

The next question is, whether in this case the time should have been . . . enlarged upon the application of the petitioner.

Neither the Act nor the Rules specify any time or number of days within which the copy of the petition is to be sent to the returning officer. By Rule 9 the registrar is required to send it forthwith upon the presentation of the petition and the notice of deposit of money, that is, within a reasonable time afterwards. There is thus less difficulty, in the absence of proof of substantial prejudice, in relieving against what is shewn to have arisen from a misunderstanding of the practice, or a misconception of the requirements of the Act and Rules, and not from intentional disregard of well understood procedure.

The question of what was necessary to be done is not at all free from difficulty. Even if the solicitor had had the Rules before him, he might have fallen into the same error, and, although he could in a case of such doubt have adopted the safe course, and would have acted more prudently if he had, yet his failure to do so was in good faith, and he ought not to be held strictly to the consequences of his mistake: *McFeeters v. Dixon*, 3 Ch. Ch. 84, 88.

I think, therefore, that the time should have been enlarged on proper terms. I would allow the appeal, but, inasmuch as the petitioner was at fault in the first instance, and as the points involved are new to some extent, the costs of the two motions should be costs in the petition to the respondent in any event, and the costs of the appeal should be costs in the petition. The order of dismissal of the petition should be discharged.

OSLER, J.A., gave reasons in writing for the opinion that this was, at the least, a case for relieving the petitioner under the provisions of Rule 58, and was content with the order proposed by the Chief Justice.

GARROW and MACLAREN, JJ.A., also concurred.

STREET, J., gave reasons in writing for the view that it was not necessary for the petitioner to leave a copy of the petition with the local registrar; but stated that if this view was incorrect, he agreed in the reasons given by the Chief Justice for allowing the petitioner to make good his omission.