

Petition Is Dismissed

**Decision of Mr. Justice Martin
In the Westminster Election
Case.**

**The Petition, He Holds, Was
Filed Too Late to Be
Considered**

Mr. Justice Martin yesterday gave judgment dismissing the petition against the election to the provincial legislature from New Brunswick of the Hon. J. B. Macdonald, on the ground that the petition was filed too late. The judgment follows:

"The question to be determined is: Was the petition presented within time after the return was made, as required by the provisions of the Provincial Elections Act? It will be noted that the language is 'after the return was made,' and that the return was made, and it is contended on the one hand that the petitioner had no knowledge of the return until the whole of the day on which the return was made, and 21 days within which to make a presentation, while on the other it is urged that under the circumstances, and in view of the best meaning of the act, fractions of the day need not be considered, and that the petition was presented within the time began to run against the petitioner immediately after the return was made. From the evidence I find that the return was made to the Deputy Provincial Secretary on Saturday, Sep-

11. I am not there before 9:30 a. m., and the petition is presented to the registrar of this court about 10:00 on Saturday, October 12, Sec. 27 S. 8, (3) of the Provincial Elections Act Amendment act, 1890, requires the presentation to be made at the office of the registrar "during office hours." Now the registrar having been made at half past ten on September 21, I am of opinion that there is nothing in said section 214 to prevent a petition being presented at the earliest time thereafter, i. e., when the registry of this court is opened at 10 o'clock that same morning, and the restriction in the statute is that the presentation must be after the return, not as I have above pointed out, after the day which the return was made. Such help, I think, will be sufficient.

to establish is that in the computation of the 21 days, he is entitled to exclude the first day on which it was possible for him to have made the presentation. "Many cases have been decided on the computation of time, but it would not be profitable to discuss them because the point has been decided by the Court of Appeal in re North ex parte Hasluck (1896) 2 Q. B. 204, wherein the rule is laid down by Lord Esher as follows: "No general rule exists for the computation of time either under the computation act or any other statute. On the other

where time is mentioned in a contract, and the natural mode of computation is to have regard in each case to the purpose for which the computation is to be made. . . . If they (the older decisions) or any of them, laid down any general rule as to the mode of computation

ing time that rule has been departed from in recent times, and no longer exists." And Lord Justice A. L. Smith states, at p. 272, each case must depend on its own circumstances and subject matter." Lord Justice Riggby takes the same view and adds, p. 274,

In my opinion, although Sir William Grant did not put the proposition in so many words, his judgment leads us to the conclusion that the question of whether the day on which the act is done is to be included or excluded must depend on whether it is to the benefit or

Here, the "person primarily interested" is undoubtedly the member who has been returned and whose seat is attacked, and it was not disputed on the argument that the policy of the law has been to protect the seat.

and to hold the petitioner strictly to the statute—Collins vs. Ross (1891) 7 Man. 81; 20 S. C. 1; Duval vs. Maxwell (1901) 8 B. C. 65, affirmed by the Supreme court, but not yet reported. As was said by Mr. Justice Gwynne: "It

... O., 135, at 137—"The meaning of the enactment is that the petition shall "not be kept long hanging over the heads of persons elected" "The present objection is consequently not one of that technical nature which I had to consider

I have been referred by the petitioner's counsel to the article on "Time" Vol.

XII. Enc. Laws Eng., but I do not full effect had been there given to the judgments in re North supra, and further, there is at least as good, if not better, ground for holding this case to be one of the "exceptions" given as for so holding any of the cases there cited. Take for

Example King vs. Adderley (1780) 2 Doug. 463, wherein Lord Mansfield said that in the case of Bellasis vs. Hester (17 . . .) 1 Ld. Ray 280, "it is laid down by the majority of the court that where the computation is to be made from an act done . . . the day when

his case was followed in *Castle vs. Turditt* (1790) 2 Term 623. It would appear from the brief note of the case of *Thomas vs. Quirk* (1889) S. C. R., 95, that fractions of a day were considered in deciding the question of a

If the court can inquire at what period of the day a writ was issued—*Clarke vs. Bradlaugh* (1881) 8 Q. B. D., 63—it is open to it "where the circumstances and subject matter" suggest it as a "rational

and mode of computation, to take account of fractions of a day, and I am of the opinion that is what should be done in the present case. If I were to accept the petitioner's contention the fact would be that he would be given 22, and not merely 21, days to present his petition. But to grant Lord Justice

From the authorities above cited the respondent is entitled to the benefit of every rational construction and in view

is hereby dismissed with costs.
(Signed), ARCHER MARTIN, J.
December 11, 1901.
Mr. A. E. McPhillips, K. C. and Mr.
P. Duff, K. C., of counsel for the

When Richard Price undertook to play practical joke on the caretaker of the Hamilton Powder company's magazine.

removing a couple of cases of gelatin and hiding them, he had no idea that he was committing a serious offence, but he is wiser now. Yesterday he was charged in the provincial police court with unlawfully having the powder in his possession and pleaded guilty. He

as not represented by counsel, but just after he had pleaded, Mr. George Powell came into the court and spoke in his behalf. Mr. Lindley Grease, who appeared for the Hamilton Powder company, also spoke strongly in favor of the case one in the commission of which

The magistrate, in consideration of the circumstances, enlarged the accused on bail till Friday, 13th instant, and meantime the matter will be laid before the Attorney-General, who will, it is confidently expected, take the next day.

...expected, take the most lenient
view of the case—that it was simply a
polish attempt to throw ridicule upon
the efficiency of the caretaker of the
magazine.

