

NILE

v.

WOOD AND ANOTHER

ORDER

BRENNAN J.
DEANE J.
TOOHEY J.

NILE

v.

WOOD

The Court has sat to hear a motion seeking the dismissal or striking out of a petition addressed to the Court of Disputed Returns under s.353 of the Commonwealth Electoral Act 1918 (Cth). The allegations contained in the petition are drawn in terms which reflect at least in part the provisions of s.44 of the Constitution. In argument that section was relied on by the petitioner as founding the claim for relief which, by a proposed amendment, she sought to insert as the prayer in the petition. On reflection, and notwithstanding that the point has not been raised by counsel, it appears to us that the petition coupled with the application for amendment gives rise to "a matter" between the petitioner and the respondents and it is a matter arising under the Constitution. Moreover, the first respondent's challenge to the sufficiency of the petition requires that consideration be given to the meaning and operation of s.44 of the Constitution, and this involves or may involve its interpretation.

In these circumstances, s.78B of the Judiciary Act 1903 (Cth) casts on this Court the duty -

" not to proceed in the cause unless and until the court is satisfied that notice of the cause, specifying the nature of the matter has been given to the Attorneys-General of the Commonwealth and of the States, and a reasonable time has elapsed since the giving of the notice for consideration by the Attorneys-General, of the question of intervention in the proceedings".

Although the Court has reserved its judgment on the application of the first respondent to dismiss or to strike out the petition, consideration of s.78B has led us to the view that the Court is enjoined from proceeding further in the matter unless the conditions prescribed by the section have been satisfied. The appropriate order now to be made is that the Court adjourn the proceedings in the cause to permit the giving of notice and the provision of an appropriate time for intervention.

The matter will therefore stand adjourned to a date to be fixed to be brought on 7 days' notice to be given in writing by any party or by the Attorney-General of the Commonwealth or of a State to the other parties, to any Attorney-General who has sought to intervene and to the Registrar. However, the Court would wish to list this matter again on 9 December. The costs of the adjournment are reserved.