

## [HIGH COURT OF AUSTRALIA.]

## IN RE PORTER'S ELECTION PETITION.

## COURT OF DISPUTED RETURNS.

H. C. OF A. *Parliamentary Election (Commonwealth)—Petition disputing return—Petition sent by telegram—Proceedings thereon—Conditions—Necessity for filing original petition*

1923.

MELBOURNE,

May 14, 15.

—*Signature—Commonwealth Electoral Act 1918-1922 (No. 27 of 1918—No. 14 of 1922), secs. 185, 187, 214—Northern Territory Representation Act 1922 (No. 18 of 1922), sec. 7—Northern Territory Electoral Regulations (Statutory Rules 1922, No. 154).*

KNOX C.J.,  
ISAACS, HIGGINS,  
RICH and  
STARKE JJ.

Sec. 185 of the *Commonwealth Electoral Act 1918-1922* provides that "Every petition disputing an election or return . . . shall . . . (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote thereat: (d) be attested by two witnesses whose occupations and addresses are stated: (e) be filed in the Principal Registry of the High Court . . . within forty days after the return of the writ;" &c. Sec. 187 provides that "No proceedings shall be had on the petition unless the requirements of the preceding sections" (including sec. 185) "are complied with."

*Held*, that under those sections no proceedings can be had on a petition unless the original petition bearing the signatures of the petitioner and of the two witnesses is filed within the time limited by sec. 185 (e).

*Held*, therefore, that no proceedings could be had upon a telegram sent to the Principal Registrar which purported to embody a petition disputing an election signed by a person qualified to vote at the election in dispute and witnessed by two other persons.

APPLICATION referred to the Full Court.

On 3rd May 1923 the Principal Registrar of the High Court at Melbourne received a telegram sent to him on the same date from Darwin, in the Northern Territory, in the following terms, so far as is material:—"Petition to the Court of Disputed Returns, Melbourne. May it please the Court—In this petition against the



election of Harold George Nelson as a member for the Northern Territory of Australia in the Federal House of Representatives the petitioner humbly desires to show :—” [Then followed the grounds of the petition]. “ Your petitioner therefore prays that the election of the said Harold George Nelson may be declared invalid. Your petitioner further prays that the inquiry into this matter shall be held at Darwin, where all the witnesses reside and where all necessary documentary evidence is obtainable, in order to save unnecessary expense and delay.—Signed by the petitioner John Alfred Porter, journalist, Smith Street, Darwin—In the presence of E. W. Pearse, labourer, Mitchell Street, Darwin ; C. McKye, prospector, Mitchell Street, Darwin. The three signatories above are all persons qualified to vote at a Federal election in the Northern Territory.” On the same date the Principal Registrar received another telegram of that date, purporting to have been sent by “ Porter, petitioner, Darwin,” and informing him that an election petition had that day been telegraphed to him, and that a deposit of £50 as security and 15s. filing fees had been telegraphed to his credit. The Principal Registrar on 4th May sent to John Alfred Porter, Darwin, a telegram acknowledging receipt of the two telegrams mentioned above, and adding “ Petition filed subject to determination by Court of question whether receipt thereof by telegram is a sufficient compliance with sec. 185 of *Commonwealth Electoral Act*.”

An application was subsequently made to *Knox* C.J. in Chambers on behalf of John Alfred Porter for an extension to 30th June 1923 of the time for the service of the above-mentioned petition ; and, by direction of the learned Chief Justice, the application was now made to the Full Court.

*Stanley Lewis*, for the applicant. Sec. 185 (c) and (d) of the *Commonwealth Electoral Act* 1918-1922 do not require personal signature by the petitioner or the attesting witnesses. Signature by an agent is sufficient, and the officer of the Post and Telegraph Department is, for that purpose, an agent. Sec. 185 (e) does not require that the original petition should be filed within the specified time. It is sufficient that some document setting out the grounds of the petition, or at most a correct copy of the petition, is filed. The original is

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only required when the petition comes on for hearing (sec. 190). The sending of a petition by telegram is permitted by sec. 214. Sec 7 of the *Northern Territory Representation Act 1922* only makes applicable in the Northern Territory those parts of the *Commonwealth Electoral Act* which can be so applied.

*Sanderson* (by permission of the Court), for Harold George Nelson. The words of sec. 185 point clearly to the original petition being filed, and under sec. 187, unless that is done, no proceeding can be had upon it.

*Cur. adv. vult.*

May 15.

KNOX C.J. delivered the following written judgment:—On 3rd May 1923 the Principal Registrar received a telegram purporting to have been sent by the applicant, informing him that an election petition had been telegraphed to him on that day, and that a deposit of £50 as security and 15s. filing fees had been telegraphed to his credit with a Bank in Melbourne. On the same day the Principal Registrar received a telegram purporting to have been sent by the applicant. This telegram embodied a petition addressed to the Court of Disputed Returns praying that the election of Harold George Nelson as Member of the House of Representatives for the Northern Territory, might be declared invalid, and purporting to have been signed by the applicant and attested by two persons, all three alleged signatories being described as persons qualified to vote at a Federal election in the Northern Territory. The Principal Registrar received these telegrams, and filed that embodying the petition subject to the determination by the Court of the question whether transmission of the petition by telegram complied with the provisions of sec. 185 of the *Commonwealth Electoral Act 1918-1922*. An application having been made to me in Chambers for an extension of time for service of the alleged petition, I directed the application to be heard before a Full Court in order that the question might be determined whether any proceedings could be had on the document so transmitted to and filed by the Registrar. It may be taken for the purpose of this application that the writ



for the election was returned on 24th March 1923, and, consequently, that the telegram in question was received by the Registrar and filed within forty days after the return of the writ.

The question for decision depends on the true construction of sec. 185 of the Act. By that section it is provided that "every petition disputing an election or return . . . shall . . . (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote thereat: (d) be attested by two witnesses whose occupations and addresses are stated: (e) be filed in the Principal Registry of the High Court . . . within forty days after the return of the writ." It is obvious that the signature of the petitioner and the attestation by the witnesses are required for the purpose of authenticating the petition and of identifying the person responsible for its presentation. The Act, as one would expect, does not provide that the signature of the petitioner or of an attesting witness may be written by anyone other than the person whose signature it purports to be. In the absence of such a provision it is necessary that the petition should be actually signed by these persons respectively, and the only question is whether the Act requires that the petition so signed and attested shall be filed or whether the filing of a copy of a petition so signed and attested not itself actually signed by those persons is a sufficient compliance with the requirements of sec. 185. On this point the words of the section are clear and unambiguous. They provide that every petition shall be (a) signed, (b) attested and (c) filed, clearly indicating that the petition to be filed is that which had been actually signed and attested—the identical document and not a mere copy.

The only document in the form of a petition received by the Registrar was neither signed by the petitioner nor by the witnesses whose names it bore—the names of the petitioner and the witnesses being typewritten, presumably by a clerk in the Telegraph Office. Consequently it does not, in my opinion, conform to the requirements of sec. 185 of the Act.

By sec. 187 it is provided that no proceedings shall be had on the petition unless the requirements of (*inter alia*) sec. 185 are complied with. It follows that no proceedings can be had on this petition, and that the application should be dismissed.

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ISAACS J. delivered the following written judgment :—No question arises as to the true date of the return of the writ. The only question is whether, whatever be the true date of the return, there has been compliance with “ the requirements of the preceding sections ” within the meaning of sec. 187 of the *Commonwealth Electoral Act 1918-1922*. If not, that section prohibits any proceedings on the petition in the Court of Disputed Returns. It assumes the existence of a petition. One of the preceding sections is sec. 185, which enacts that a petition shall conform to five conditions, one of which is that it shall be filed in the Principal Registry of the High Court or in the District Registry of the Court in the capital city of the State in which the election was held within forty days after the return of the writ. As I have said, nothing turns on the date of the return or the period of forty days. The question is simply whether the petition has been “ filed ” at all, and at any time.

First of all, we have to remember that the election was held under the *Northern Territory Representation Act 1922*. Sec. 7 of that Act enacts : “ Subject to this Act, the provisions of the *Commonwealth Electoral Act 1918-1922* shall apply, with such exceptions and subject to such modifications and adaptations as are prescribed, in the Northern Territory in like manner as if (a) the Northern Territory were an Electoral Division ; (b) the election of a member to represent the Northern Territory were the election of a member to represent an Electoral Division of a State ; and (c) the Supreme Court of the Northern Territory were the Supreme Court of a State.” There have been modifications and adaptations prescribed. They are found in the Second Schedule to Statutory Rules No. 154 of 1922, dated 11th October 1922. Several sections of the *Commonwealth Electoral Act 1918-1922* have been modified or adapted, but secs. 185 and 187 are not included : they have been left untouched ; and no other modification or adaptation affects them in relation to this case. There exists no separate Registry of this Court in the Territory, and the only available place for filing the petition is the Principal Registry of this Court.

Assuming there exists an original petition perfect in all other respects, that original petition has not been filed ; only a telegraphic copy—assuming it to be a true copy—has been filed. The words



of the Act point to the original being filed ; and, in the absence of any distinct provision permitting a copy to be substituted, both the words and the reason of the matter are opposed to such a course. It would be absurd to suppose a copy could be filed, and the original left in the hands of the petitioner, to be dealt with as he choose. Besides, there is a history behind the provision. The Court takes the place of the former Election Committee and, before that, of Parliament itself ; and the common law was that the original petition had to be presented to the House concerned. Filing in the Court is the substitute for the presentation to Parliament, and presentation of a copy was never heard of. The original petition had to be very rigidly examined, and the present law is a mere adaptation of the former method to the new practice.

Sec. 187 is therefore a bar to proceeding on the petition. I would add that sec. 214 has not been overlooked. It has no application.

HIGGINS J. I have come to the same conclusion as my learned brothers.

RICH J. I agree that the document in question does not comply with sec. 185 of the *Commonwealth Electoral Act 1918-1922*, and that the application should be dismissed.

STARKE J. I agree that no order can be made on this application.

*Application dismissed. The £50 lodged as security to be paid out to the applicant or his solicitors.*

Solicitors for the applicant, *Blake & Riggall*.

Solicitor for Harold George Nelson, *R. I. D. Mallam*, Darwin, by *McCay & Thwaites*.

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