am not satisfied that there is at Common Law power in a Judge of this Court to upset an election or declare an election void on the ground of a single act of bribery. Of course it is true that whatever the Common Law is, this Court can administer it, but I am not satisfied that there is any Common Law which would authorize the avoidance of an election for a single act of bribery. However, the withdrawal by Sir John Quick of any imputation of bribery outside the Act itself renders it unnecessary to consider that point. On this ground also I am entirely in accordance with the judgment of the other members of the Court.

GRIFFITH, C.J. Both parties having partly succeeded, there will be no costs of the reference.

Solicitors, for petitioner, *Quick, Hyett & Rymer*, Bendigo.

Solicitors, for respondent, *Blake & Riggall*, Melbourne.

[HIGH COURT OF AUSTRALIA.]

WILLIAM MALONEY . . . . . PETITIONER;

AND

SIR MALCOLM DONALD McEACHARN . RESPONDENT.

MELBOURNE ELECTION PETITION.

ON REFERENCE FROM THE COURT OF DISPUTED RETURNS.

Commonwealth Electoral Act 1902 (*No.* 19 *of* 1902), *secs.* 109, 112, 113, 114, 119, 139, 158, 209; *Schedule, Form K—Acts Interpretation Act* 1901 (*No.* 2 *of* 1901), *sec.* 13—*Election — Voting by post — Application for ballot-paper — Witness to signature—Mandatory or directory provision—Voter voting out of his division—Form of ballot-paper—Writing name of candidate.*

March 8, 9, 10.

Griffith, C.J., Barton and O'Connor, JJ.

The direction in Form K in the Schedule to the *Commonwealth Electoral Act* 1902, introduced by the letters "N.B." as to the persons by whom applications for postal vote certificates are to be attested, is mandatory.

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Held, therefore, that postal votes, given upon certificates and ballot-papers issued to electors pursuant to applications not attested by a person of one of the classes there specified, are invalid.

A ballot-paper, issued pursuant to sec. 139 of the *Commonwealth Electoral Act* 1902 and Regulations made thereunder to a voter absent from his Division, must be in the ordinary form having the names of the candidates printed or written thereon, and the voter must vote in the ordinary way by making a cross opposite the name of a candidate.

Held, therefore, that votes given by the voters writing on a blank ballot-paper the name of one of several candidates, are invalid.

At an election for the House of Representatives for the Electoral Division of Melbourne, in the State of Victoria, held on 16th December, 1903, there were two candidates, Sir Malcolm Donald McEacharn, Knight, and William Maloney. The former was, on the 18th December, declared by the Returning Officer to have been duly elected. Maloney thereupon filed a petition praying for a declaration that McEacharn was not duly elected, and that he, the petitioner, was duly elected, or, in the alternative, for a declaration that the election was void.

The petition coming on for hearing before *Griffith*, C.J., sitting as the Court of Disputed Returns, he ordered the following questions of law to be referred to the Full Court for determination, viz. :—

(1) Whether the attestation of applications in Form K (*a*) in the Schedule to the *Commonwealth Electoral Act* by some one of the

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(*a*) FORM K.

The *Commonwealth Electoral Act* 1902.

APPLICATION FOR A POSTAL VOTE CERTIFICATE.

State of [*here insert name of State*].

To the Returning Officer Electoral Division of [*here insert name of Division*].

I [*here state Christian names, surname, place of living, and occupation*] hereby apply for a Postal Vote Certificate.

1. I am an elector on the Electoral Roll for the Division of [*here insert name of Division*] to vote at [*here insert name of polling place*].

2. The ground on which I apply for the Certificate is [*here state ground*].

3. I request that the Postal Vote Certificate and the Postal Ballot Paper for the Senate and the House of Representatives or either as may be required may be forwarded to me at [*here state address to which the papers are to be forwarded*].

Dated this day of 19

[*Signature.*]

Signed in the presence of

persons specified in the note to that form, is an imperative condition, so that votes given by post, under certificates and ballot-papers issued to electors upon applications not so attested, are necessarily invalid.

(2) The ballot-papers provided for use, under the Regulations, by electors absent from the Division, not having contained any squares in which to mark a cross, but being blank with the exception of the words "Ballot Paper" at the top, with one horizontal line at a distance of about an inch below them; whether votes given by merely writing upon the ballot-paper the name of the candidate for whom the elector voted, without also writing the name of the other candidate, and without marking the ballot-paper by making a cross opposite the name of the candidate for whom he voted, ought to be rejected.

These questions now came on for argument.

Gaunson for the petitioner. The answer to the first question depends on section 109 and Form K to the Act. The provisions in Form K are mandatory. "Whether words used in a Statute are compulsory or only directory, depends on the subject-matter to which they are applied, and on the general scope and object of the Statute, rather than on the use of particular language in the Statute." *Paley on Summary Convictions*, 7th ed., p. 40. The section is enabling, and the power must therefore be followed strictly. "When a new authority is vested in any body, the condition upon which it is granted must be strictly pursued." *Thompson* v. *Harvey* (1859), 4 H. and N., 254, at p. 259; see also, *R.* v. *Loxdale* (1758), 1 Bur., 445; *Bain* v. *Whitehaven Railway Co.* (1850), 3 H.L., 1; *Maxwell on Statutes*, 2nd ed., p. 360. In considering the provisions for voting by post, the Common-

N.B.—To be signed in the presence of a Returning Officer, Electoral Registrar, Justice of the Peace, School Teacher, or a Postmaster.

The grounds on which a Postal Vote Certificate may be issued are—

(*a*) That the applicant has reason to believe that he will on polling day be more than five miles from the polling place for which he is enrolled; or

(*b*) That the applicant being a woman believes that she will on account of ill-health be unable on polling day to attend the polling place to vote.

(*c*) That the applicant will be prevented by serious illness or infirmity from attending the polling place on polling day.

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wealth Parliament may be assumed to have had before it the Victorian legislation, and to have intended to make a very serious departure from it. In the Victorian Act (No. 1701) there is no provision requiring signatures to applications for postal votes to be witnessed. The object of the Commonwealth Legislature is to surround the privilege with safeguards, and to prevent anything like fraud on the Act. The *Acts Interpretation Act* 1901, sec. 13, makes every Schedule to an Act part of the Act. Form K, therefore, is part of the Act.

[GRIFFITH, C.J.—Are the words introduced by the letters "N.B." part of the Form, or are they something added to it?]

They are part of the form, and they are introduced in that way in order to show that they are mandatory.

[GRIFFITH, C.J.—In *McIntosh* v. *Simpkins* (1901), 1 Q.B., 487, words in a form in a Schedule printed in italics and giving directions as to filling up the form, were held to be mandatory.]

[*Mitchell.*—The Act in that case appears to be one dealing with the liberty of the subject.]

Enabling words are always mandatory where they are words to give effect to a legal right; *Julius* v. *Bishop of Oxford*, (1880) 5 App. Cas., 214. Sec. 109 contains a grant of an electoral privilege, and no elector can have the benefit of the grant without complying with the conditions. None of the questions contained in sec. 141 can be put to a person voting by post. The Court should struggle against directory legislation, and should seek to make the law certain by interpreting conditions as being mandatory. The application is the foundation of the right to vote by post, and if the application does not comply with the requirements of the Act, it is void and the subsequent vote is bad.

The votes referred to in the second question are obviously bad. The only case in which an elector can vote by writing on the ballot-paper the name of the candidate he prefers is that of postal voting. Under sec. 158 (*c*), at the scrutiny, all ballot-papers (not being postal ballot-papers) which do not contain a cross opposite the name of the candidate, must be rejected. Sec. 139 (3) (*a*) does not justify regulations permitting the writing on ballot-papers of only one name. Regulation 13 of the Regulations of 10th Oct., 1903, provides that ballot-papers are to be in the ordinary form, that is,

having the names of all the candidates printed or written upon them, when they are handed to the voter.

Mitchell for the respondent. As to the first question the most important, and the governing section, is sec. 119, which gives the grounds upon which a postal vote shall be rejected, and it shows that all that is necessary upon the application form is the signature of the voter, so that it may be compared with the signature to the postal vote. The omission to have the application verified, if it is necessary, does not affect the validity of the vote, but would justify the Returning Officer in refusing to issue a postal ballot-paper. Having issued it the Act does everything else. The words introduced by the letters "N.B." in Form K are directory only. If personation were feared, the legislature should have made provision in the body of the Act as to verifying these applications.

[GRIFFITH, C.J., referred to *Liverpool Borough Bank* v. *Turner* (1860), 30 L.J. Ch., 379, *per* Lord *Campbell*, L.C., at p. 380, as to when an Act is mandatory.]

If the object of the legislature were to obtain identification of the applicant, it would have required the witness to the signature to certify that he knew the applicant. It looks as if the draughtsman who drew Form K thought that there was a provision in the Act itself to the effect set out in the words following the letters "N.B."

[GRIFFITH, C.J. — In all the other forms except Form K, sentences introduced by the letters "N.B.," simply call attention to a provision contained in the body of the Act. It would seem as if there had been in the original draft some such provision as that following the letters "N.B." in Form K which had subsequently been struck out.]

If these words were in a section of the Act it would be very difficult to contend that they were not mandatory. But their position in Form K makes them much less important. The case of *McIntosh* v. *Simpkins*, *supra*, is followed in *Lumley* v. *Osborne* (1901), 1 Q.B., 532, and in *Alderson* v. *Palliser* (1901), 2 K.B., 833, and all were cases affecting the liberty of the subject. The words introduced by the letters "N.B." are a footnote within the meaning of sec. 13 (3) of the *Acts Interpretation Act* 1901, and

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are, therefore, not part of the Act. Those words clearly refer to something supposed to be somewhere else, and do not purport to enact anything. See *Woodward* v. *Sarsons*, (1875) L.R. 10 C.P., at p. 746. If then the words are part of the Act, they are directory only; if they are mandatory, the Returning Officer, before issuing the postal ballot-paper, should have dealt with the matter, and, as he has passed it over, the only grounds for rejecting the votes are those contained in sec. 119. The issue of the postal vote certificate is conclusive as to the signing and witnessing of the applications.

[O'CONNOR, J., referred to *Thompson* v. *Harvey*, *supra*, as being in the respondent's favour.]

As to the second question. The electoral officers appear to have put a certain interpretation upon the Regulations, and to have considered that these absent votes should be given in the same way as postal votes. If sec. 158 is applicable to these votes, there appears to be no doubt that they are bad. But, if it is held that the putting of a cross opposite the name of a candidate is directory, then this also is only directory.

Gaunson in reply. Although sec. 209 enables the Forms in the Schedule to be varied, that does not justify a variation of the requirements of those Forms.

[GRIFFITH, C.J.—May it not be that, although it is mandatory that the application shall be witnessed, it is only directory that it shall be witnessed by one of certain persons?]

The general scope and object of the Act shows that the directions, both as to the witnessing and as to the person who witnesses, are mandatory.

Cur. adv. vult.

10th March.

GRIFFITH, C.J. Two questions were referred for the opinion of the Court. The first is "Whether the attestation of applications in the Form K in the Schedule to the *Commonwealth Electoral Act* by some one of the persons specified in the note to that Form is an imperative condition, so that votes given by post under certificates and ballot-papers issued to electors upon applications not so attested are necessarily invalid." The votes mentioned in the petition, amounting, we are told, to a very large number, are

what are called postal votes, given under the provisions of Part X. of the *Electoral Act*. Sec. 109 provides that an elector, under certain circumstances, "may, after the issue of the writ, and before the polling day, make application in the Form K in the Schedule, to the Returning Officer for the division in which he lives, for a postal vote certificate." Then follow certain provisions as to what shall be done after the application is made. By sec. 209 it is provided that "the Forms in the Schedule may be varied as the circumstances of the case may require." I take that as qualifying sec. 109 by saying "In the Form K, or substantially in the Form K." [His Honor then read Form K, and continued.] It will be observed that there is a note, not italicised, but introduced by the letters "N.B.," which is as follows:—"To be signed in the presence of a Returning Officer, Electoral Registrar, Justice of the Peace, School Teacher, or a Postmaster." Then follows what is practically a repetition of the grounds specified in sec. 109 as authorizing an application for a postal vote certificate. The question to be determined is whether the words introduced by the letters "N.B." are imperative, or merely directory, that is to say, whether they are an essential part of Form K. The principles to be applied in determining whether particular provisions of an Act are mandatory or directory, have been sufficiently stated in the previous decision (*a*). The scope and object of the particular provisions must be looked at. Now the scheme of this Act is that every elector shall, as far as practicable, vote at the polling place for which he is enrolled. Provisions, however, are made for allowing an elector to vote at another polling place, but always on conditions; in the case of an elector who wishes to vote at another polling place in the same Division, he must, under sec. 139, make and sign a declaration in the Form Q in the Schedule, and if he wishes to vote at a polling place outside his Division, but within his State, he must comply with the regulations made under sec. 139 (3). So, if he wishes to vote by post, he must comply with the conditions of sec. 109. That is necessarily involved in the words used, because a voter has no right to vote by post beyond such a right as is conferred by sec. 109, and I think it is a clear rule that where a privilege is granted subject to a condition, the performance

(*a*) *Chanter* v. *Blackwood*, *ante*, pp. 70, *et seq.*

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of that condition is necessary before the right to exercise the privilege arises. Therefore the question is reduced to this—is the attestation of the application a condition to be performed? It is clear that the voter must make an application, and the words are "in the Form K," to which, as modified by sec. 209, may be added "or to the like effect." Similar words in English Acts have received very stringent interpretation, particularly in the Bills of Sale Acts. But a distinction is endeavoured to be drawn here in consequence of the very singular way in which the condition is introduced. It is introduced by the letters "N.B." A number of directions are given in the form, many of which may be said to be essential. Indeed, it is hardly contended that they are not essential. For example, the direction that such particulars shall be stated as will serve to identify the applicant with the elector whose name appears on the roll. If, instead of the words now in question being introduced by the letters "N.B.," they had been in brackets or in italics, they would *primâ facie* have been in the same category as those directions, and essential. But attention is called to the fact that notes introduced by the letters "N.B." are frequent throughout the Schedule, and in every instance, except this one, they are mere repetitions or notifications of something already contained in the body of the Act. In this instance, the note is not a notification of something in the body of the Act, but adds something not to be found in the body of the Act. It is contended from that circumstance that it is clear that the framers of this Act used these notes, not for the purpose of declaring or laying down something in the nature of an enactment, but merely for the sake of giving information. That argument was strongly supported by the singular fact that, although the Act contains no reference to attestation of applications for postal vote certificates, it does contain elaborate provisions for attestation of the postal ballot-papers themselves. Thus sec. 112 requires that the ballot-paper shall be marked in a certain way in the presence of a postmaster, or a police or stipendary magistrate, or a head master of a State school, or a person appointed for the purposes of the section by the Governor-General in Council, and by no other person. Then sec. 114 provides that it shall be the duty of these persons to witness postal ballot-papers; sec. 115 requires these persons to

post all postal ballot-papers witnessed by them, and sec. 122 imposes other duties upon these same persons in the event of the inability of the voter to write. It is, no doubt, very singular that in analogous provisions in the same part of the Act two analogous documents are required to be signed by the elector, and that in the body of the Act there are elaborate provisions for attesting one of them, while, as to the other, no provision is there made, and we are left to find that provision in the Schedule. On the other hand not too much weight is to be attached to the fact that the words are in roman letters and not in italics. The application is to be in the Form K substantially. We know that in England and also in Australia similar words have sometimes received a rigorous construction. Some assistance may perhaps be derived from the case of *McIntosh* v. *Simpkins*, (1901, 1 K.B., 587.) In that case, by rules of Court, not by Statute, power had been given to a County Court Judge to issue judgment summonses in certain cases, the condition of their issue being the making of an affidavit by the plaintiff in a form in the Schedule. The form in the Schedule had, printed in italics, certain directions exactly analogous to those in the Form K and conveyed in no other way. The form ran thus:—"(3) The defendant, C.D., now lives at in a house (*or* shop) apparently of the yearly rent or value of *l.* (4) (If a master). The defendant C. D., carries on the business of (*state what*) in a (*state what*) at (*state where and any circumstances showing that the business is profitable or that he has means to pay*); (5) the defendant, C. D., is unmarried [*or* is married and has (*state how many*) children, of whom (*state how many*) work and earn wages]." It was held by the Court of Appeal that the making of an affidavit in the prescribed form was an imperative condition to be performed by the plaintiff before the Judge could exercise in his favour the power conferred upon him by the rules. That case, I think, goes further than any others that preceded it. If it is a guide, it would be difficult to say that anything contained in this Form K, at all analogous to the directions in that case, could be rejected, or could be held to be other than a condition to be performed before the electors can take advantage of the privilege conferred by sec. 109. The only points upon which that case can

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be distinguished are that the words here are introduced by the letters "N.B." and are not printed in italics. If they were printed in italics I think it could hardly be contended that they were not part of the essentials of the Form. Notwithstanding the very singular construction of the Act, and the singular difference between the form of the provisions as to attestation of the two documents, and the absence of any provision in the body of the Act as to attestation of the applications, I am, I confess, compelled to come to the conclusion that attestation of the application by one of the persons specified is an essential condition to the granting of the application. In coming to that conclusion I am influenced to a great extent by the apparent scope of this Part of the Act. If the application could be made without attestation, means of personation would be offered to any person who was willing to take advantage of them. There would be no check or means of obtaining evidence against the personator. If a man were merely required to sign the name of an elector and give the particulars mentioned in the form, all of which he could ascertain from the roll, and then to send in the application, the Returning Officer would have no more to do than to issue the certificate and ballot-paper. Anybody would be enabled to get a postal ballot-paper. If the application were merely required to be attested by another signature, the means of evading the Act would be almost as easy, because it would only need two persons to concur, one to sign the name of an elector as the applicant, and another to sign a fictitious name as attesting witness. But, if the application is required to be attested by some known and identifiable person, of one of the classes specified in the note to Form K, there would be this safeguard, that, if he improperly attested a ballot-paper, he would be liable to lose an official position, if the facts were made known on a prosecution for personation or otherwise. There would be, at any rate, some safeguard added. It is true it is an imperfect safeguard, just as the attestation of an affidavit by a commissioner is an imperfect safeguard as to the identity of the deponent, for the commissioner seldom knows the deponent. But a person who signs an affidavit in the presence of a commissioner runs the risk of being identified and prosecuted if he swears falsely. So, in this case, if a man signs an application of this sort, not

being the person whose name is signed, he is guilty of a criminal offence, rendering him liable to imprisonment for two years. If the construction which we favor is adopted, he cannot effectively do so except in the presence of a person easily identifiable, a person holding a public office, and who is likely to be a credible witness on a prosecution. Therefore the provision is a substantial, though an imperfect, safeguard. This reasoning and the authority of *McIntosh* v. *Simpkins* (*supra*), compel me, reluctantly I confess, to the conclusion that attestation by some one of the persons specified in the note to the Form is an imperative condition. I say reluctantly, because it appears manifest that the electors made the applications and attempted to exercise their right to vote in perfectly good faith, and believed that they were complying with the Act in doing so in this manner (*a*). Nevertheless, I have come to the conclusion that attestation by one of the specified persons is an imperative condition.

The second point referred is as follows:—"The ballot-papers provided for use under the Regulations by electors absent from the Division, not having contained any squares in which to mark a cross, but being blank with the exception of the words 'Ballot Paper' at the top, with one horizontal line at a distance of about an inch below them, whether votes given by merely writing upon the ballot-papers the name of the candidate for whom the elector voted, without also writing the name of the other candidate, and without marking the ballot-paper by making a cross opposite the name of the candidate for whom he voted, ought to be rejected." It is necessary to refer briefly to the regulations on that point. I referred just now incidentally to sec. 139. In pursuance of that section the Governor-General made regulations dated 19th October, 1903, and published on the same day, providing facilities for electors desiring to vote at a polling place outside of the Division. They prescribed that the electors should give certain particulars, answer certain questions, and sign a

(*a*) NOTE.—It was stated to the Court that the error arose in consequence of erroneous instructions issued by the Chief Electoral Officer to Returning Officers, to the effect that applications for postal votes certificates might be attested by certain persons (whom he specified) other than those mentioned in the note to form K.

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declaration. Amongst other things, they prescribed the form of the ballot-paper to be used. Regulation 13 provides :—"The ballot-paper to be used shall be in the ordinary form, except . . . (2) The names of the candidates may be written instead of printed thereon." That means, I suppose, taken with the sections of the Act relating to the form of ballot-papers, that the names of the candidates may be written by the Returning Officer. It is his duty, by sec. 124, to provide the ballot-papers, and when the regulations say that the ballot-papers shall be in the ordinary form, they mean that the Returning Officer is to provide the ballot-papers in the ordinary form, but may write the names of the candidates or have them written, instead of their being printed. The ballot-paper, being thus in the ordinary form, is to be given to the elector, who, having received it, is to mark it in the prescribed manner, that is to say, by making a cross, within a square or not (whatever the law as to that is), opposite the name of the candidate for whom he votes. But that he must mark the ballot-paper by making a cross opposite the name of the candidate for whom he votes, is manifest. In this case also the elector is seeking to take advantage of a privilege granted subject to a condition which he must perform. It is also manifest that the names of all the candidates must appear upon the ballot-paper in the same way as in other cases. For these reasons I think that all these votes must be rejected.

BARTON, J. I agree with the learned *Chief Justice* on both questions. I should also like to add an expression of my reluctance in coming to the conclusion on the first question, because the result is, unless the whole facts and circumstances lead to another election, the disfranchisement of a number of electors who have done the best they knew to comply with the Act. I do not think that I could have been led to the conclusion in which I now concur, except by being satisfied upon very careful thought, that, no matter in what place Parliament has put the requirement which follows the letters "N.B." in the Schedule, there was that in the body of the enactment which rendered the verification prescribed in the words in question, an essential for the due operation of the Act. Postal voting is the greatest stretch of the

secrecy of the ballot which has been made in the legislation of the States of Australia. I do not for a moment question its wisdom, but the fact that it was to no slight extent a departure from the secrecy of the ballot, would make the legislature very careful in surrounding it with safeguards. The legislature has expressly stated so in sec. 112, where it requires the marking of the ballot-paper in the presence of a witness of a certain class. But there is something anterior to that act of performance, and of equal, if not greater, importance, and that is that the foundation of the right to vote by post, a right only allowed under certain circumstances, shall be truly laid. Therefore the circumstances which render it necessary in the eye of the legislature that the actual vote itself should be marked in the presence of a witness, exist with equal cogency to require proper safeguard to the obtaining permission to do that thing. Now that is the application referred to in sec. 109. If we hold that the requirement expressed in Form K and now in question, is merely directory, the result would be that, notwithstanding what is there said, anyone would do as a witness, and therefore an act of greater importance than that mentioned in sec. 112, viz., that mentioned in sec. 109, would be surrounded by fewer and weaker safeguards. We cannot conclude that that was the intention of the legislature, more especially in view of the fact pointed out by the learned *Chief Justice* that sec. 182 begins with the offence of falsely personating any person to secure a ballot-paper to which the personator is not entitled, and subjects the personator to imprisonment not exceeding two years. Nothing is more likely to have been the intention of the legislature than to see that rights of this kind were not fraudulently gained, and that the process of gaining them should be so verified as to enable the finger to be put at once on competent witnesses for the purpose of proving whether the representation upon which the vote was gained was a correct or false one when challenged in a court of justice. That appears to me to be the reason for the note introduced by the letters "N.B." —it certainly is not a foot-note within the meaning of the *Acts Interpretation Act*—in requiring what I am compelled to hold it does require. Serious as the consequences are, they might be more serious if we gave a judgment in this case which might entail consequences in the way of the destruction of proper vigil-

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ance and safeguards, and which we cannot imagine the legislature wished to produce by the law which they passed. I agree with the learned *Chief Justice* on that ground. On the second I have nothing to add to what he has said.

O'CONNOR, J. I concur with the judgments of the other members of the Court on both points. As to the first point, the safeguard given by sec. 112 ensures, as far as possible, that the person who votes is the person who has obtained the certificate and ballot-paper. It does nothing more. That vote, generally speaking, will be exercised a long way away from the voter's Division, it may be out of his State altogether, and probably amongst people who cannot identify him and who know nothing about the form in which his name appears on the electoral roll. So that there is absolutely no safeguard to ensure that the elector himself and not somebody who is personating him, has obtained the ballot-paper. In this method of voting there are infinitely more opportunities of personating than in any other method, and one would expect the legislature would take particular care, in setting the machinery of the Act in motion, that there should be a safeguard concerning the issue of the ballot-paper. Unless that safeguard consists in the obtaining of a witness to the application there is no safeguard, and, in the nature of things, there can be no safeguard. What we have to decide is whether this provision requiring a witness to the application for a postal vote certificate, although in the Schedule, and not in the body of the Act, is not so extremely material, as being the foundation for the vote itself, that we ought to regard it as just as mandatory as the provision in sec. 112. It appears to me that, unless we are to throw away all safeguards against personation in the obtaining of postal vote certificates, we are driven to the conclusion that this note in Form K is a mandatory part of the Act, and we must hold that, unless it is complied with, the certificate and the vote given under it are invalid. As to the second ground I wish to add nothing except that I concur with the judgment of the Court.

Questions answered accordingly.

Solicitors, for petitioner, *Gaunson & Lonie*, Melbourne.

Solicitors, for respondent, *Malleson, England & Stewart*, Melbourne.