

# Effect of Forgeries Upon Election Petitions

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## EFFECT OF FORGERIES UPON ELECTION PETITIONS

**N**OTHING is more vital in a democracy than honest and efficient elections. If the purity of primary as well as general elections is endangered, then the whole fabric of government is affected.

The efficient administration of the election machinery necessitates that designating and independent nominating petitions be untainted by forgeries. While it is probably true that fraud and irregularities attending petitions and election contests are more uncommon today than a quarter of a century ago, and the conduct of elections and the administration of the Election Law have advanced to a highly efficient and respectable degree, still it is a mistake to assume that irregularities in the conduct of elections have entirely disappeared. The election administration has been astute to detect and remedy irregularities in the conduct of our elections, and, from year to year, there are added numerous statutes whereby in some measure the further improvement of the conduct and the administration of elections is sought. Encouragement may be deduced from this situation. However, changes in, or increments to, our laws dealing with forged signatures relating to election petitions have been insignificant.

As early as 1911 particular attention was addressed to the fact that petitions were permeated with forged signatures. Election Law, Section 123<sup>1</sup> was enacted to cope with this situation. When the Election Law was rewritten in 1922<sup>2</sup> this section was omitted. The statute (Election Law § 123) formerly read:

No separate sheet comprising an independent certificate of nomination, where such certificate consists of more than one sheet, shall be received and filed with the custodian of primary records if five per centum of the names appearing on such sheet are fraudulent or forged.

This legislation revealed a marked and progressive step towards the abolishment of forged or fraudulent election

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<sup>1</sup> N. Y. Laws 1911, c. 649 as amended.

<sup>2</sup> Part of N. Y. ELECTION LAW § 123 was incorporated into N. Y. ELECTION LAW §§ 135 and 137.

petitions. This would not appear to have been a too drastic corrective measure to be applied by the legislature to a widely prevalent abuse. But, in *Re Burke v. Terry*<sup>3</sup> prompt and vigorous challenge was directed at this section on precisely such grounds. It was contended that that section would necessarily produce the disfranchisement of qualified signatories who had the right and the desire to participate in making an independent nomination; that the statute unjustly punished electors and their candidates for an offense committed by others for whom they were not in any legal sense responsible; and that such a statute unreasonably impaired the rights of electors in contravention of Article I, Section I, of the Constitution of the State of New York. The constitutionality of the statute was ultimately upheld by the Court of Appeals but on the tenuous ground that:

Independent nominators are not constrained to subject themselves to its (the statute's) operation. They may all sign a single sheet or each may sign a sheet by himself.

As the result of this decision petitions were then presented for filing with but one signature affixed thereon, so that ten thousand signatures were represented on an equal number of petition sheets. This method was adopted in order to defeat the operation and intent of the statute. In other words, a valid signature was not to be affected by a forgery on the same sheet. However, under the separate sheet system election boards were swamped with countless thousands of petitions, thus seriously impairing the efficiency of their administrative duties. The legislature, in its revision of the Election Laws in 1922, omitted this statute from its books, so that no reference may now be found in the Election Law governing the presence of forged or fraudulent signatures contained in a petition sheet. This situation in its present arrangement is subject to just criticism. The nearest approach in order to combat the evil of fraud and forgeries must now be sought from our penal statutes.<sup>4</sup>

The courts have had their attention directed to four divisible phases of fraud and forgeries, and have appraised

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<sup>3</sup> 146 App. Div. 520, 203 N. Y. Supp. 293 (2d Dept. 1911).

<sup>4</sup> N. Y. PENAL LAW §§ 1620, 760-a (6).

them by divergent opinions. They may be classified in the following manner:

- I. EFFECT OF PETITION SHEETS CONTAINING NUMEROUS FORGERIES THEREON;
- II. EFFECT OF PETITION SHEETS CONTAINING A SMALL PROPORTION OF FORGED SIGNATURES;
- III. EFFECT OF PETITION SHEETS NOT CONTAINING FORGERIES, BUT AUTHENTICATED BY A SUBSCRIBING WITNESS WHOSE AFFIDAVITS ARE PROVEN PERJURIOUS WITH RESPECT TO OTHER PETITION SHEETS;
- IV. EFFECT OF FRAUD WHERE THE SUBSCRIBING WITNESS IS NOT A PARTICIPANT THEREIN.

## I

### EFFECT OF PETITION SHEETS CONTAINING NUMEROUS FORGERIES THEREON

The most notable and outstanding decision involving the appearance of numerous forgeries affixed to a petition sheet was rendered by Mr. Justice Cuff in *Re Brady*.<sup>5</sup> The issue there was clearly presented as to what effect numerous forged and fraudulent signatures could have upon a petition. From the facts in that case it appears that one Powes, a subscribing witness to a great number of signatures, was not available to testify in court in order to rebut the testimony of certain purported signers that their signatures were not genuine but forged. The court asked the respondent's attorney if he intended to call the subscribing witness to the stand. Counsel replied in the negative and added that he did not know where he could be found. The court offered to adjourn the hearing for the purpose of producing this witness but counsel for the respondent declined the offer. It was held that all the signatures affixed to the petition sheet, so authenticated by the subscribing witness, were invalid. The rule of evidence of *falsus in uno falsus in omnibus* was invoked to sustain the

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<sup>5</sup> Reported in N. Y. L. J., October 28, 1935, p. 1536, col. 4., *aff'd upon other grounds*, 246 App. Div. 561, 282 N. Y. Supp. 964 (2d Dept. 1935).

court's position. It is a classic for its clarity and logical reasoning.

It is remarkable that a person who procured a great percentage of the alleged signatures to this petition should disappear from the face of the earth at a time when his activities were under scrutiny by the court. His work was most important. In the nature of things he should have appeared in court voluntarily to sustain the signatures he had sworn he saw affixed to the petitions by persons known to him. His absence unaccounted for, cannot be overlooked. He is the subscribing witness to 20 names on page 35. Four of these persons testified that they never signed their names nor authorized anyone to sign for them and that they never saw or heard of Powes, who swore before a notary that he knew them and saw them sign. These four were taken at random. Can it be said that the other 16 on page 35 are genuine signatures? We invoke a salutary and common sense rule in the trial of cases, namely, if a witness wilfully swears falsely as to a material fact his entire testimony may be disregarded. If that rule binds a person who comes to court, it should certainly be applicable to him who submits his sworn statement but absents himself from the hearing. Having in mind page 35 alone we find 20% of Powes' sworn statement false. I cannot believe any part of it and for that reason the twenty names on page 35 will be eliminated.

Viewing this decision in its brightest light, its principles and conclusion appear juridically sound. Exacting scrutiny of its basis reveals that the court had in mind the non-existent five per centum forgery rule enacted in 1911 and no longer incorporated in our present statutes as a guide towards its determination. It seems evident that, were the subscribing witness to appear when directed by the court, the decision and result would be no different if certain signatures were proven forgeries. Support for this view may be had from two later decisions<sup>6</sup> by the same judge, where numerous petition sheets were stricken out by reason of forgeries contained therein.

Events reveal that the *Brady* case was the forerunner of an important and far-reaching decision which was rendered a year later by Special Term in *Re Benninger*.<sup>7</sup> The facts involved the same issues as in the *Brady* case. The similarity was so striking that the court cited the latter case as the basis

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<sup>6</sup> *Re Sullivan*, N. Y. L. J., March 25, 1940, p. 1348, col. 4, *aff'd*, 259 App. Div. 752, 18 N. Y. S. (2d) 723 (2d Dept. 1940).

<sup>7</sup> N. Y. L. J., March 24, 1936, p. 1497, col. 1.

for its decision. Mr. Justice Kadien in summing up the case before him said :

Approximately twenty witnesses testified that their purported signatures and those of members of their families on the petition were forged. A handwriting expert testified that using the signatures in the enrollment registration books as a standard and by comparison with the petition, 206 signatures were forged. He further testified that there were a large number of other signatures which he conservatively classed as "doubtful". A careful examination by the court of numerous signatures on different pages of the petition, when compared with the same signatures in the enrollment registration books, plainly indicates that they were forged. In some instances witnesses testified that they did not sign the petition but had authorized others to do so. It further appears from the petition that in one day, 10 sheets, totalling 155 names, were obtained by the same subscribing witness, throughout a widely scattered area. At least two witnesses said that although the petition contained their signatures they signed it without any intention of designating the respondents for party positions, but because they were requested to sign the paper in order "to keep Glendale on the map". It is apparent that there is a general fraudulent plan permeating the entire petition.

I therefore find that on all the sheets of the petition where forgeries occur that the subscribing witnesses therein are unworthy of belief. All of the signatures on these sheets totalling 535 names must be declared invalid (*Matter of Brady*, New York Law Journal, October 28, 1935, *aff'd* 282 N. Y. Supp. 964).

The total invalid signatures on this petition total 738, leaving 273 valid signatures. The required number of signatures for this party position is 750. The petition is therefore invalid.

Still the contrary view by the courts appears in some measure to overshadow the forcefulness of *Re Brady* and *Re Benninger*. An illustration of the cleavage and demarcation of the principle enunciated in those cases may be taken from *Re Scoleri*.<sup>8</sup> The petitioner there sought an order striking out a certain petition upon the ground that numerous forgeries were contained therein. It appears that 1144 signatures were presented in the petition for filing, of which 213 signatures were proven forgeries. The designation for the office required 350 signatures. The petitioner advanced the

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<sup>8</sup> 259 App. Div. 716, 19 N. Y. S. (2d) 496 (1st Dept. 1940).

contention before the court, that the presence of the forged signatures was sufficient to invalidate the petition as a whole. The doctrine in *Re Brady* was directed to the court's attention in the petitioners' briefs. No consideration was given to the forceful view advanced, that the statement of a subscribing witness who swears to a forged signature that the signer is personally known to the witness and so subscribed in his presence is perjurious, and as such invalidates the petition sheet to which the affidavit is affixed. The proven forgeries were not permitted by the court to affect or disturb the valid comingled signatures. This view was affirmed by the Appellate Division.<sup>9</sup>

In *Re Thompson*<sup>10</sup> the court refused to strike out a petition containing numerous forgeries. Examination was limited by the court to the number of valid signatures remaining upon the elimination of the forgeries. This ruling was affirmed by the Appellate Division.<sup>11</sup> There again, as in *Re Scoleri*, no affirmation was given to the doctrine enunciated in *Re Brady* and *Re Benninger*.

## II

### EFFECT OF PETITION SHEETS CONTAINING A SMALL PROPORTION OF FORGED SIGNATURES

The problem respecting the appearance of a small proportion of forged signatures affixed to a petition sheet has been summarily dealt with by the courts in unanimity. The appearance of isolated instances of forgeries was not permitted to affect the validity of the petition sheet.

In *Re McLean*<sup>12</sup> the issue was disposed of by Mr. Justice Kadien in holding that:

One or two isolated cases of false signatures appearing on a petition sheet is not sufficient to invalidate the entire sheet.

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<sup>9</sup> 259 App. Div. 716, 19 N. Y. S. (2d) 496 (1st Dept. 1940). Leave was granted by the Appellate Division to appeal to the Court of Appeals. It appears that the petitioner did not avail himself of this privilege.

<sup>10</sup> 257 App. Div. 1067, 14 N. Y. S. (2d) 618 (1st Dept. 1939).

<sup>11</sup> *Ibid.*

<sup>12</sup> N. Y. L. J., Sept. 11, 1940, p. 594, col. 3.

Similarly in *Re Harvey*<sup>13</sup> the Appellate Division affirmed the ruling of Special Term which held that a petition sheet containing a forged signature was not sufficient to invalidate the entire sheet.

At present the general and common practice pursued by the court in dealing with the problem of forged and fraudulent signatures (where the validity of the entire petition is sustained) is to subtract them from the total number of signatures on the petition. Hence, void signatures are not counted, but the valid signatures remain intact and are counted. The mathematical process is resorted to in order to arrive at the quotient of valid signatures. This method is fraught with danger, serves no effective purpose and does not undertake to correct the existing deplorable conditions surrounding forged and fraudulent signatures.

### III

#### EFFECT OF PETITION SHEETS NOT CONTAINING FORGERIES, BUT AUTHENTICATED BY A SUBSCRIBING WITNESS WHOSE AFFIDAVITS ARE PROVEN PERJURIOUS WITH RESPECT TO OTHER PETITION SHEETS

There are at present two opposing schools of thought respecting this topic, and represented by two Special Term decisions. The results reached in those two cases are diametrically opposed to each other.

In *Re Iorio*,<sup>14</sup> before Special Term in the Second Judicial Department, an application to strike out certain petitions by reason of forgeries contained therein was denied. The petitioner in establishing the basis for the relief sought proved that numerous forgeries on twelve petition sheets were committed by several subscribing witnesses. He contended that the proven perjury of the subscribing witnesses rendered them wholly unworthy of belief and therefore served to invalidate all the petition sheets so witnessed by them. The court refused to subscribe to the petitioners' contentions nor

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<sup>13</sup> 259 App. Div. 751 (2d Dept. 1940).

<sup>14</sup> 174 Misc. 225, 19 N. Y. S. (2d) 328 (1940).



apply the rule of evidence, *falsus in uno falsus in omnibus*, to the entire petition.

To the contrary is an opinion rendered by Mr. Justice Walter, of Special Term in the First Judicial Department, in *Re Weisberger*.<sup>15</sup> An examination of the facts reveals that the Board of Elections invalidated a designating petition in its entirety by reason of fraud and numerous forgeries contained therein. The petition as a whole, inclusive of forgeries, contained many more signatures than those required for designation. The theory upon which Special Term nullified the entire petition was the presence of numerous affidavits of subscribing witnesses that were proven false, in that numerous signatures authenticated were in truth forgeries. Similarly, as in *Re Brady, supra*, none of the authenticating witnesses whose affidavits were attacked came forward to offer explanation when confronted with the proof in court.

Mr. Justice Walter in an expostulatory decision declared that:

If designating petitions are to perform their lawful and intended function it is essential that they be kept free from fraud in their making. It is to that end that the legislature has made meticulous requirements with respect to them. The surest way to keep them free from fraud is to let it be known that any taint of fraud will wholly invalidate them, rather than merely set the court to the task of counting up the number of fraudulent instances in order to see whether they reduce the number of signatures below the minimum required by law \* \* \* On the other side is the argument that if fraud in connection with a few names be held to vitiate an entire petition, those who signed regularly and properly are in effect frustrated in their choice of a candidate through no fault of their own. \* \* \* Its weight in the scale is lessened, however, by the consideration that if they knew that forgery and perjury were being resorted to, we must assume that they would not express the choice they did. In the absence of guidance from an appellate court I tip the scales on the side first above stated \* \* \*.

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<sup>15</sup> N. Y. L. J., Sept. 6, 1940, p. 535, col. 7, *aff'd*, N. Y. L. J., Oct. 28, 1940, p. 1285, col. 1.

## IV

EFFECT OF FRAUD WHERE THE SUBSCRIBING WITNESS IS NOT  
A PARTICIPANT THEREIN

A striking and effective illustration of this topic can best serve to point out the common danger in which subscribing witnesses sometimes find themselves. A, the subscribing witness, presents a petition to John Doe for his signature. John Doe signs as Richard Roe and affirms to A that he is Richard Roe. It is subsequently discovered that the true Richard Roe did not affix or sign his name to the petition in question. Proceedings are generally brought by or on behalf of the purported signers to strike their names from the petitions in question and to declare the petitions invalid by reason of fraud and forgeries.

This situation was presented to the court in *Re Harvey, supra*, where a petition sheet was sought to be stricken out by reason of a forged signature contained therein. The court held that the petition sheet upon which the forgery appeared was not affected thereby. Careful research has revealed that it is the only case in which this issue was squarely passed upon by the courts.

## COMMENTS

*a) In re First Classification*

Sufficient basis exists for the voiding of an entire petition sheet when it is proven that *only one* signature affixed therein is fraudulent or forged. At first blush, this may seem a rigid, harsh and non-workable rule, but this opinion may be spared when viewed as a sound, practical and legal proposition.

The statutory form outlining the substantial appearance of a designating<sup>16</sup> or nominating<sup>17</sup> petition is contained in our election laws. At the foot of each petition there is an affidavit commonly known as the authenticating affidavit. In

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<sup>16</sup> N. Y. ELECTION LAW § 135.

<sup>17</sup> *Id.* § 137.

this affidavit,<sup>18</sup> after reciting certain facts, the subscribing witness is required by statute to swear to the following:

\* \* \* I know each of the voters whose names are subscribed to the above sheet of the foregoing petition \* \* \* and each of them subscribed the same in my presence and upon so subscribing declared to me that the foregoing statement made and subscribed by him or her was true.

The affidavit in the eyes of the law gives sanctity and credence to the petition. It is technically and strictly construed.<sup>19</sup> Any deviation, omission or mistaken allegation, however slight, from the statutory outline, will serve to invalidate the entire petition.<sup>20</sup> No thought in regard to possible disfranchisement is given when an affidavit is found erroneous or defective.<sup>21</sup>

Perjury as defined by the Penal Statute<sup>22</sup> in part reads:

A person is guilty of perjury who swears or affirms that \* \* \* any affidavit or other writing by him subscribed is true, \* \* \* or states in his affidavit any matter to be true which he knows to be false.

Thus, a subscribing witness who affirms that his affidavit subscribed by him or any matter contained therein is true, which he knows to be false, is guilty of perjury. A *falsum* petition may be likened to any false document. Yet the law against false swearing has rarely been invoked in order to invalidate a petition. The clamor and cry of possible disfranchisement of innocent signers has always appeared as the chief argument to nullify transgressions against our penal statutes. Numerous cases of fraud crop up yearly with no effective curb, other than to deduct the fraudulent and forged signatures from the valid ones in order to determine the mathematical sufficiency for designation or nomination. Such course adopted by the courts allows a petition to suffer a *falsus*. A premium is placed upon the acts of the deceiving witness. An

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<sup>18</sup> Appears both in a designating and nominating petition.

<sup>19</sup> N. Y. ELECTION LAW § 135; *Re Lerner*, 262 N. Y. 450, 187 N. E. 635 (1933).

<sup>20</sup> *Re Dorsey*, 268 N. Y. 620, 198 N. E. 523 (1935); *Re Crosbie*, 281 N. Y. 329, 23 N. E. (2d) 81 (1939).

<sup>21</sup> *Re Lerner*, 262 N. Y. 450, 187 N. E. 635 (1933); *Re Dorsey*, 268 N. Y. 620, 198 N. E. 523 (1935); *Re Crosbie*, 281 N. Y. 329, 23 N. E. (2d) 81 (1939).

<sup>22</sup> N. Y. PENAL LAW § 1620. A person convicted of a crime may not act as a subscribing witness. N. Y. ELECTION LAW § 152.

irregular affidavit can in no manner serve to validate the petition.<sup>23</sup> A false affidavit, however, is permitted to stand and give full credence to the remaining valid signatures. An irregular and technically defective affidavit has been held far more penal in character than a perjurious affidavit. In the former, all the signatures contained therein are stricken out upon the theory that there is not present a substantial compliance with the law with regard to the presence of a valid affidavit. With regard to the latter, the petition is permitted to stand upon the theory that although the affidavit is false, still it is valid as to unproven forgeries. This ruling is chiefly predicated upon the time-worn view that no disfranchisement should take place. This same thought is not given equal effect to affidavits visited by technical omissions or imperfections. This incongruous and inconsistent viewpoint necessitates amelioration.

A subscribing witness is deemed the agent either of the electors making the nomination or of the candidate who is nominated. In theory he is the agent of the former, as a matter of fact he is usually selected by the latter. It is a matter of common knowledge that party workers entrusted with the duty of obtaining signers to a petition seek those persons familiar to them and also sympathetic to their political ideals. It is not too much to demand of those individuals that they exercise care and vigilance and faithfully execute the trust assigned to them in accordance with the law. If a dishonest and unworthy subscribing witness has been se-

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<sup>23</sup> An example of the strict interpretation given to the authenticating affidavit may be gleaned from the following decisions: The failure of a subscribing witness to state the address from which he last registered has been held to invalidate the petition, *Re Crosbie*, 281 N. Y. 329, 23 N. E. (2d) 81 (1939). An omission to state the election district where the subscribing witness resides is similarly fatal to the petition, *Re Crosbie, supra* (It was argued that the omission of the election district is inconsequential since the election district may be ascertained from the witnesses' given addresses. The Court of Appeals, in reversing the Appellate Division, held that strict interpretation of the statute was incumbent upon the court). An address given by a subscribing witness and mistakenly copied was sufficient to invalidate the petition sheet, *Re Wood*, 247 App. Div. 322, 236 N. Y. Supp. 497 (2d Dept. 1936). Erasures or alterations present in the authenticating affidavit will likewise serve to invalidate the petition sheet, *Re DeMendez*, N. Y. L. J., Sept. 3, 1937, p. 569, col. 2. Any misstatement or the omission to state the number of signatures authenticated by the subscribing witness renders the petition sheet invalid, *Re Springer*, 242 App. Div. 726, 274 N. Y. Supp. 224 (2d Dept. 1934); *Re Lyon*, 247 App. Div. 816 (2d Dept. 1936).

lected, it is far more fitting that the person making the selection should bear the penalty for his misdeeds than that the rights of other candidates should be impaired or those of other electors hindered or impeded.

The persistent tradition and legend employed by the courts that disfranchisement must not be visited upon the innocent should be dismissed as inconsequential. The interests of pure and honest elections demand that an exacting penalty be enforced against those careless and untrustworthy persons attempting to undermine its structure. Surreptitious and shady practices when exposed to the court were condemned in the following words:

\* \* \* Swept aside is technicality, trifling error; not so those practises which shock the conscience and traverse the plain provisions of our statute law. Condemned they should be, and condemned they are.<sup>24</sup>

Fraudulent agents disfranchise their own principals, but in another sense no disfranchisement is visited upon the voters by an unscrupulous witness, for if the petition be rejected by reason of fraud or perjury, those voters who desire to vote for the candidate named in the rejected petition may still do so by virtue of the write-in vote on the ballot.<sup>25</sup> Although this may not be an expedient method of voting, yet, in the interests of administering a pure and honestly conducted election this is not too great a penalty to exact, in order to prevent carelessness upon the part of those responsible for the petition in selecting an incompetent or a dishonest and untrustworthy agent. The courts should be far more concerned with the extinguishment and prevention of frauds than with protection against theoretical disfranchisement.

Present judicial decisions appear to foster and abet continued disrespect towards the conduct of elections. The juridical view adopted by the courts prohibits the acceptance for filing of petitions technically imperfect. Yet, on the other hand, the acceptance of false and forged petitions is sanctioned by their qualified approval through the medium of separating forged from valid signatures. No thought is given

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<sup>24</sup> *Re Higbee*, 153 Misc. 1, 274 N. Y. Supp. 435 (1934).

<sup>25</sup> N. Y. ELECTION LAW § 219.

to possible disfranchisement in petitions containing technical imperfections. Curiously, disfranchisement is considered in cases involving false and forged petitions. Public apathy, blind signing and disrespectful characterization of the petition as a whole, are directly responsible and arise out of the reticence by the courts to declare void all petitions visited by fraud and perjury.

*b) In re Second Classification*

There is nowhere present in our statutes any rule or guide to determine what course of conduct the courts may adopt respecting the appearance and effect of petition sheets containing a small proportion of forged signatures.

The views enunciated in Subdivision I are clearly applicable here. A simple forgery perjurally authenticated is no less serious than a few forgeries. The gravamen of the crime is present. The opinion in *Re Harvey, supra*, arriving at a contrary conclusion, creates an additional interesting situation. The court there held that the fact that one signature on the petition was forged did not invalidate the entire sheet on which it appeared. This would seem to be inconsistent with the line of cases<sup>26</sup> where the courts uniformly held that the authenticating affidavit must set forth the correct number of signatures obtained by the witness. It was held that the clear purpose of the statute is to prevent the possibility of fraud. It would therefore seem that if, for example, an authenticating affidavit recited that the witness obtained 20 signatures of which one was an admitted forgery, his affidavit would be false in that only 19 signers subscribed the same in his presence. There is no difference between a case in which the petition contains 19 signatures and the witness states in his affidavit that he obtained 20, and one in which the petition contained 20 signatures, of which one was an admitted forgery. In each case the number of signatures is overstated in the affidavit. In the former case, the sheet would undoubtedly be held invalid, whereas in the latter case, it would be held valid. Yet, in each case the statement in the affidavit is false.

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<sup>26</sup> *Re Springer*, 242 App. Div. 726, 274 N. Y. Supp. 224 (2d Dept. 1934); *Re Lyon*, 247 App. Div. 815 (2d Dept. 1934); *Re Clerk*, N. Y. L. J., Oct. 23, 1937, p. 1305, col. 2.

In each case the witness swears that he knew each of the voters whose names are subscribed to the particular sheet containing 20 signatures, and that "each of them subscribed the same in my presence." If he swore that 20 persons signed the petition in his presence, whereas only 19 did so, his affidavit would be deemed false and the entire sheet invalidated. Why, then, should not the same rule apply to a case where only 19 persons subscribed their names in the presence of the witness and the 20th name is an admitted forger?

In the interest of strict interpretation of election petitions, it would seem that the courts should adopt the firm position that the forged signature not being counted, the affidavit thus states an incorrect number of signatures obtained and that the entire petition sheet should therefore be invalidated.

### c) *In re Third Classification*

The maxim *falsus in uno, falsus in omnibus* is particularly applied to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence. This doctrine should be adopted to apply to an entire petition where the perjury of the witness is proven, more particularly to a situation in which the subscribing witness has actively participated in the preparation of the petitions contaminated with forgeries and false statements under oath. The threads of wrongdoing of the subscribing witness are so interwoven into the petition that they cannot be separated without destroying the entire fabric.

The requirement of honestly presented petitions is unquestionably the most important and effective means devised to safeguard the elective franchise. Under our present system hordes of unprincipled individuals with no regard or sanctity for the important character of a petition will present or affix spurious and forged signatures to petition sheets with impunity, in order to conveniently serve their political constituency. Fraud and irregularities have been introduced into petitions in districts with corrupt political machines, where vigilance or notice was completely relaxed. This prac-

tice has endured the last three decades and is commonly exercised today. This issue has repeatedly appeared before the courts, but to no avail. The mathematical process was always employed to arrive at the quotient of valid signatures.

The clear and forceful reasoning of Mr. Justice Walter, in *Re Weisberger, supra*, appears to solve this problem when he says that:

The surest way to keep them (petitions) free from fraud is to let it be known that any taint of fraud will wholly invalidate them.

His other views enunciated cannot be too oft repeated; especially his reasoning for the purification of petitions, where he states that:

If designating petitions are to perform their lawful and intended function it is essential that they be kept free from fraud in their making. It is to that end that the legislature has made meticulous requirements with respect to them.

The knowledge that such a rule exists and will be enforced may act as a deterrent, in the future, to the preparation and filing, for hire or otherwise, of dishonest and fraudulent petitions, lighten the work of the Board of Elections and District Attorneys, improve the administration of the Election Law, and benefit the electors of the state.

#### *d) In re Fourth Classification*

Notice is taken of situations in which a signer will misrepresent his true name to the subscribing witness. While not very common, these unfortunate incidents sometimes occur. The answer to this situation may be found in the Election Law. Sections 135 and 137 of the Election Law are exacting in their demands in order to thwart and safeguard against such misrepresentations. The following statement, found in the statute, is required from the subscribing witness as part of his affidavit.

\* \* \* I know each of the voters whose names are subscribed to the above sheet \* \* \*.

The word "know" contained in the statute has been interpreted by the courts to mean that a subscribing witness must



be personally acquainted with the persons whose names appear on the petition.<sup>27</sup> Any misstatement of such knowledge renders the petition invalid.<sup>28</sup> Persons who sign petitions must do so in the presence of the subscribing witness.<sup>29</sup>

Adequate penal protection is given to a subscribing witness who may become the victim of a hoax or fraud perpetrated upon him. Such a situation will readily find the perpetrator guilty of misconduct in relation to petitions. The Penal Law,<sup>30</sup> relating thereto, in substance states that anyone who:

Being a signer to a petition \* \* \* thereby makes a false statement \* \* \* to the witness who authenticates a petition, is guilty of a misdemeanor.

Hence any signer who perpetrates a fraud may be summarily dealt with pursuant to this statutory provision.

There appears sufficient basis for the wide-sweeping rule that a petition containing any forged signatures, whether created by accident or mistake, should be declared invalid. The statute makes it obligatory upon the subscribing witness to know the signers to the petition, that obligation is fulfilled in the authenticating affidavit when affirmed by the witness. Reinforcement for this viewpoint is taken from the court's decisions<sup>31</sup> in which personal acquaintanceship with a signatory is deemed necessary.

A subscribing witness who pleads as a victim of a fraud or hoax need not inspire any equitable sympathy from the courts. In construing the strict provisions of election statutes relating the form of an affidavit, we find the victimized witness' sworn statement in the exact statutory words:

I know each of the voters \* \* \* and each of them subscribed the same in my presence \* \* \* and declared to me that the foregoing statement \* \* \* by him or her was true.

We thus find the word "know" false and the statute breached by the authentication of a single proven forged signature.

<sup>27</sup> *Re Lynch*, 108 Misc. 668, 178 N. Y. Supp. 30 (1919); *Re Schwartz*, N. Y. L. J., Sept. 5, 1936, p. 610, col. 5.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Re Kielb*, N. Y. L. J., Sept. 9, 1938, p. 606, col. 2.

<sup>30</sup> N. Y. PENAL LAW §760-a (6).

<sup>31</sup> See note 26, *supra*.

Petitions untainted by fraud or forgeries is the first salutary and important step towards the efficient administration of the election machinery. It must be borne in mind, however, that the requirement of honestly presented petitions *per se* is the only effective means in preventing frauds in the procurement of petitions. The relaxation of this rule by the courts will serve no purpose other than to act as a passive medium for questionable practices. The protection of the petition from this recognized abuse would lighten the burden upon the electorate and the courts, and further intensify public interest in the designation and nomination of candidates through the purification of the elective process. A vigilant attitude by the courts and officials entrusted with the administration of elections would be directly responsible therefor.

LEWIS ABRAHAMS.