

That the Clerk himself was no party to any arrangement by which shoving this petition under the door was to be held equivalent to leaving it with him, or as presentation of it is evident from Mr. Thompson's affidavit, in which he states, that the Clerk promised to remain in his office until half-past seven and receive the petition, which clearly negatives any intention on his part to consider putting the petition under the door as equivalent to a presentation of it. Mr. Thompson requested the Clerk to remain in his office to receive a petition which was about to be filed, and then adds, "meaning the petition against the above named Respondent"; but there is nothing to show that he informed the Clerk what petition he was to wait to receive, and from Mr. McDonald's affidavit it appears that the office-boy picked the petition up from the floor the following morning on entering the office. I fail to perceive in all this the performance of one act essential to the presentation or filing of the petition.

From a careful consideration of this matter I have arrived at the conclusion,—1st That I am bound by the affidavit and endorsement of the Clerk of the Court to decide that the petition in this case was not presented or filed within the time required by the Act, and 2ndly that the facts as stated in the affidavits of Messrs. McDonald and Thompson do not amount to a compliance with the Act, and that therefore there was no petition before the Court at the time the order for extension of time was moved for.

My opinion being as above on the main point, I deem it unnecessary to go into the consideration of the other grounds stated in the rule nisi, though I have examined them with some care. I have no alternative but to make the rule nisi absolute, and with costs.

In accordance with the above judgment an order to quash the petition and the order for extension of time for service passed in the following terms:—

On argument of the rule nisi herein granted by me, dated 2nd April, 1874, to set aside, quash and rescind the petition herein and the order for extension of time for service, I do order that the said *rule nisi* be made absolute with costs, and that said petition and order and all proceedings thereon be set aside, quashed and rescinded.

Dated May 1st, A. D. 1874.

JAMES W. JOHNSTON,  
*Judge of Election Court.*