ground for a new trial, and which, upon a second trial, should produce an acquittal.

Where the Court has overruled the same reasons for a new trial, on a motion based thereon, they will not be reconsidered, except on the recommendation of the Judge before whom the case was tried.

### Rule 10.

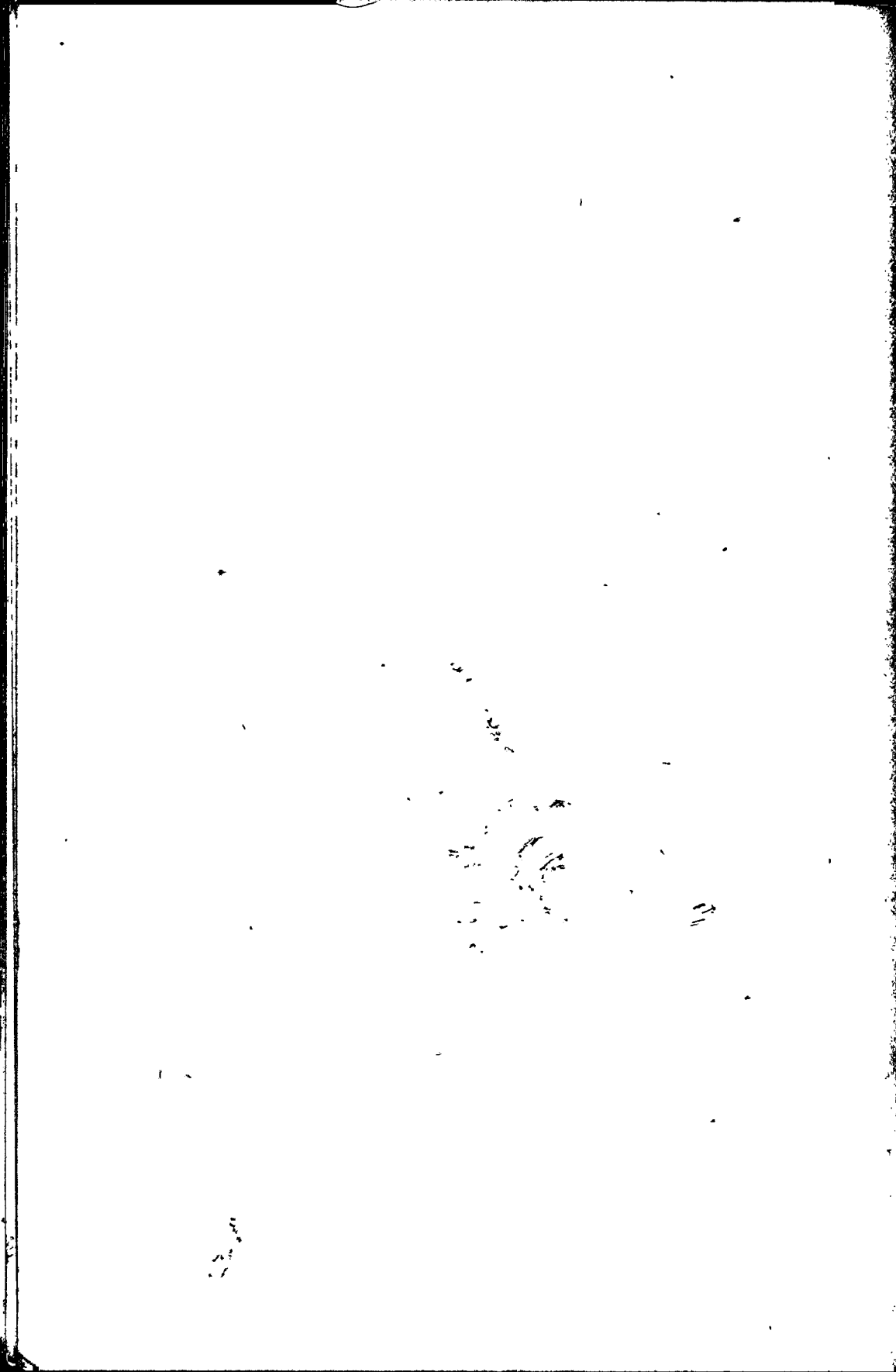
All applications properly on file will be considered by the Board, whether represented by counsel or not. No party will be allowed to occupy more than fifteen minutes in the oral presentation of any application, except in capital cases, unless by special permission of the Board.

### Rule 11.

No application will be considered if presented to any individual member of the Board.

Adopted 19th January, 1887.





# RULES REGULATING APPLICATIONS FOR LIQUOR LICENSES,

ADOPTED BY

THE COURT OF QUARTER SESSIONS

OF ALLEGHENY COUNTY.



## Rule 1.

All licenses granted shall be for one year from the first day of May, and shall expire on the first day of May of the following year, without regard to the date at which the same was issued.

## Rule 2.

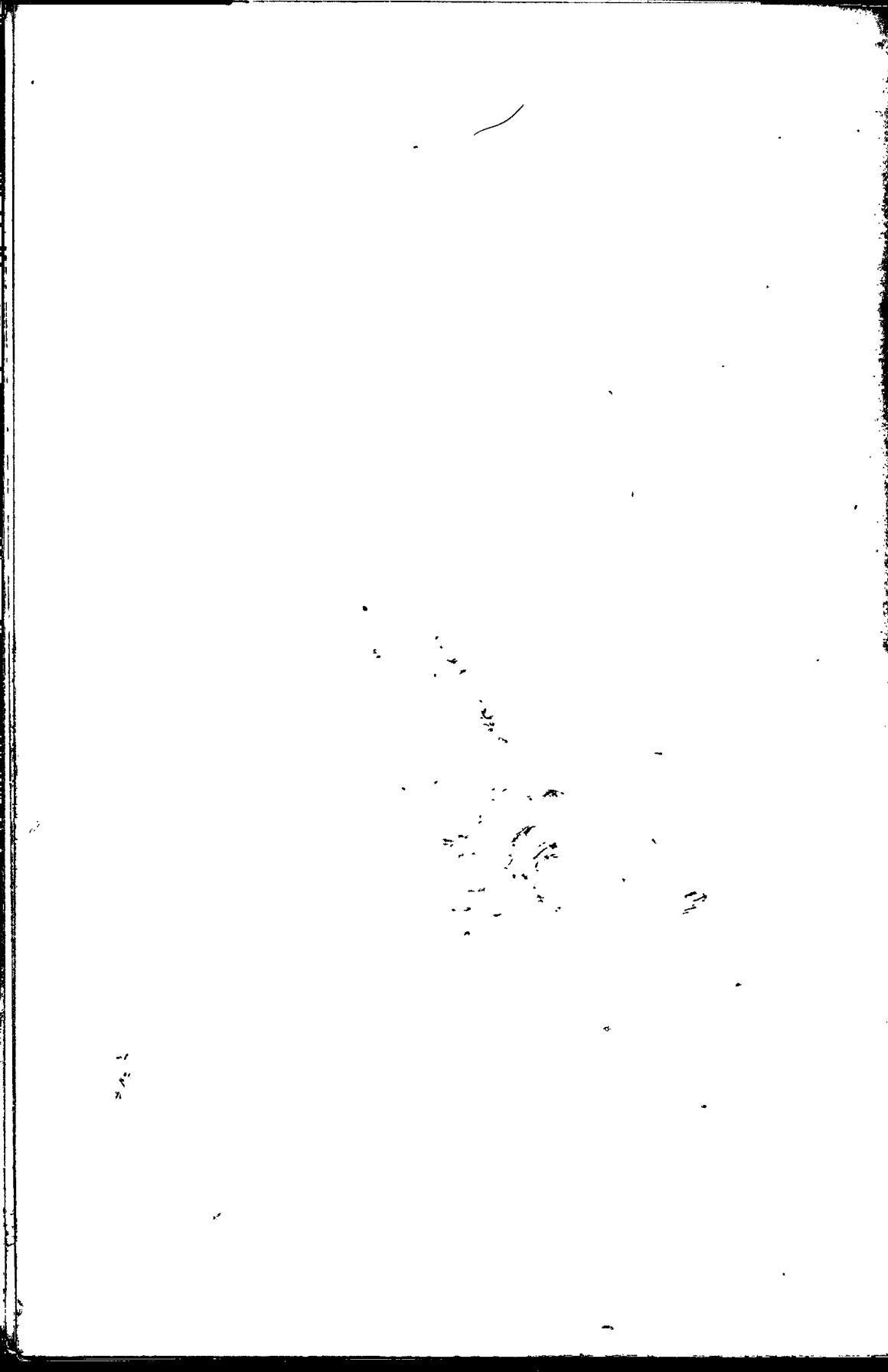
Applications (for retail licenses) shall be heard on the third Monday of March in every year, and the hearing of such applications shall be continued for such length of time as may be necessary to dispose of them.

## Rule 3.

All petitions in favor of, and remonstrances against the granting of any license shall be in writing, and shall be filed with the clerk at least three days before the time fixed for the hearing, but no charge shall be made for such filing.

## Rule 4.

When an application shall be granted by the Court, and the requirements of the Act of May 13th, 1887, as to payment of license fee, filing the Treasurer's receipt, giving bond, etc., having been fully complied with, the Clerk shall issue a license in the following form, duly attested, and under the seal of the Court, viz.:



APPLICATIONS FOR LIQUOR LICENSES.

COURT OF QUARTER SESSIONS OF ALLEGHENY CO.

This is to certify, that .. . . . . . has  
been duly licensed to sell vinous, spirituous, malt or brewed  
liquors..... . . . . . for the space of  
one year from May the first, A. D..... at.....

In witness thereof, I have hereunto set my hand and the seal  
of the said Court, this ..... day of ..... A. D.....

[L. s.] ..... Clerk.

**Rule 5.**

Applications for license may be filed with the Clerk of the Court, three weeks before the first Monday of September, 1887, and will then be heard; but after that date all applications for license shall be filed at least three weeks before the first Monday of March, in each and every year.

Adopted July 12, 1887.

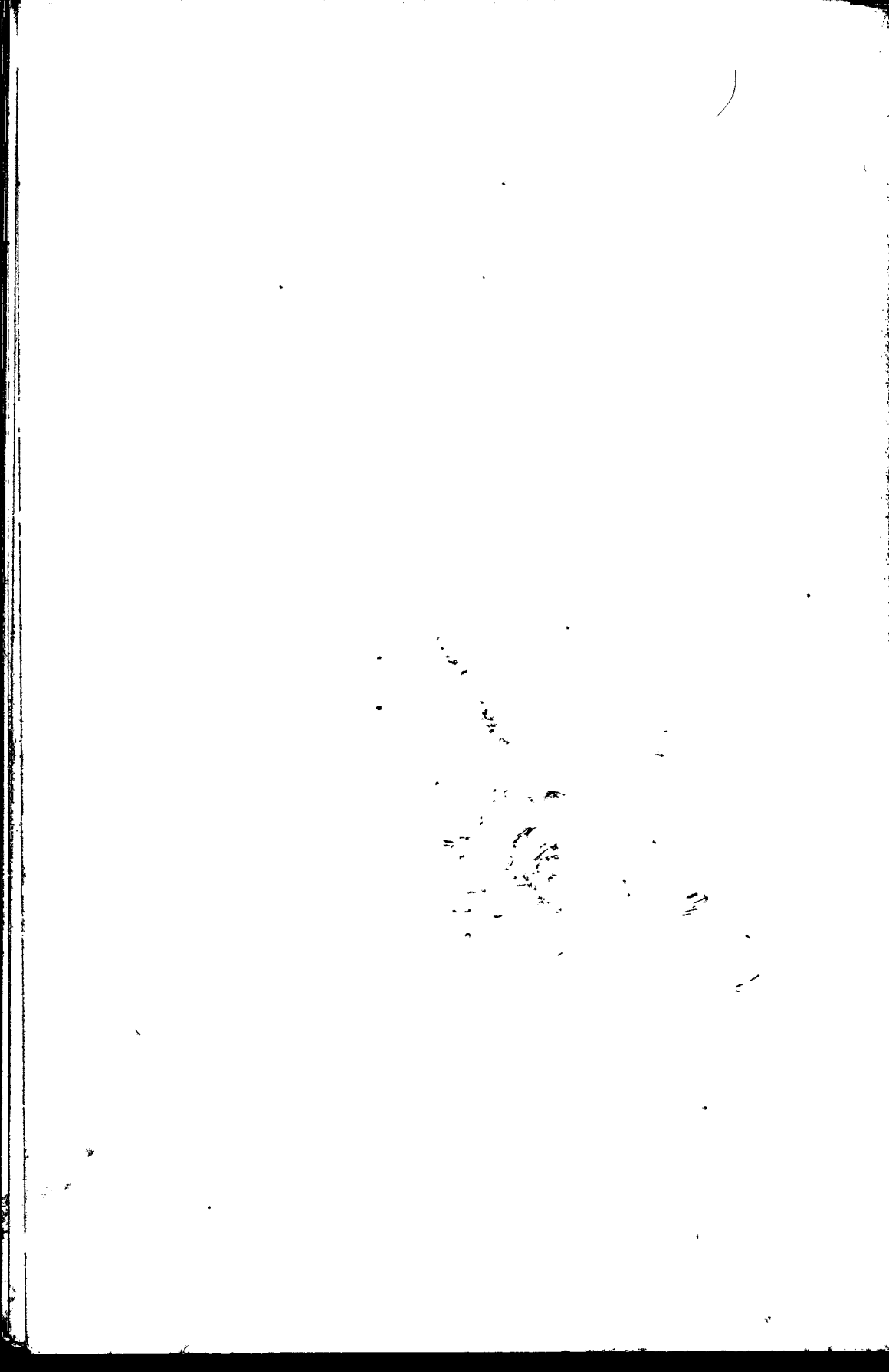
**Rule 6.**

Wholesale dealers, Brewers, Distillers, Rectifiers, Compounders, Storekeepers, Agents and Bottlers, applying for license to transact business under the provisions of the Act of Assembly, approved 24th May, 1887, shall in their petition conform to the requirements of the first, second, third, fourth and tenth paragraphs of section 5 of the Act of Assembly, approved 13th May 1887, P. L. page 109-110.

The petition shall also give the names of no less than two reputable resident freeholders of the County, who will be sureties on the bond of the applicant, and a statement that each of said sureties is a *bona fide* owner of real estate in the County worth over and above all incumbrances the sum of two thousand dollars, and that it would sell for that much at public sale.

**Rule 7.**

The rules of Court in relation to retail dealers shall apply to applications under the act of 24th of May, 1887, as to time of filing petition, advertisement thereof, and the date from



## APPLICATIONS FOR LIQUOR LICENSES.

which licenses shall run, and also as to petition in favor of or remonstrances against the granting of a license, such applications will be heard on the first Monday of April in each year, and the hearing shall be continued for such length of time as may be necessary to dispose of all the applications.

### Rule 8.

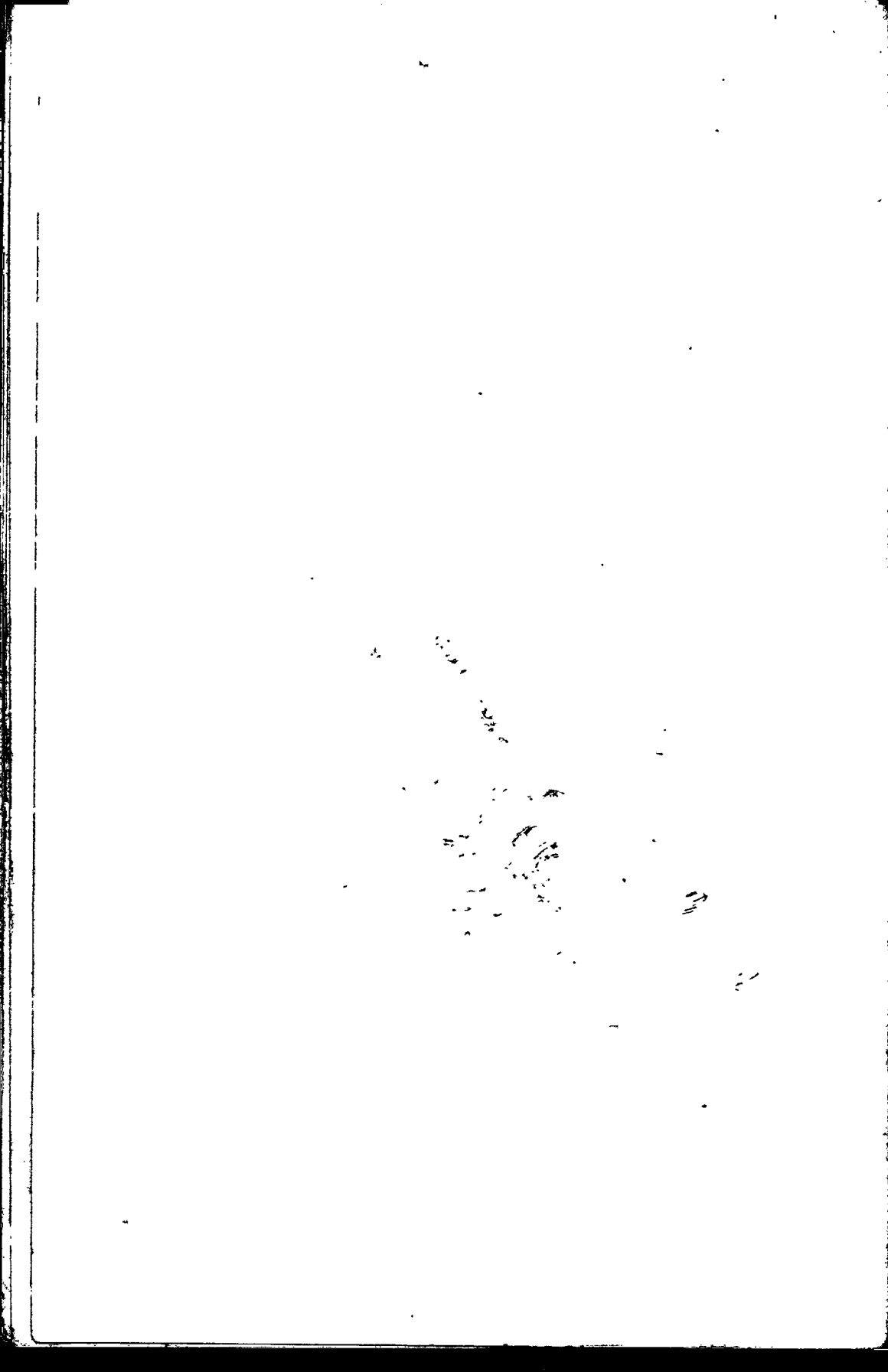
Where application shall be made for the transfer of a license the petition shall set forth particularly the facts upon which such application is based, so as to bring it within the requirements of the Act of Assembly relative thereto, approved 20th April, 1858, Sec. 7, P. L. 366, and shall be verified by affidavits of both parties. The petition and bond of the applicant shall conform in all respects to the statutory requirements and rules of Court in relation to the granting of an original license.

Upon presentation of such petition and bond the Court shall fix a time for a hearing not less than ten days thereafter, notice of which shall be published at the cost of the applicant by one advertisement at least one week before the time of hearing in the two newspapers last designated for publication of applications for license.

At which time persons opposing the transfer, as well as the parties, shall be heard, unless the hearing be continued for cause to a day certain.

Adopted January 21st, 1888.

NOTE.—For decisions under the Acts of May 13th and May 24th, 1887, see Appendix.



# APPENDIX.

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## DECISIONS UNDER LIQUOR LICENSE ACTS

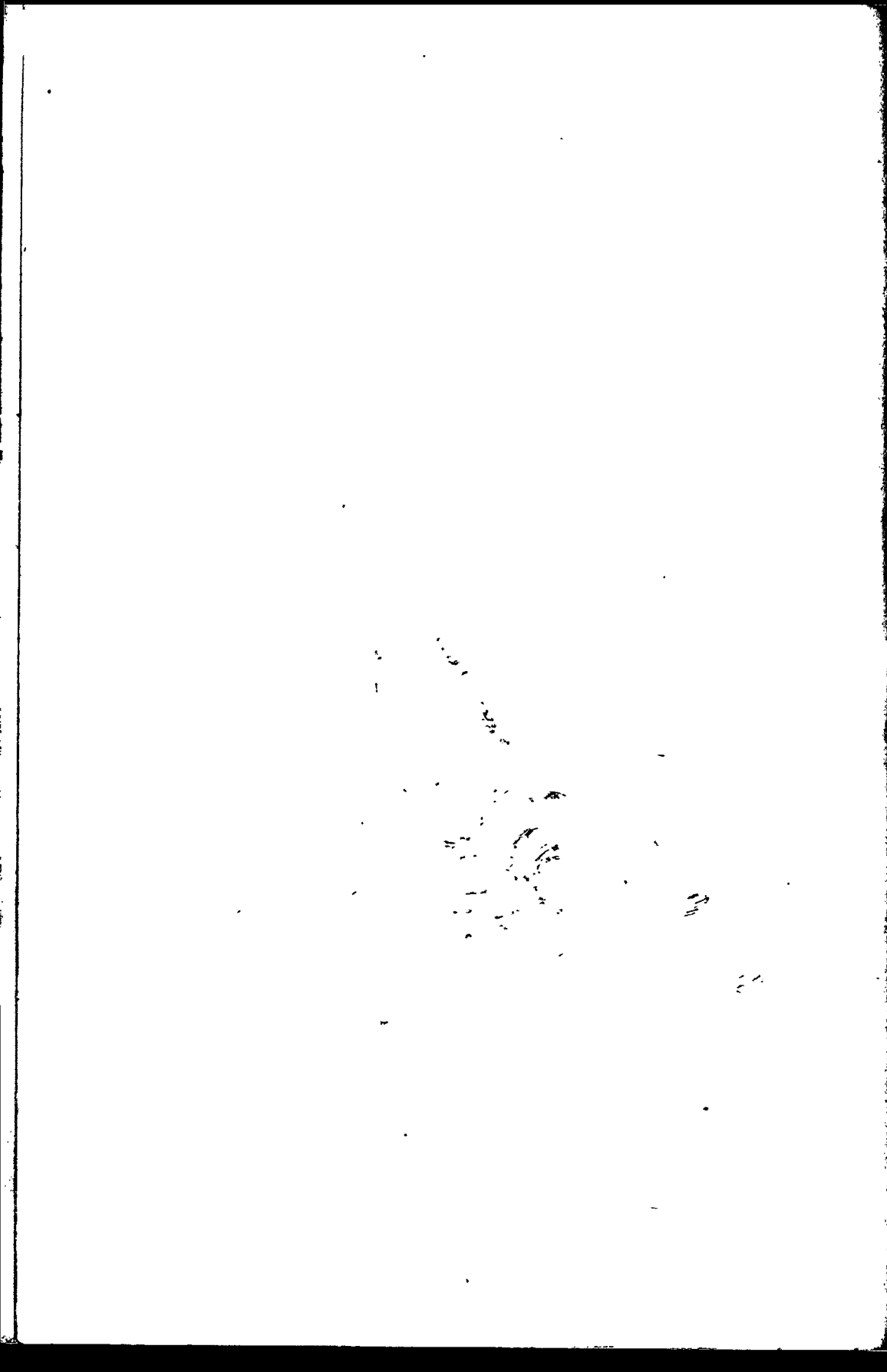
OF MAY 13, 1887 AND MAY 24, 1887.

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1. *In re King's Application*, 23 W. N. C., 152, Sup. Ct. Liquor Licenses—Act of May 13, 1887. Discretion of Court. Mandamus. The Judges of Warren county refused all applications for licenses to sell liquors under the Act of May 13, 1887, (P. L. 108), upon the ground that, upon the inspection of the various petitions and remonstrances filed, it was clear that there was a great preponderance of popular opinion among the people of said county that there was no necessity for the sale of any liquors therein for the "accommodation of the public and the entertainment of strangers and travellers." One of the petitioners thus refused presented an application to the Supreme Court for a mandamus to compel the County Court to consider and decide the application in accordance with the provisions of existing law, making the qualifications of the petitioner and the necessity of her hotel for the accommodation of the public, and not popular sentiment, the criterion by which to test the propriety of granting the license. The mandamus was refused.

2. Commonwealth ex rel Stein vs. McCandless, Treasurer, Vol. 3, Supreme Court Digest, page 9, S. C. in Vol. 21, W. N. C., 162, Liquor Laws, License, Act of April 3, 1872, is repealed by the Acts of May 13, 1887 and May 24, 1887, (P. L. 108 and 194). Construction of Statutes, Constitutional Law, S. C. in 35 Pgh. Leg. Journal, 81. Stowe, P. J., Opinion of.





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3. *Stewart vs. Commonwealth*, Liquor License Act of May 13, 1887, Sec. 15, Right of defendant in criminal prosecution to be heard by himself or counsel, Vol. 2, Supreme Ct. Digest, page 306, Same case reported in 117 Pa. St. Reports, page 378.

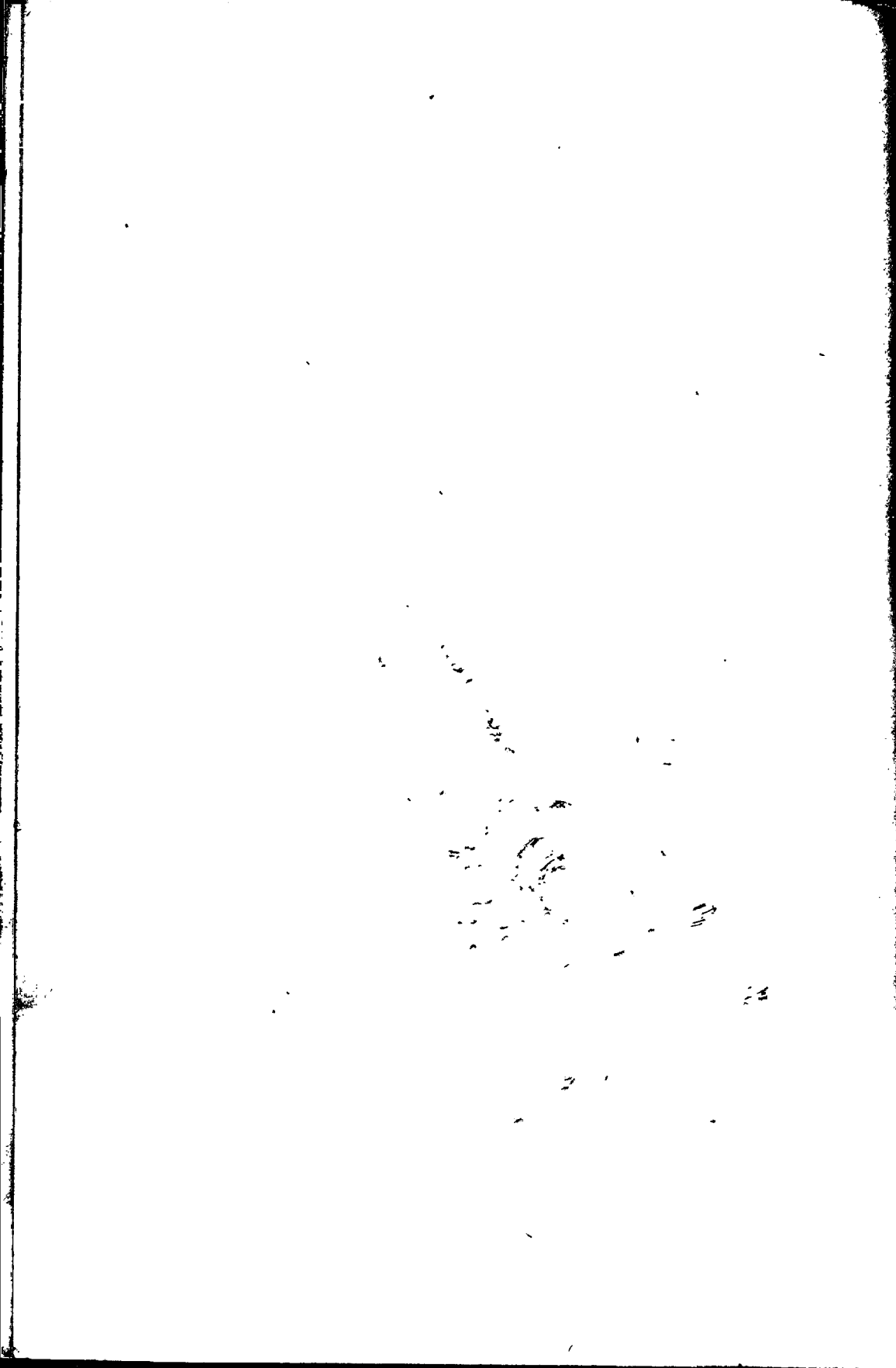
4. *Durr vs. Commonwealth*, Vol. 3, Supreme Court Digest, page 12, Liquor License, Local Legislation, Selling Liquor on Sunday, Local Act of April 3, 1872, relating to Allegheny County, is repealed by the Act of May 13, 1887, and the Act of February 26, 1855, is thereby revived as to said county S. C. reported in Vol. 35, Pgh. Leg. Journal, page 270. Same case in Vol. 3, Co. Ct. R., 525, Opinion by Magee, J., Ewing, P. J., concurring.

5. *Rauderbusch in Petition of Liquor Licence*, Mandamus under the Act of May 13, 1887, an applicant has no absolute right to a license; the granting of the same is within the discretion of the Court of Quarter Sessions, Vol. 3, Supreme Court Digest, page 214. Same case also in Vol. 21 of W. N. C., 432. Same case in 35 Pgh. Leg. Journal, page 409.

6. *Zinner vs. Commonwealth*, Vol. 3, Supreme Court Digest, page 260, Liquor Licenses, Effect of Act of May 24, 1887, on previous legislation, Brewer's License. Under the Act of May 24, 1887, licensee cannot sell liquor in more than one place. See Vol. 22, W. N. C., 97.

7. *Commonwealth ex rel Sellers vs. Kramer*, Act of May 13, 1887, Although a person may have received a license prior to the Act of May 13, 1887, he may be convicted under the Act for an offence committed after the passage of the Act. Vol. 3, Supreme Court Digest, 344. Same case in 4 Co. Ct. R., 119.

8. *Van Buren's License*, Vol. 35, Pgh. Leg. Journal, page 415. The local act of April 3, 1872, relating to the sale of liquor in Allegheny County having been repealed by the general Act of May 13, 1887, the general act of April 20, 1858, is



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now in force so far as it is not inconsistent with nor repugnant to the said Act of May 13, 1887.

The Act of May 13, 1887, being silent upon the subject of the transfer of licenses, licenses are to be transferred according to the provisions of the Act of April 20, 1858. Same case, 4 Co. Ct. R., 280. See also *Toogood vs. Comm.*, 4 Co. Ct. R., 282.

9. *Doberneck's Application for License for Brewery*, Vol. 35, Pgh. Leg. Journal, 476. Title of Act "for Licensing of Wholesale Dealers," of May 24, 1887, sufficiently expresses subject of the Act to include brewers and distillers, is constitutional. Where Court is satisfied from evidence traveling public will be entertained in community without license, no license necessary.

The discretion of Court in licensing hotels, brewers and distillers stated. Same case reported in Vol. 5, County Court Reports, page 454. Same case in 45 Leg. Int., 256.

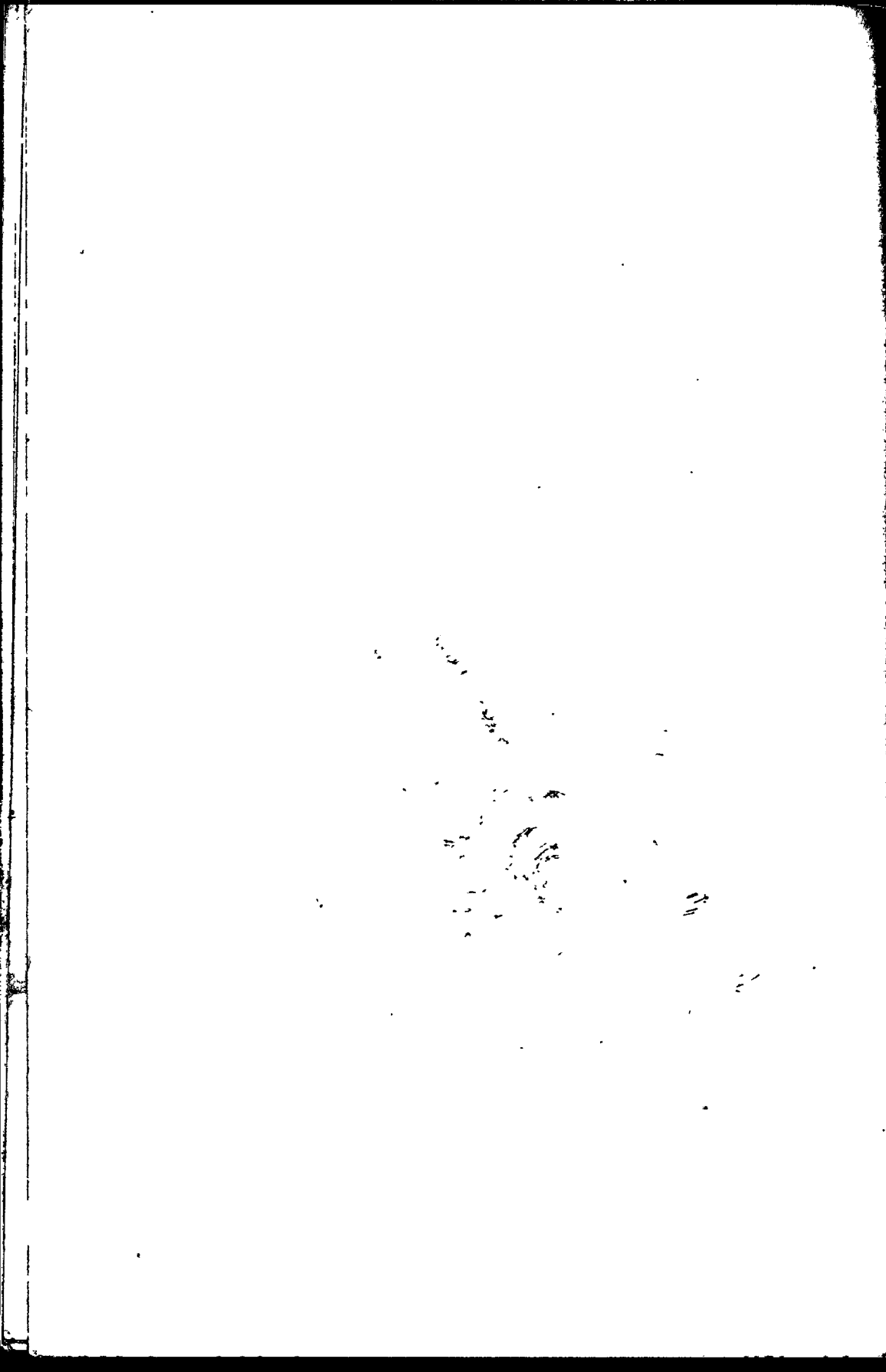
10. *Bosch's License*, Vol. 35, Pgh. Leg. Journal, 523. Same case in Vol. 5, Co. Ct. R., 315.

The provisions of the Act of 13th May, 1887, P. L. 108, known as the Brook's Liquor Law, relative to the revocation of the license of a liquor dealer, when proof has been made to the Court of the violation of any liquor law of the Commonwealth, are imperative.

In such case the Quarter Session Court is not invested with a discretionary power.

Where an application for license under said Act did not question the constitutionality of the law when taking out his license, it is too late to do so when in the grasp of one of the penalties for its violation.

11. *Commonwealth vs. Turks*, Vol. 3, County Court Reports, 419. Criminal Law, Selling Liquor Without License, Effect of repeal of former Acts on penalties, Act of May 13, 1887.



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12. Templeton's License, 3 Co. Ct. R., 434, Liquor licenses, Revocation and petition for transfer, Act of May 13, 1887.

13. Hanlon's License, 3 Co. Ct. R., 474, Liquor License, Transfer of License, Time of hearing original applications, Acts of April 20, 1858, and May 13, 1887.

14. McNally and Boyd's cases, Vol. 3, Co. Ct. R., 671, Liquor License Laws, Act of May 13, 1887, Effect of on Previous licenses, License granted but not taken out, License for fraction of year.

15. \*Commonwealth vs. Shuble, 4 Co. Ct. R., 12, Criminal Law, Selling Liquor Without License, Repeal of Statute by implication, Effect of repeal on prior penalties or prosecutions, Indictment, Presentment by Grand Jury, Indictment without information or binding over, Acts of April 12, 1875, and May 13, 1887.

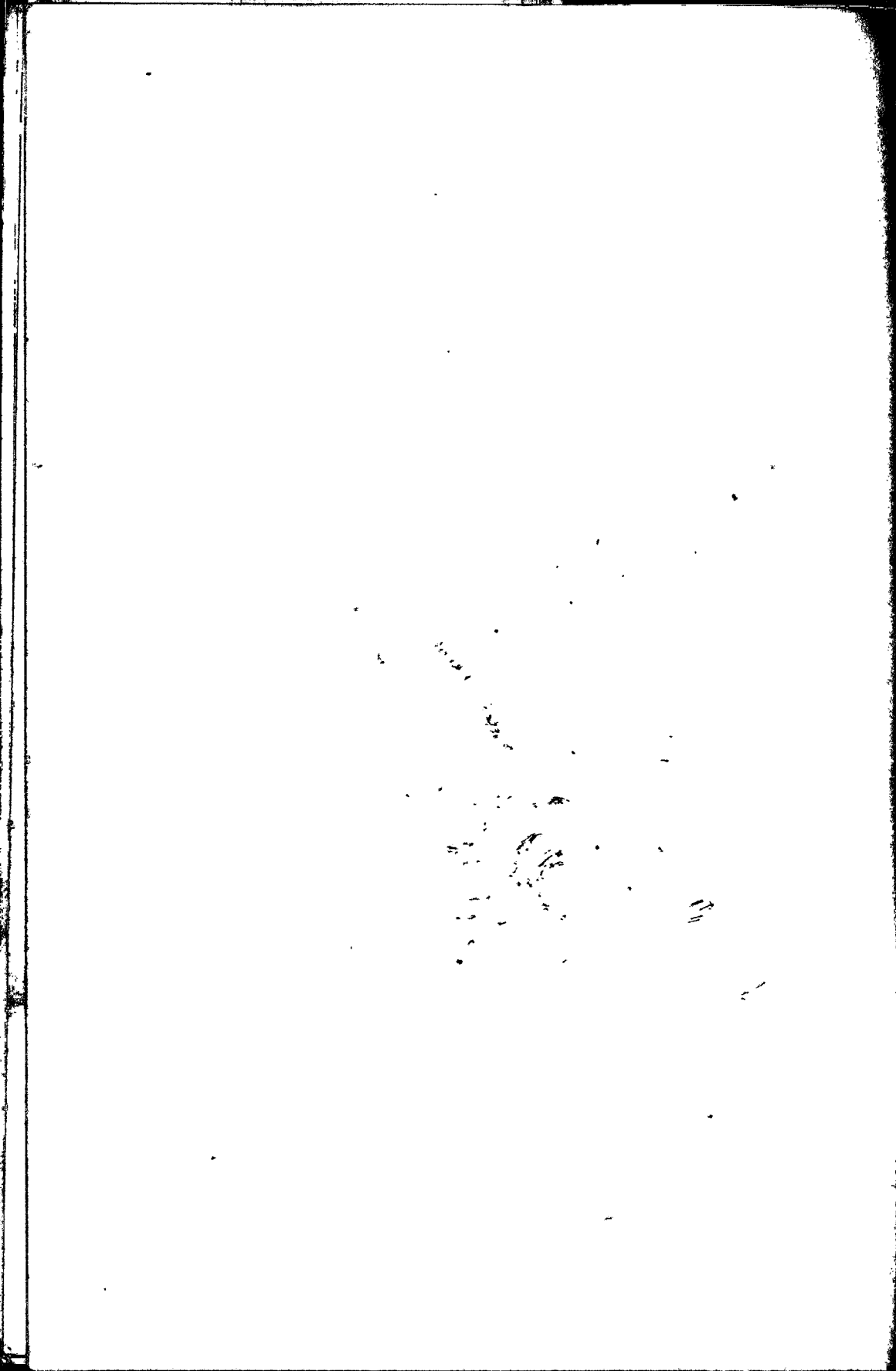
16. Wishart vs. Newell *et al*, Vol. 4, Co. Ct. R., 141. Same case in Vol. 35, Pgh. Leg. Journal, 72. Nuisances, Place for illegal sale of intoxicating liquors, Statement of Nuisance, Equity jurisdiction, Parties plaintiff and defendant, General and Special Nuisances, Act of May 13, 1887, Constitutionality of Section 18.

17. Mack vs. Commonwealth, 4 Co. Ct. R., 256, Summary conviction, Record, Particularity as to date, Repeal of Act by implication, Acts of February 26, 1855 and May 13, 1887.

18. Bender's License, 4 Co. Ct. R., 289, Liquor License Laws, Clerk's fees for wholesale license under Act of May 24, 1887.

19. Behny vs. Bassler, 4 Co. Ct. R., 96, Liquor License, Restaurants, Fees, Construction of Statutes, Implied repeals, Acts of March 22, 1867, and May 13, 1887.

20. Yost vs. Whalen, 4 Co. Ct. R., 590, Liquor License Laws, Mercantile Appraiser's fees, Act of May 13, 1887, Section 4.



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21. Commonwealth ex rel Raphael vs. McCandless, Vol. 4, Co. Ct. R., 123, Construction of Statutes, Implied repeal of local Statutes, Wholesale Liquor License, Act of May 24, 1887.

22. Bender's License, 4 Co. Ct. R., 289, Liquor License Laws, Clerk's fees for wholesale license under Act of May 24, 1887.

23. Commonwealth vs. Kromer, Vol. 4, Co. Ct. R., 241. Constitutional law, Diminishing emoluments of public officer. New duties of constables without compensation, Fee Bill Act of April 2, 1868, Liquor License Act of May 13, 1887, Section 12, Art. 3, Sec. 13 of the Constitution.

24. Sanders vs. The Commonwealth, Thomas vs. The Commonwealth, Vol. 20, W. N. C., 226, Constitutional law, Acts of April 12, 1875 and May 13, 1887, Liquor Licenses, Penalty for selling without, Penalty imposed after repeal of Act creating. Same case, 117 Pa. St. R., 293, 35 Pgh. Legal Journal, 152, Vol. 2, Supreme Court Digest, 266.

25. Adams County Licenses, Vol. 5, Co. Ct. R., 26, Liquor Licenses, Practice, Petitions and remonstrances, Bonds, Rule of Court, Necessity, Fitness of applicant, Transfer of license, Ownership of premises, Requisites of place, Duties of licensees, Act of May 13, 1887.

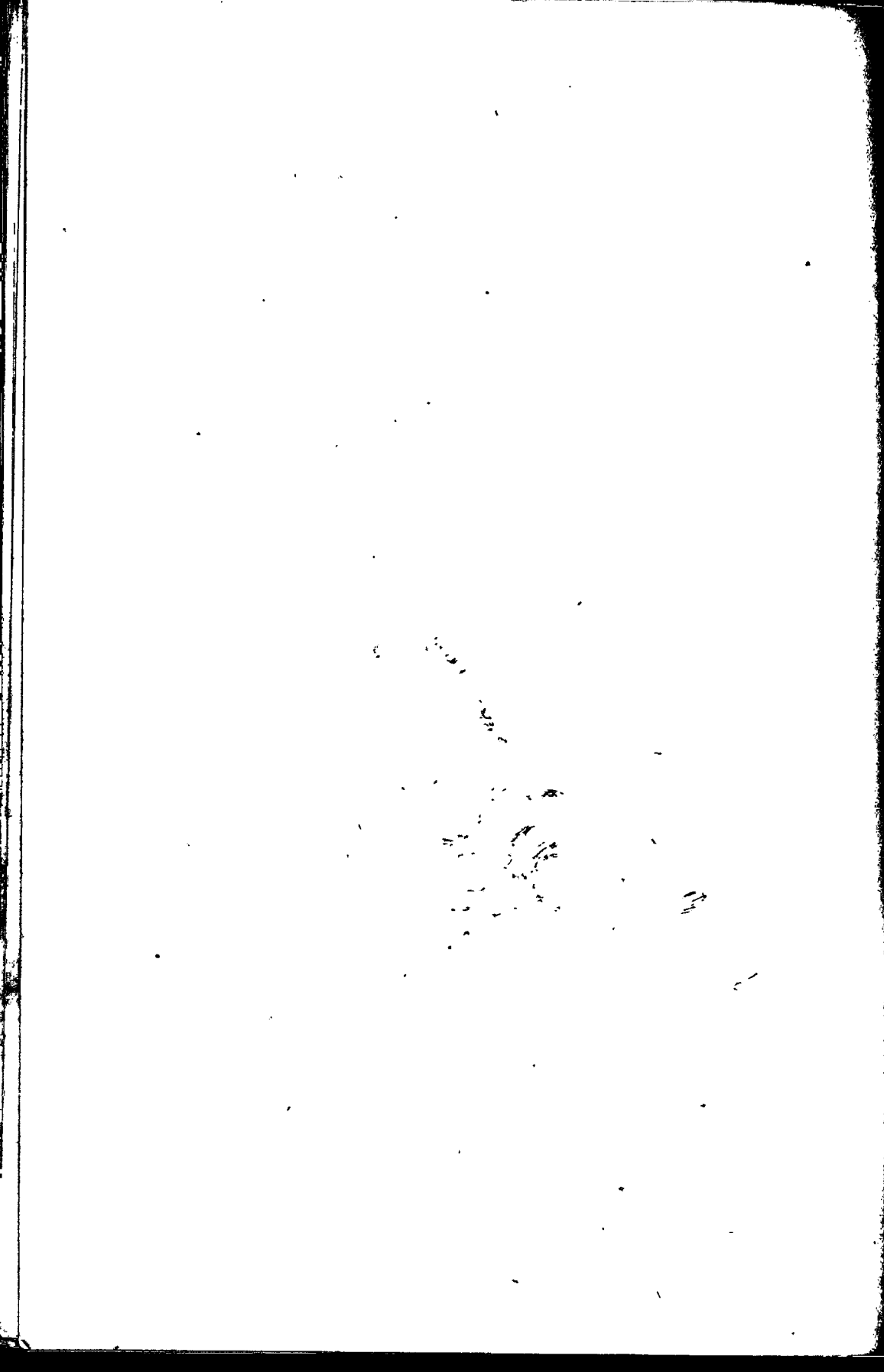
26. Crawford County Licenses, Vol. 5, Co. Ct. R., 34, Liquor licenses, Evidence of necessity, Act of May 13, 1887.

27. Steven's application, vol. 5, Co. Ct. R., 627, Liquor License, Form, Place of amusement, Act of May 31, 1881 and May 13, 1887.

28. Lackawanna County Licenses, vol. 5 Co. Ct. R., 462 Liquor License Laws, Necessity, Fitness of applicant, Practice and procedure, Evidence, Act of May 13, 1887.

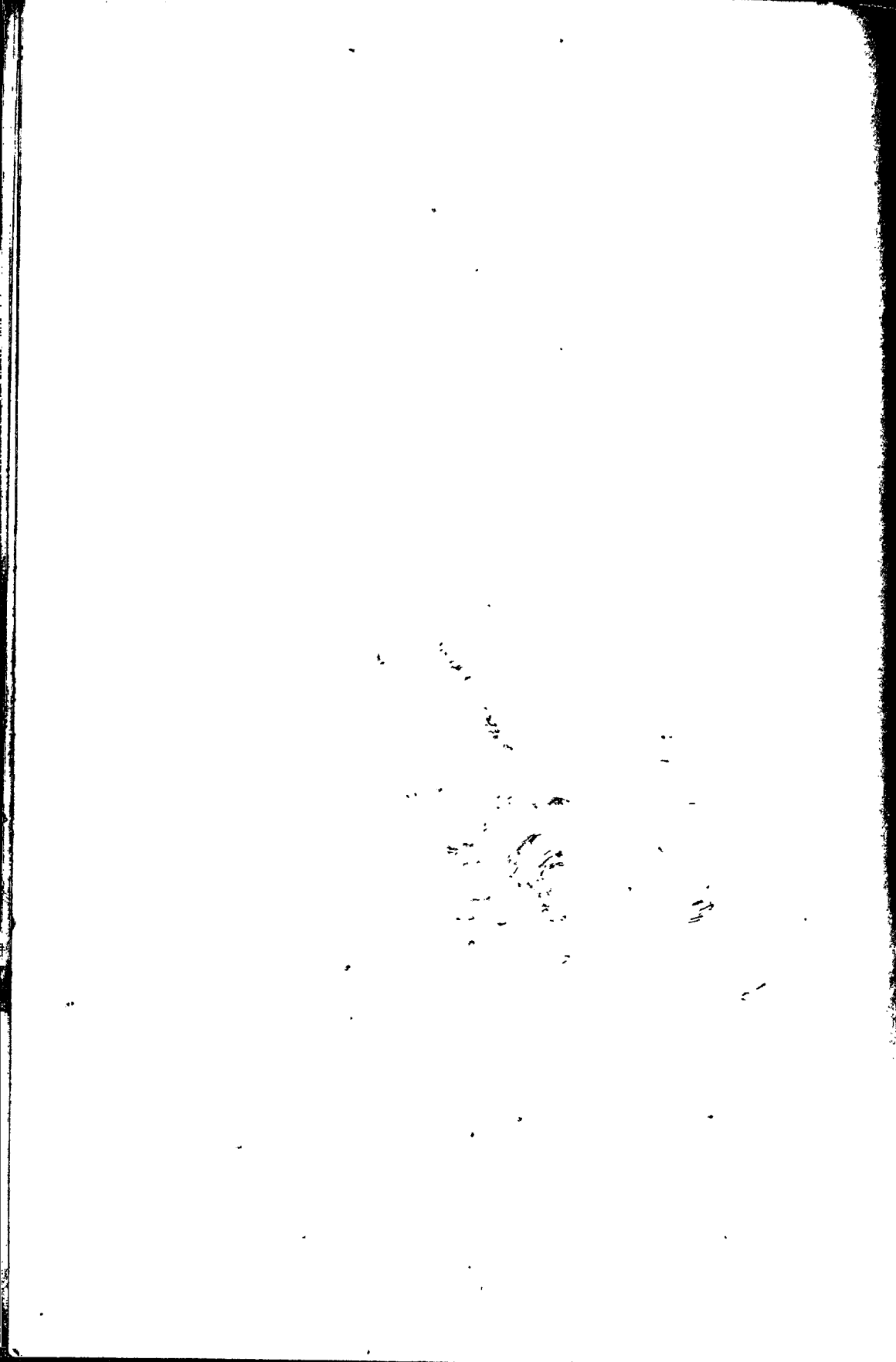
29. Adams County Licenses, 5 Co. Ct. R., 26, Sections 5 and 6, Where landlord is member of firm of liquor dealers, tenant cannot have retail license.





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30. *Semmel vs. Lehigh County*, vol. 5 Co. Ct. R., 447, Constable's fees under liquor license? Act of May 13, 1887, Section 12, for monthly visits to licensed places.
31. *Brewers and Distillers License*, vol. 5 Co. Ct. R. 136, Liquor License, *Brewers and Distillers? Wholesale license*, Acts of May 24, 1887, and April 10, 1849.
32. *Lackawanna Brewing Company's License*, vol. 5 Co. Ct. R., 453, Liquor license laws, *Brewers and Distillers license, requirements*, Act of May 24, 1887. Vol. 1, Com. Pleas Rept. N. S. 83.
33. *Liquor License Fees*, vol. 6 Co. Ct. R., 27, Disbursements of license fees under Act of May 13, 1887, Return to auditor general, Practice.
34. *Commonwealth vs. Wilhelm*, vol. 6 Co. Ct. R., 30, Criminal Law, *Furnishing liquor to persons of known intemperate habits*, Act of May 13, 1887, Section 17.
35. *Commonwealth vs. Haag*, vol. 6 Co. Ct. R., 118, Constitutional Law, *Local Legislation, Liquor license Act of May 13, 1887*, Const., Art. III, Sec. 3.
36. *Thum's case*, vol. 6 Co. Ct. R., 143. A bottler, licensed under the Act of May 24, 1887, in Philadelphia, was allowed to change his place of business to another ward, and to have his certificate amended accordingly, upon filing a new bond.
37. *Commonwealth vs. Roes*, vol. 1 *Wilcox's Reports or Common Pleas Reporter*, page 253. Cider which has undergone the process of vinous fermentation, by which it has become possessed of the alcoholic quality of wine, is a "vinous liquor," within the meaning of the Act of 13th May, 1887, and its sale without a license is prohibited.
38. *Crawley et al. vs. The Commonwealth*, Vol. 36, Pgh. Legal Journal, page 217, the Act of May 13, 1887, P. L. 108, commonly known as the Brooks Law, repealed the Act of 1872, and by its operation revived the Act of February 26,



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1855, P. L. 53, entitled, "An Act to Prevent the Sale of Intoxicating Liquors on the First Day of the Week, commonly called Sunday." This suit was brought on the license bond against Crawley and his sureties, to recover from them the aggregate amount of certain judgments for penalties, which had been recovered against Crawley in actions instituted under the Act of February 26, 1855, *supra*, at divers times between September, 1887, and April, 1888, for alleged violations of said act, by selling liquor on Sunday during the continuance of his license. Whatever may have been the effect of the Act of May 13, 1887, P. L. 108, on the liability of the licensee, outside the bond, it did not increase that of his sureties. See also Vol. 23, W. N. C., 148.

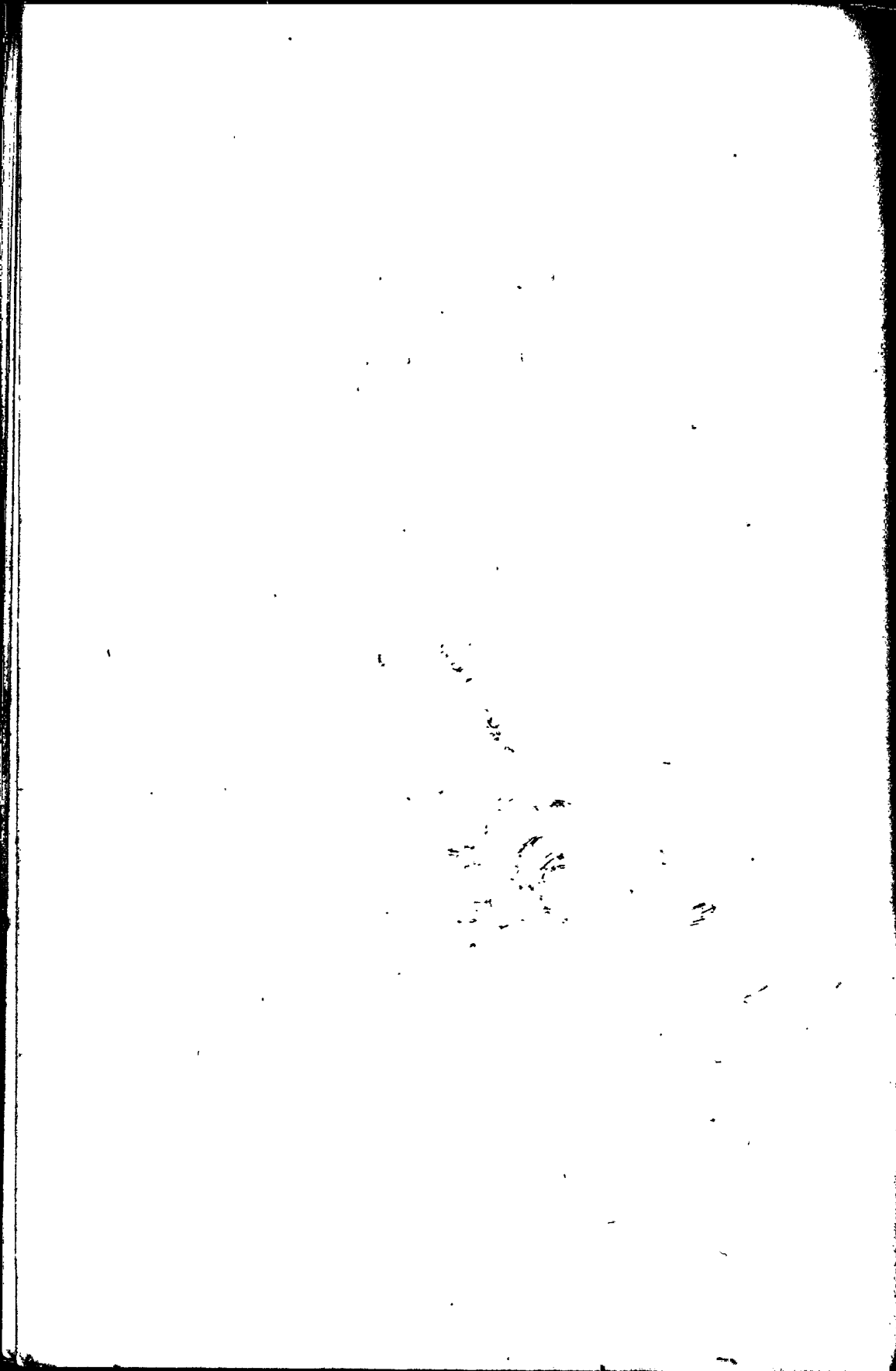
39. Wishart vs. Leslie, 36 P. L. J., page 223. The Acts of 26 February, 1855, P. S. 53, and 29th April, 1867, P. L. 95, are in full force in Allegheny county, and entitle the prosecutor in cases brought under them to one-half the penalties recovered.

The Act of 26 April, 1855, P. L. 315, does not entitle Allegheny county to any part of such penalties.

The Act of 6 April, 1870, P. L. 952, giving the whole penalty to the Poor Board, as well as the local laws, was repealed by the Allegheny county liquor law of April 3, 1872, P. L. 843, section 1.

And the repeal of the Act of 1872 by the Act of May 13, 1887, P. L. 108, reinstated the general laws of the state in Allegheny county, but did not revive these repealed local laws. Opinion by Ewing, P. J.

40. The prohibition, in the first section of the High License Act of 1887, against the keeping of any house, etc., where liquors are sold without license, does not define any criminal offense, and no indictment could be sustained upon it. The offense punishable under the terms of that act is the sale of liquor without a license, which is covered and punished by the fifteenth section. It is not error for the Court to frame and submit to the jury a special verdict and advise its adoption, so



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long as there is no attempt to control the jury in its action.

A defendant, where application for license had been refused, declared (whether before or after the 13th of May, 1887, not shown) that the Liquor League was dissatisfied with the ruling of the Court, and proposed to make his a test case, and that he had accordingly opened his bar that morning. Held, that evidence of this threat was properly received on the trial of an indictment under the Act of 1887, in connection with evidence of the sale in compliance therewith. Vol. 1, N. S. Common Pleas Reporter, Wilcox's Reports, Commonwealth vs. Dixon, No. 1, page 211.

41. The High License Act of 1887 went into effect from its date, so far as concerns the offense of selling liquor without a license, subsequently committed, and the pains and penalties of the fifteenth section attach thereto. Commonwealth vs. Dixon, No. 2, Common Pleas Reporter, Vol. 1, N. S., Wilcox's Reports, page 217.

42. Opinion by Hand, P. J.—Where the remonstrance charges, and the evidence shows, violations of the law by an applicant for a hotel license, the license must be refused, though the hotel is shown to be necessary.

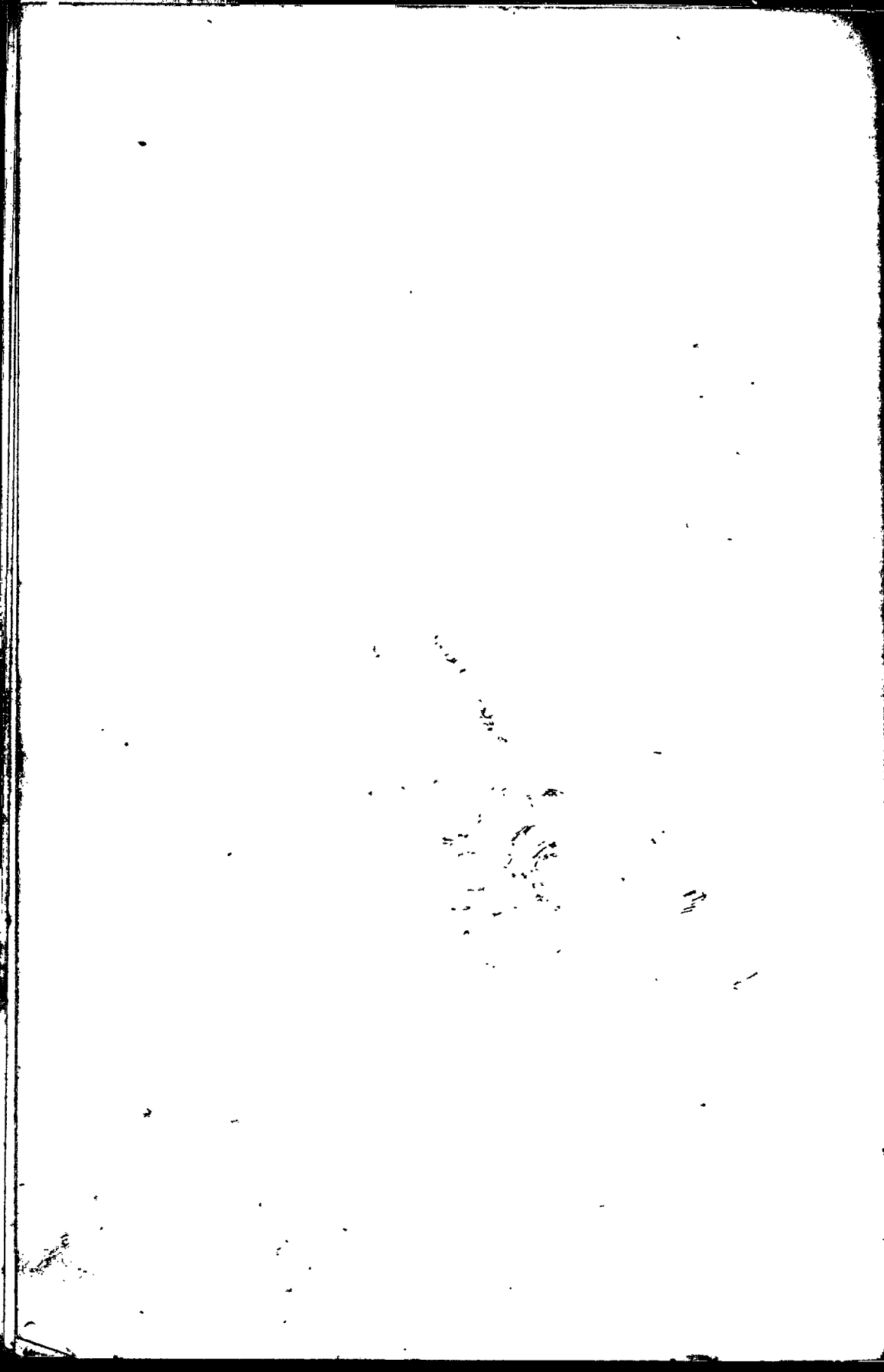
*In re* application of Amos Wight, Vol. 1, Common Pleas Reporter, N. S., Wilcox's Reports, page 85.

43. The High License Act of 1887 makes no general repeal of former laws, and is to be construed as a part of the whole system of law on this subject.

In regard to necessity, the question is whether the hotel is necessary, not whether the license to sell intoxicating liquors is necessary. And in deciding this question, the Court is not confined to the petitions and remonstrances alone, but may properly hear evidence.

On the question of the fitness of the applicant, the Court will hear witnesses and take notice of violations of the law, as shown by the Court records, returns of constables, etc.

Testimony as to the fitness of the applicant can be heard



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only when the question is raised in the first instance by the petition and remonstrance. Opinion by Hand, P. J., *in re* Licenses, 1888, page 77, Common Pleas Reporter, N. S.

44. Commonwealth vs. Reyburg, 23 W. N. C., page 151, S. Ct. Act of May 13, 1887. Is cider a "vinous" or "spirituous" liquor? Evidence. Indictment for selling without license. If any liquor which is sold without a license is either vinous or spirituous, it comes within the prohibition of the Act of May 13, 1887, (P. L. 108); the intoxicating quality is not the one which is prohibited by the act.

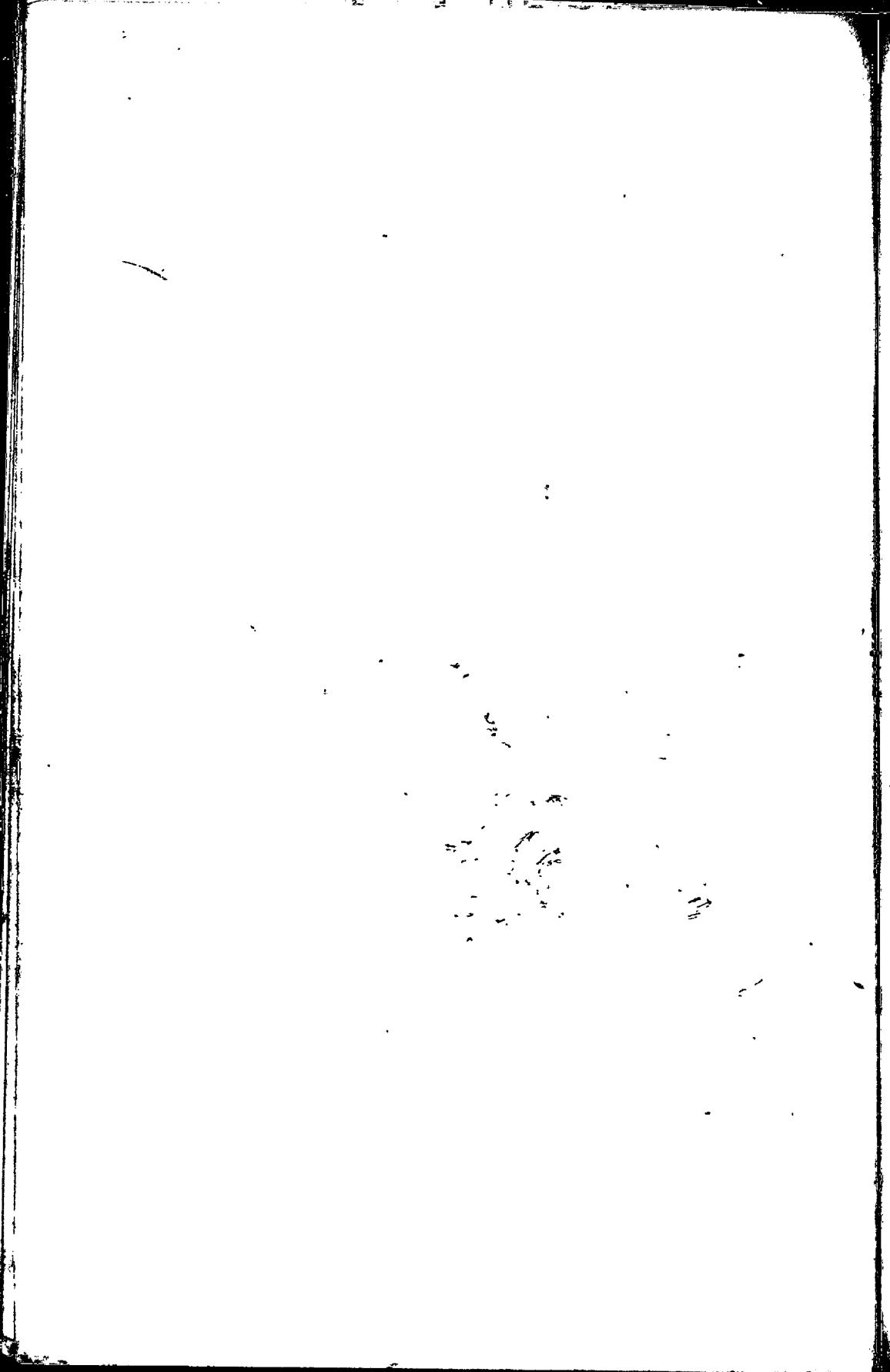
Whether cider is "vinous" or "spiritous" is not a question of law to be decided by the Court, but a question of fact to be determined by the jury. Where there is evidence more than a scintilla as to whether a liquor is vinous, spirituous, malt or brewed, it is for the jury and not for the Court to decide upon it. The Act of May 13, 1888, (P. L. 108), is a criminal statute and must be strictly construed.

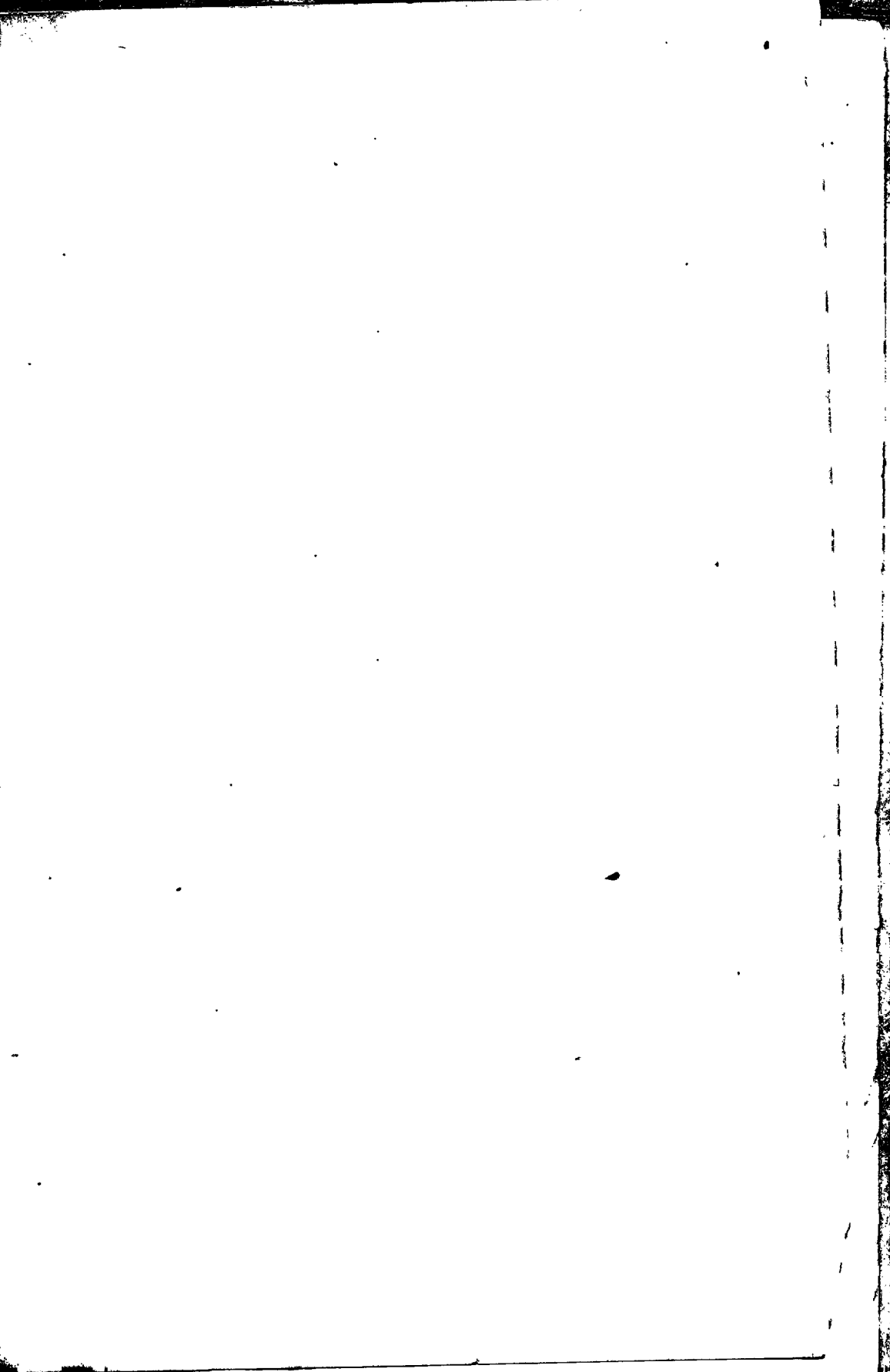
45. Commonwealth vs. Wilhelm, Vol. 4, Montg. Co. Law Reporter, page 205.

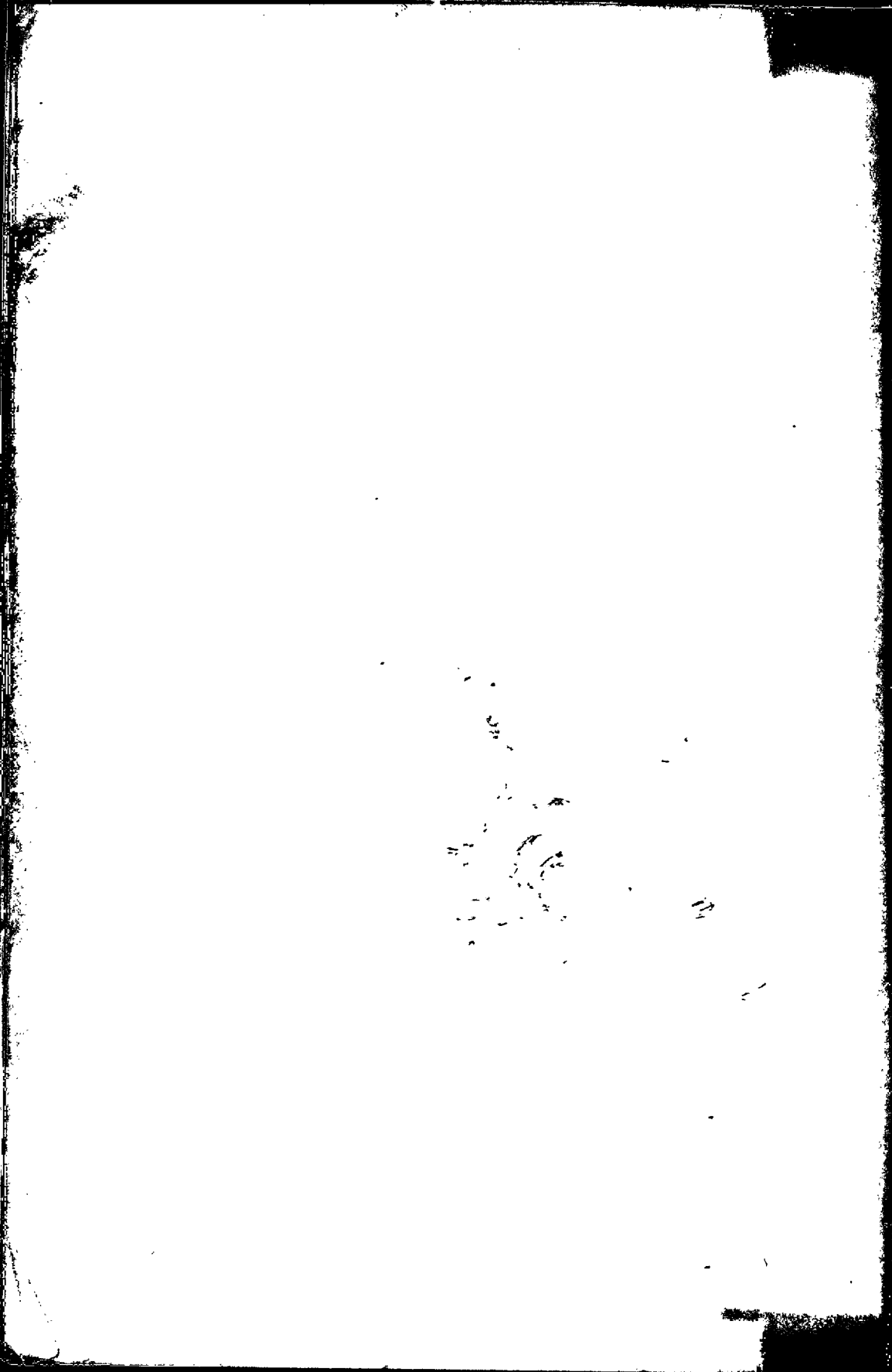
1. In order to convict a defendant of a violation of Section 17 of the Act of May 13, 1887, prohibiting the furnishing of liquors to persons of known intemperate habits, it is necessary to prove that the defendant knew of intemperate habits of the person to whom the liquors were furnished.

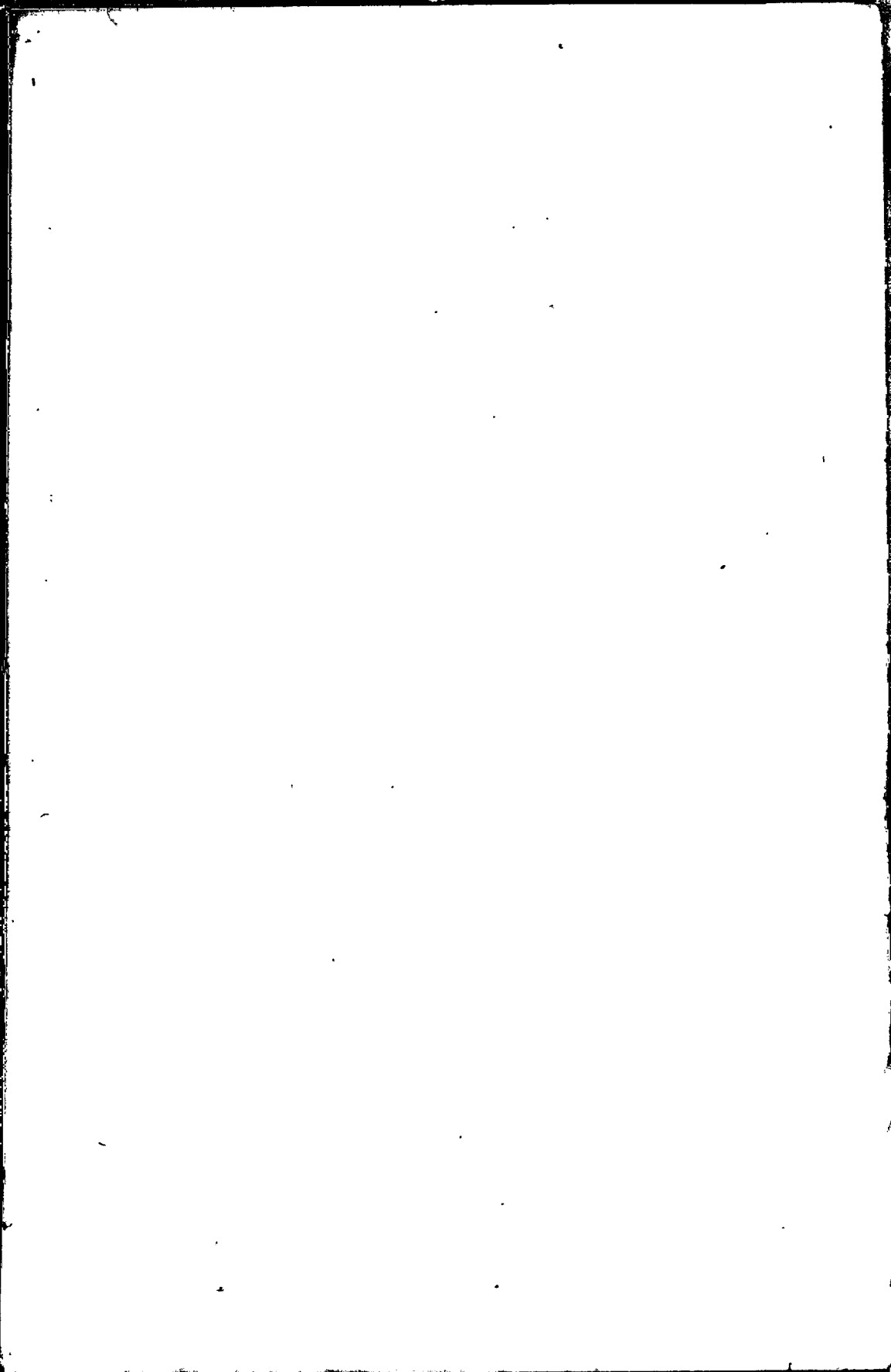
2. It seems that buying liquor for a person of known intemperate habits is furnishing it within the meaning of Section 17 of the Act of 1887.

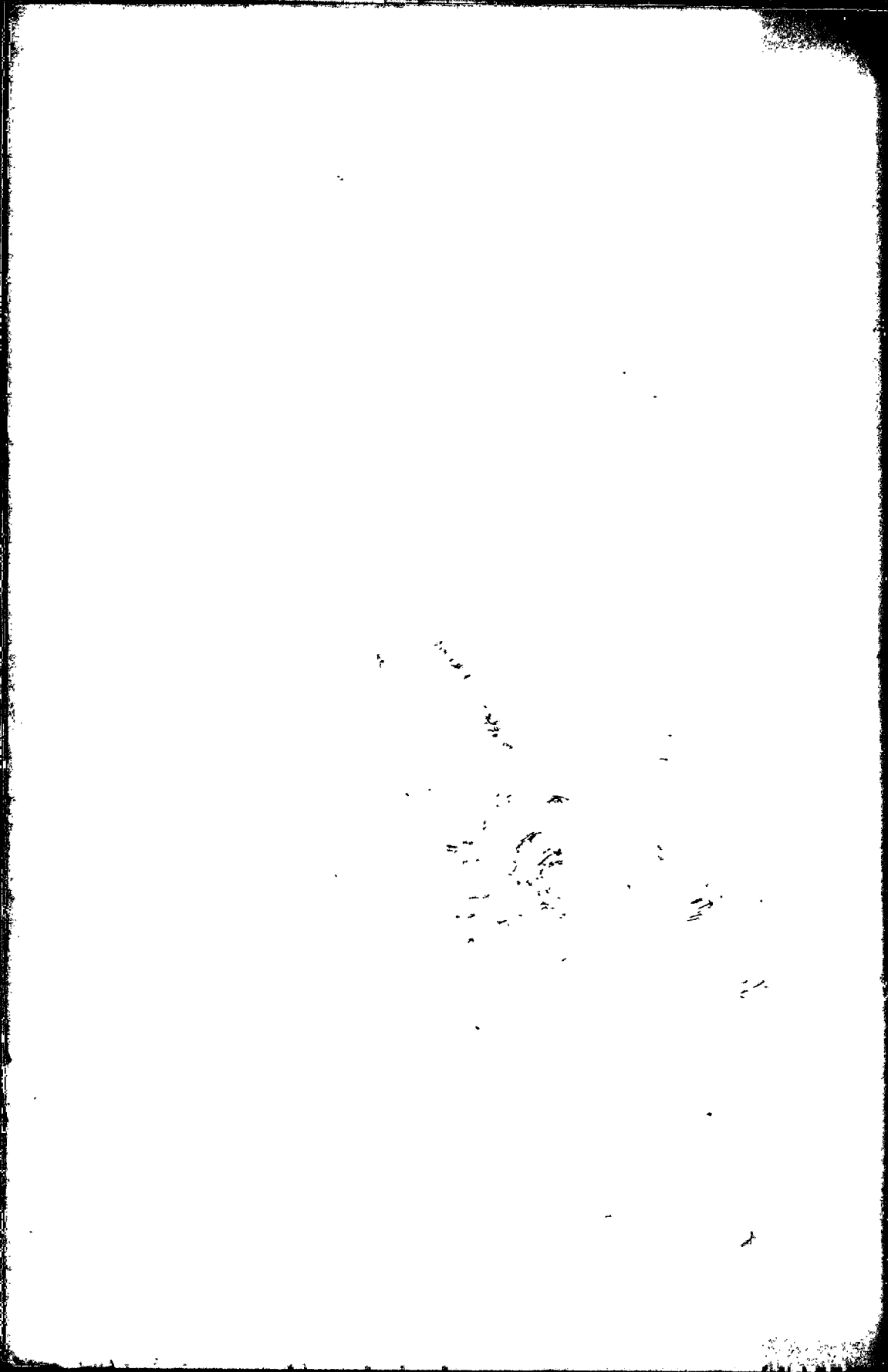


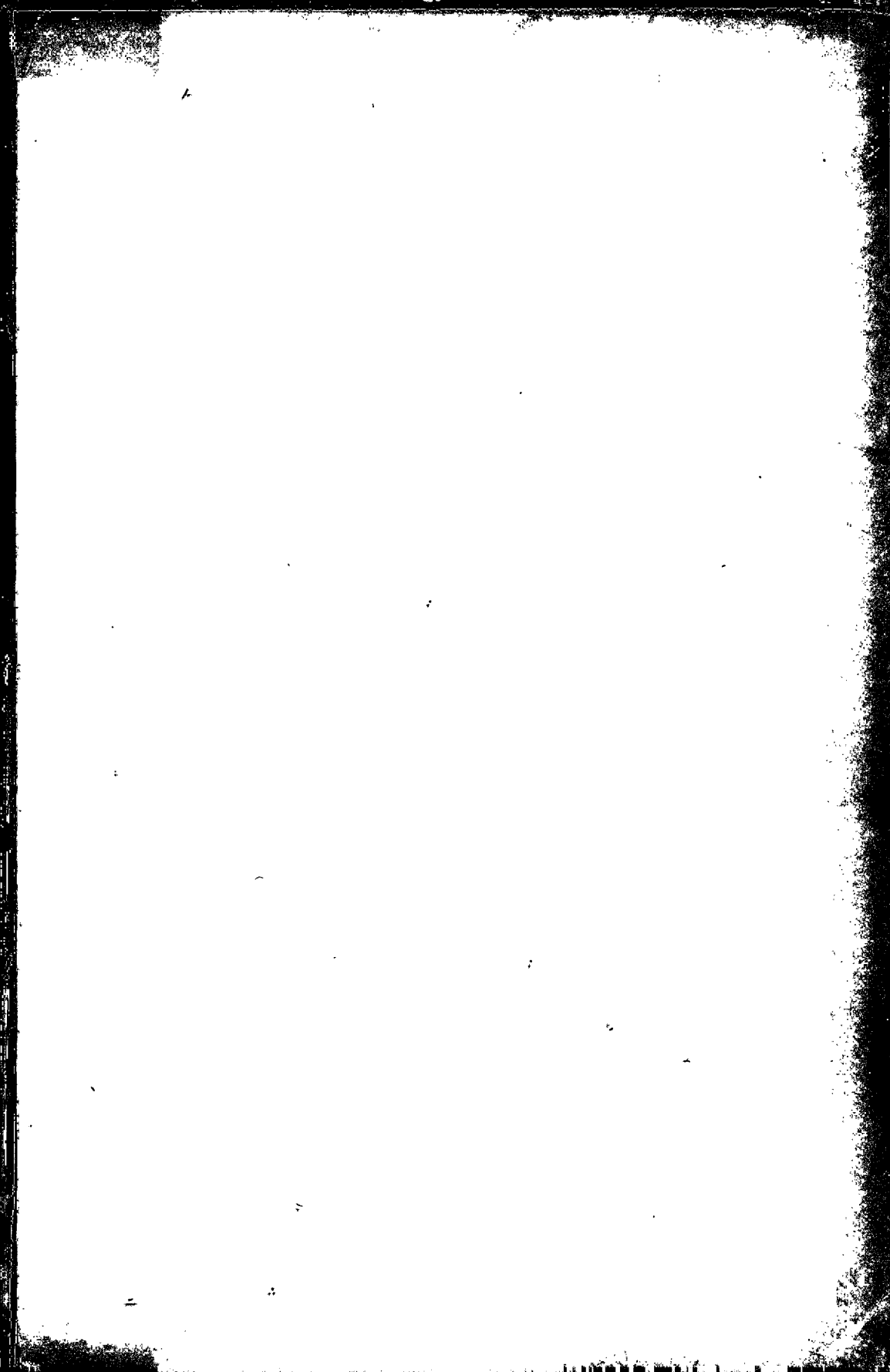














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