

Wm. H. Weaver  
H. D. Mayer & others

vs  
L. F. Zimmerman

Deceitful Order  
for Mandamite.

Filed Oct 29<sup>th</sup> 1864

William A. Weber  
A. D. Mayer and others

Leonhard F. Zimmerman

Court of appeals of  
Maryland. Term 1864

The appeal in this case standing ready for hearing and having been argued by counsel for the respective parties: it is thereupon this 29<sup>th</sup> day of October in the year 1864. by the Court of appeals of Maryland and by the authority thereof adjudged and ordered that the judgment from which this appeal was taken be and the same is hereby affirmed, and it is further adjudged and ordered that a peremptory writ of mandamus issue from this Court ~~commanding the appellants to restore the appellee or cause him to be~~ in accordance with the prayer of the appellee in his petition ~~therefor~~ therefor, and the Clerk of this Court is hereby directed to issue the same.

Rich<sup>d</sup> J. Bowie  
" "  
 Jas. S. Parrot

Ben J. Goldbrough  
S. Morris Coleman

William H Weber  
H D Mayer and  
others

vs

L J Zimmerman

D D G. C.

Opinion

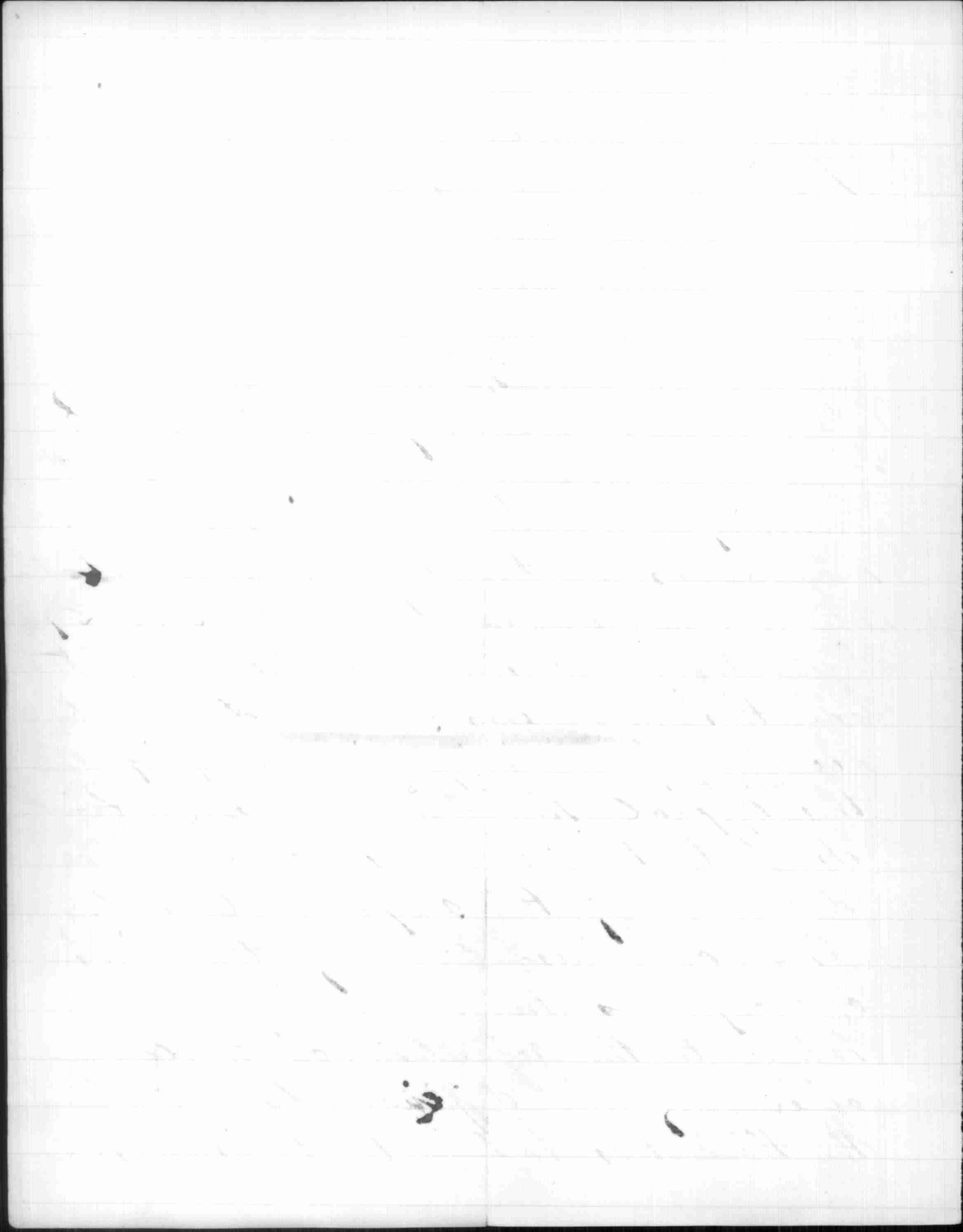
Barth J.

Filed October 21st 1864.

William H Weber  
 H D. Mayer & others  
 vs  
 L. F. Zimmerman

The act of Assembly, passed at the January Session 1858, ch. 285, materially changed the law governing proceedings in cases of mandamus in this State. That Statute is embodied in the Code Art. 59. Under the provisions of that Article of the Code this cause was instituted and decided below, and in disposing of this appeal this Court must, <sup>under the 12<sup>th</sup> section of the 3<sup>rd</sup> Article of the Code,</sup> confine itself to the questions raised, and decided by the Superior Court.

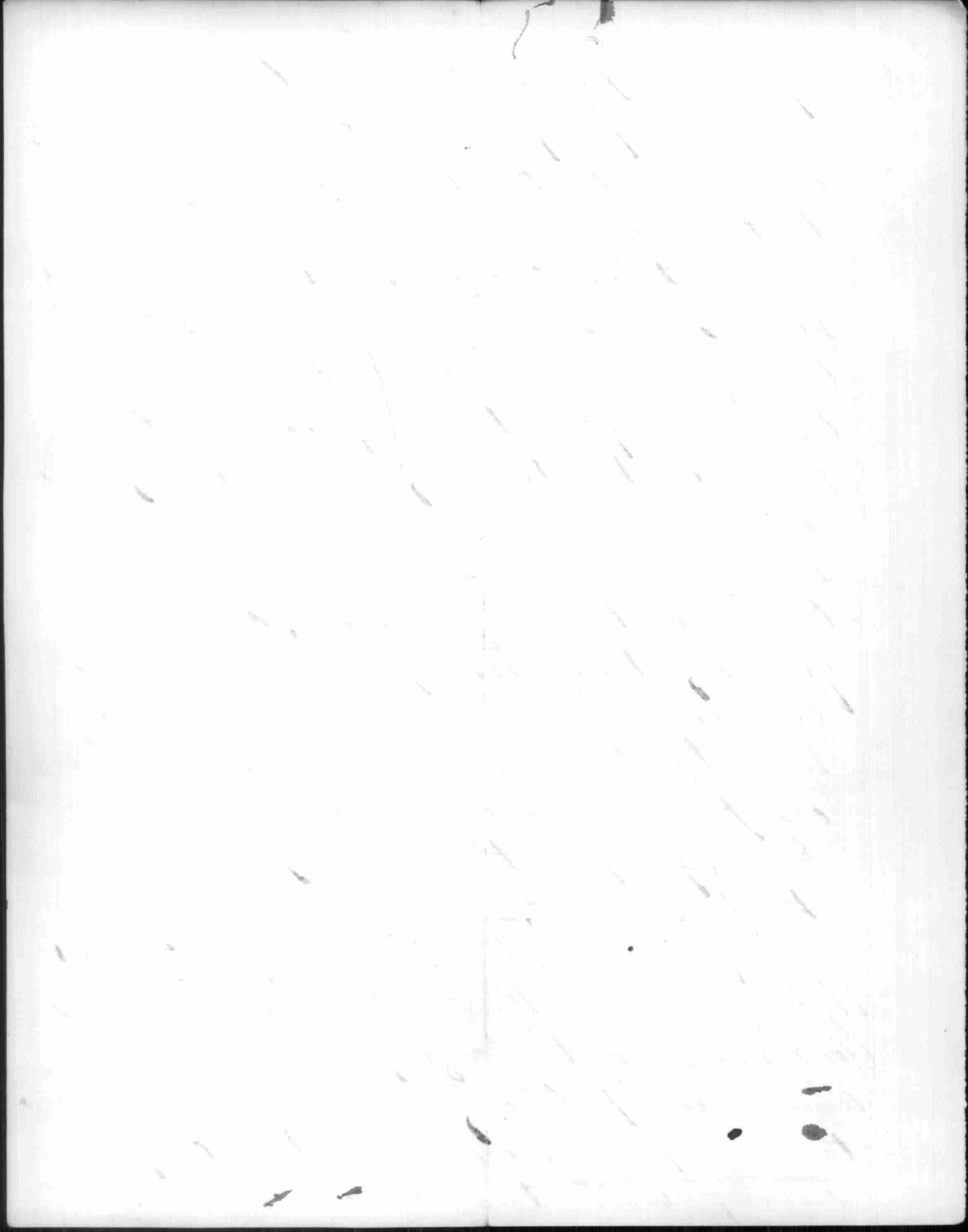
These are presented by the bills of exceptions two of which were taken to the rejection of evidence offered by the defendants - and the third was taken to the refusal



by the Superior Court to grant the two prayers of the defendants and also to the instruction given to the jury.

The third exception will first be considered. The Courts instruction to the jury asserts that the notice of the meeting of the Congregation to be held on the 13<sup>th</sup> day of January 1864 given in evidence, was not such a notice as was required by the constitution of the Congregation, and consequently that meeting is to be considered as irregularly convened, and is to be treated as invalid, and that its proceedings and votes are not binding upon the Congregation or the petitioners; -

By the Constitution Chapter 7 sec 12 it is provided that "All meetings (for business) of the Congregation must be announced publicly in the Church (before the Congregation) at least ten days previously, with the distinct declaration



of the object (purpose Design aim)  
of the same (meeting).

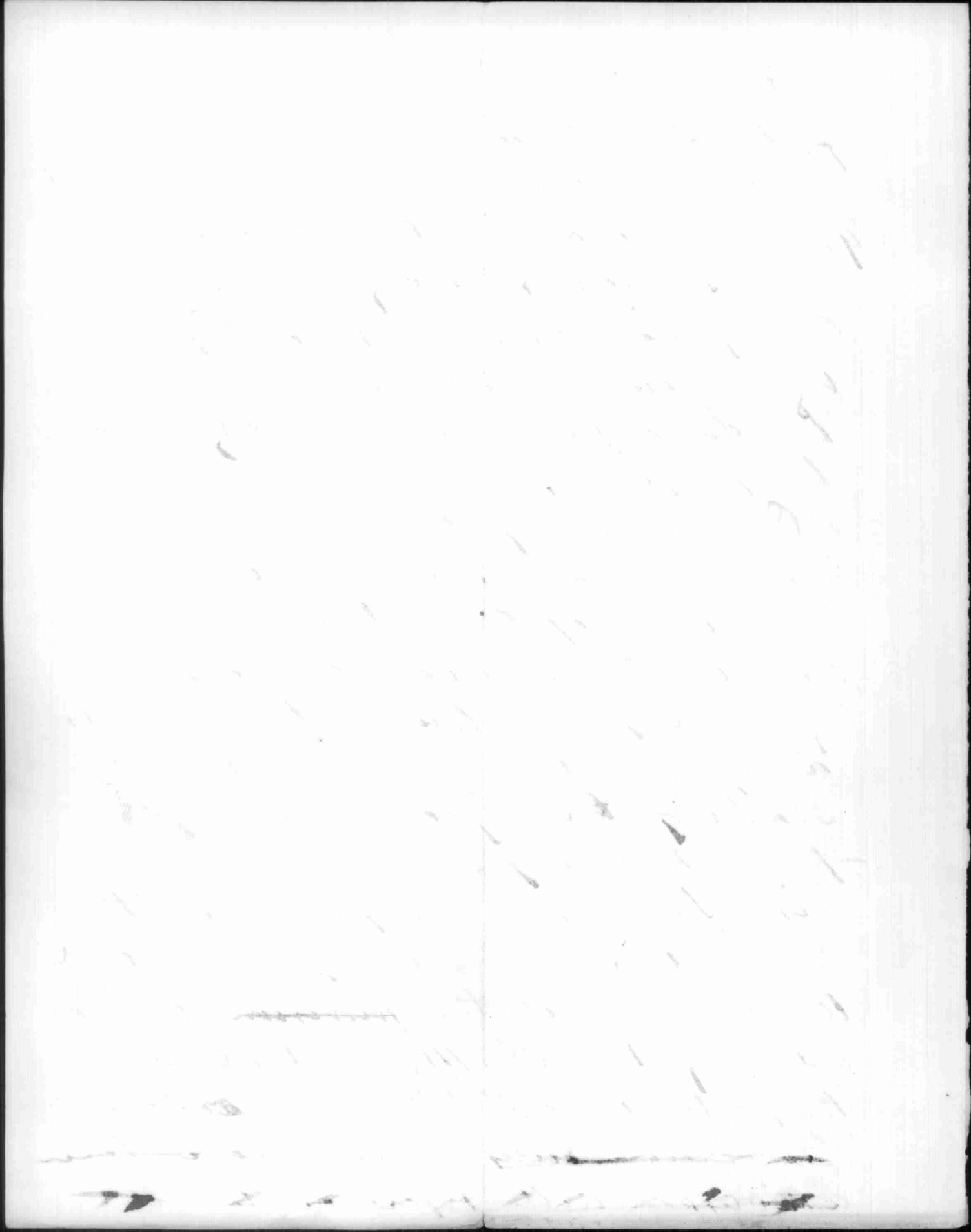
The new constitution Chapter 9 Art.  
9. contains a similar provision  
in these words, "Every meeting of the  
Congregation with the reason for call-  
ing the same, must be announced  
ten days previous, publicly from  
the pulpit,

On examining the notice given  
to the Congregation, as stated in the  
bill of exceptions, this Court con-  
curs in the opinion expressed  
by the Superior Court that it is  
altogether insufficient, in not  
stating the object of the pro-  
posed meeting -

The petitioner was pastor of the  
Church, which was incorporated under  
and in virtue of the provisions act of  
assembly 1802 Ch. III. By that act  
the pastor is constituted a Corporator,

~~The general rules which have been  
established with reference to the~~





Independent of the positive provision contained in the Constitution ~~of the~~ Church above cited, it would seem from the authorities that ~~in~~ order properly to exercise the power of another of a corporation, notice must be given to all the members of the corporation "that it is intended to consider the question of removing the particular person". The authorities on this subject will be found collected in Bacon's Ab. Vol 2, 462, 463. We refer also on this <sup>point</sup> subject to the cases cited by the appellee in argument.

Without however discussing the general principles governing this subject, it will suffice for the present case to say that by the Constitution of this society it was necessary that notice should be given to the congregation of the object of the proposed meeting and that

The first part of the paper is devoted to a general  
 discussion of the problem. It is shown that the  
 problem is equivalent to a problem in the theory of  
 differential equations. The second part of the paper  
 is devoted to a detailed study of the problem. It is  
 shown that the problem is solvable in closed form.  
 The third part of the paper is devoted to a study of  
 the asymptotic behavior of the solution. It is shown  
 that the solution has a logarithmic singularity at the  
 origin. The fourth part of the paper is devoted to a  
 study of the numerical solution of the problem. It is  
 shown that the numerical solution is stable and  
 accurate.

according to the evidence as contained in this bill of exceptions, in the notice ~~whatsoever~~ ~~was given~~ which was given of the proposed meeting of the 13<sup>th</sup> of January, no ~~notice~~ <sup>intimation</sup> whatsoever was given that it was intended to consider the question of removing the pastor. -

Entertaining the opinion that the law of the case was properly given to the jury in the Court's instruction, it follows that there was no error in rejecting the first prayer of the defendants.

And the second prayer of the defendants was also properly rejected for the same reason. Besides ~~it has been settled~~ <sup>according to the</sup> repeated decisions of this Court, that such a prayer is too general and indefinite -

We concur also in the decision by the Superior Court of the questions of evidence presented by the first

~~Handwritten text, possibly a title or header, crossed out with a thick line.~~

Introduction

Handwritten text, possibly a list or series of notes, mostly illegible due to fading and bleed-through.

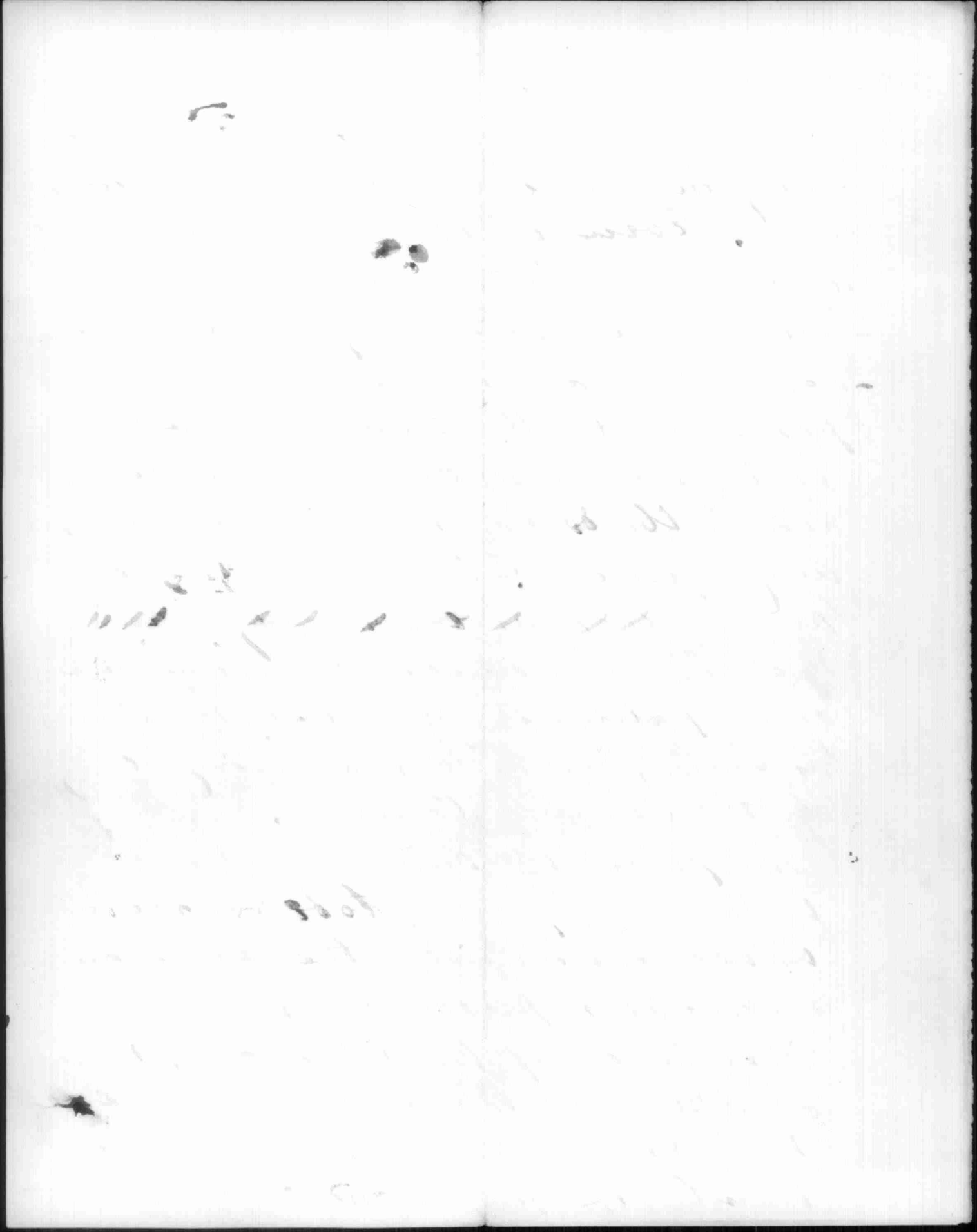
Handwritten text, possibly a signature or date.

Handwritten text at the bottom of the page, mostly illegible due to fading and bleed-through.

and second bills of exception.

The evidence, it seems to us, was clearly inadmissible under the issues joined. ~~Even~~ if it be conceded that the Committee of the Synod had jurisdiction and authority to investigate the charges against the petitioner, in the manner stated in the evidence; ~~on~~ which point however ~~be~~ ~~do~~ not mean to express any opinion; their decision or award ~~was~~ ~~advisory~~ ~~only~~ ~~and~~ did not pronounce the dismissal of the petitioner from his functions as Pastor; but was advisory only to the Church Council.

The power of dismissal resided in the congregation, ~~to be~~ exercised in accordance with the rules and regulations prescribed in the Constitution of the Church, which according to the evidence ~~were~~ not observed in this case, for want of proper ~~and~~ sufficient



notice of the meeting convened for that purpose.

Many of the questions presented in the appellants' brief and argued at the bar, we have deemed it unnecessary to decide, because we consider they are not properly before us on this appeal.

The case comes before us on the bills of exceptions only, no question having been made in the Court below either on the pleadings, or by motion in arrest; and finding no error in the decision of the Superior Court, the judgment will be affirmed, and a peremptory writ of mandamus ordered.

Judgment affirmed  
& mandamus ordered.