
Opinion: No. 112

Subject: *PRODUCTION OF TELEGRAMS*
DISCRETION OF POSTMASTER-GENERAL

Author: GARRAN Robert Randolph

Key Legislation: *POST AND TELEGRAPH ACT 1901, s. 127*

Date: 22 November 1902

Client: *The Secretary, Postmaster-General's Department*

Related Opinion: [189](#)

Opinion text: The Secretary, Postmaster-General's Department:

The Secretary, Postmaster-General's Department writes to me as follows:

With reference to the opinion of the Attorney-General of 4 April 1902 ⁽¹⁾, on the subject of the production of telegrams-Post and Telegraph Act 1901, section 127-1911 have the honour to inform you that after the receipt of that opinion the Deputy Postmaster-General, Melbourne, drew attention to the fact that a subpoena from a Magistrate was received by him directing the production of certain telegrams in re Stephens (Collector of Customs) v. Henty⁽²⁾, and you advised (verbally in September 1902) that the summons must be obeyed and the telegrams required produced. As, however, this decision does not coincide with the opinion referred to above, viz. that telegrams should be produced only when required by a Chief Commissioner of Police or by a court presided over by Judges, and apparently bore only upon the case in point, I shall be glad of advice for future guidance as to the course to be adopted in the event of the occurrence of a case of a similar nature, i.e. the production of telegrams before a court presided over by a magistrate. Papers enclosed herewith.

The opinion of the Attorney-General referred to was that the Postmaster-General or the Deputy Postmaster has a right (not affected by section 127 of the Post and Telegraph Act 1901) to authorise the production of a telegram whenever he thinks proper in the interests of justice; that the question as to when such authority shall be given should if necessary be settled by regulation; and that meanwhile such authority might be given when production is required by a Chief Commissioner of Police or a court presided over by Judges.

Recommend to reply that the concluding words were intended to define the case in which authority might be given without question, and were not intended to limit the discretion of the Postmaster-General or a Deputy Postmaster-General to allow production in any case in which he might think proper. Consequently they are not inconsistent with the advice verbally given in the case of Stephens v. Henty.

[Vol. 2, p. 439]

⁽¹⁾ Opinion No. 56.

⁽²⁾ Apparently not reported

⁽³⁾ This opinion was initialled by Mr Deakin, Attorney-General.

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