

hold that the Clerk was not bound to have his office open or any one present to receive papers after 4 o'clock p. m. In England where by rule papers are to be served before 7 o'clock p. m., if made after, the service is deemed as having been made on the following day, and in this country I presume that a paper left in the office after office hours and when there was no officer present to receive it, would be filed as of the day following. The statement of Mr. Thompson that the Clerk told him he would return to his office about seven and remain there and receive the petition until half-past seven, I do not think alters the case, for Mr. McDonald cannot state positively whether he was at the office at half-past seven or twenty minutes to eight, and it may be that the Clerk left precisely at the half hour, and a few minutes before Mr. McDonald arrived. But even had the Clerk failed to keep his appointment, that would be a matter to be settled between him and the petitioner, and could not be allowed to operate to the prejudice of a party insisting on his strict legal rights.

A question has arisen whether shoving the paper under the door after hours was a compliance with the Act. The 2nd clause of section 11 of the Act is very explicit on this point: "the petition *must be presented, etc.*," and clause 3 of the same section enacts that presentation of a petition shall be made by *delivering* it at the office of the Clerk, or in any other prescribed manner. And by the 2nd rule "the presentation of a petition shall be made by leaving it at the office of the Clerk, who, or his Clerk shall if required give a receipt." I think that the letter as well as the spirit of the Act requires that the presentation should be made by leaving the paper with some one capable of receiving it, and of giving a receipt for it if required. Where does the responsibility of the Clerk for the petition commence? Evidently from the time when it is presented or exhibited to him, and he has given a receipt for it if required. Supposing the petition had been stolen during the night, or swept into the stove, and destroyed without his knowledge, that any petition had been in his office, the Clerk upon no principle that I am aware of could be held liable for its loss when he was in total ignorance of its existence, and yet the law unquestionably fixes him with such liability after the petition has been presented or filed with him. And the fact that the petition was not stolen or destroyed, but was discovered the next day stowed away inside of a petition in another matter, does not alter the case.