

In the Supreme Court of Jamaica

Holden at Lucea, Hanover

Coram: Parnell, J.

Election Petition, Suit No. C.L. B016 of 1977

Basil Duck	Petitioner
Aston King and Egbert Campbell	Respondents

Winston Spaulding and A. J. Dabdoub for the petitioner;

K. D. Knight, Glen Cruickshank and Robert Pickersgill for the
respondent King;

Lloyd Ellis, Senior Assistant Attorney General and Rupert Lopez ,
Crown Counsel for the respondent Campbell.

Heard: 1978: July 10, 11, 12, 13, 14, 17, 18, 19, 20, 21
Sept. 18-22; 25-29
Oct. 2-5
Nov. 20-23; 27-30
Dec. 1 and 4

1979: March 5-9; 12-16; 19-23; 26-30
July 2-5; 9-10; 16-19; 23-27; 30-31
Aug. 1-3; 7-10; 13-17.

January 3, 1980

Parnell, J.

This is an election petition which has arisen out of the general election held on the 15th December, 1976. The petitioner was the unsuccessful candidate for the Jamaica Labour Party in the contest for the constituency of Hanover Eastern. The first respondent King was the representative of the Peoples National Party in the contest. The second respondent returned Mr. King as the candidate duly elected. The margin of victory was 150 votes.

A brief summary of the result may be put as follows:

(1) Electors on the list:	12,771
(2) Electors who voted:	11,079
(3) Percentage of electors voting:	86.75
(4) Voting for first respondent King:	5,580
(5) Voting for the petitioner Buck:	5,430
(6) Votes spoilt	69

The evidence has disclosed that the election contest was keen.

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The period during which the enumeration exertion was in force, was marked with incidents which call for close scrutiny. And on election day, there were certain events which were not comfortable.

The hearing lasted for 81 days over a span of about 13 months. A period of 23 days was consumed by counsel in their closing addresses. Apart from tendering numerous documentary exhibits, the petitioner called 8 witnesses and the first respondent called 23 witnesses. The respondent Campbell did not give evidence neither was any witness called on his behalf.

Complaint of the petitioner

In his petition dated the 19th January, 1977, the petitioner has outlined his grievances. The petition has 13 paragraphs. Paragraphs 4 to 13 contain the sting and substance of his complaint. When reduced to simple terms, the allegations contained in the relevant paragraphs may be put as follows:

- (1) That persons whose names did not appear on any list of electors for the Constituency, did in fact vote in the election.
- (2) That persons who had no identification card were allowed to vote without being thumb-printed and sworn.
- (3) That certain persons whose names appeared once on the List of Electors, voted more than once.
- (4) That numerous persons who had not attained the age of 18 years, did in fact vote throughout the constituency.
- (5) That the election was marked by irregularities in breach of the Representation of the People Act resulting in voting by persons:
 - (a) who were not entitled to vote;
 - (b) who voted at polling stations where they were not entitled to vote.
- (6) That at three Polling Stations more persons voted than the number of persons whose names appeared on the official lists of electors for the respective polling stations.
- (7) That certain persons whose names appear in the Poll Books as having voted did not in fact vote.

There is one paragraph of the petition which I shall quote in full. Evidence was tendered to show not what the petitioner did in fact allege therein but what may be regarded as a serious irregularity if found to be true. Paragraph 7 of the petition states;

"that persons whose names appear on the Supplementary Lists as Electors for the said Constituency were deprived of the opportunity of exercising their right to vote due to the late or non-arrival of the said Supplementary Lists."

It is not in dispute that no evidence was tendered at the hearing to support this ground. What was tendered is evidence tending to support the suggestion that certain persons who were then supporters of the political party to which the petitioner belongs, had done everything required to ensure that their names did appear on the Supplementary List for the relevant polling division. However, their names did not appear on any supplementary list and as a result they lost their constitutional right to vote for such candidate as they thought fit to support. It was urged with great force by Counsel for the petitioner that the omission from the Supplementary Lists of the names of persons suspected to be supporters of the petitioner, was or is evidence that a powerful conspiracy was in existence in the constituency designed to defeat the laws dealing with parliamentary election; to thwart the will of the electors and generally to bring about a result which is not in unison with the concept of a free and fair election. I shall refer to this aspect of the case in more detail in due course.

There are two other paragraphs in the petition to which brief reference may be made at this stage. Paragraph 4 claims that more valid ballots were cast for the petitioner than the amount in favour of the respondent King. A prayer is, therefore, tendered asking that the petitioner be declared to be the candidate duly elected for the constituency. And in paragraph 12, a complaint is made that under the Grant of Poll, 88 polling stations were designated where electors were entitled to vote. But on election day only 75 polling stations were put in operation. It is claimed that as a result persons who were entitled to vote were denied that opportunity. At the hearing no evidence was tendered to prove that electors were deprived the opportunity to vote as a result of the reduction of the number of polling stations from 88 to 75. However, in due course, I shall make further reference to this aspect of the preparation for holding the election in the constituency.

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The grounds relied on in the petition, the evidence tendered in support, the suggestions made during the cross-examination of witnesses and the arguments advanced, all together have brought under close review the conduct of the second respondent and that of the election officers in the performance of their duties preparatory to the holding of the election. The events on election day in the constituency are also put under examination.

Preliminary skirmish

Where a judge is sitting with a jury in the trial of a cause, it is a safe guide that he should sum up the case to the jury in the way that it has been conducted. In the same way, where an election petition has been keenly contested and debated, the trial judge should follow closely, in the preparation of his judgment, the path taken by Counsel in the conduct of the case and in particular, he should note the strategy - if any - which was employed in traversing the covered ground.

When the hearing started, Mr. Ellis on behalf of himself and of the other attorneys appearing for the respondent, took a point, which if it had been accepted would have resulted in the dismissal of the petition without any evidence being heard on its merits. The point taken by Mr. Ellis may be summarised as follows:

"An examination of the petition shows that the petitioner is alleging that several irregularities on the part of election officers did take place prior to and on the day of the election, that in effect the conduct of the election officers who functioned in the constituency has been brought under scrutiny. There is no allegation in any of the paragraphs of the petition that the election officers acted otherwise than in good faith. In the absence of a specific allegation that bad faith was employed, the petition is incurably defective and should be dismissed with the usual consequences."

In the course of his submissions, Mr. Ellis relied on the provision of sec.107 of the Representation of the People Act. He also urged in support the nisi prius ruling of Hercules, J (as he then was) in the unreported case of Powell v. Manley which was heard in January, 1968. Mr. Knight in a brief contribution adopted the submissions of Mr. Ellis and urged a contention based on a construction of sec.8 of the Election Petitions Act to which I shall refer hereafter. The Court did not call on Mr. Spaulding to deal with Mr. Knight's contention. The main thrust of the submission of Mr. Spaulding is that where substantial breaches of the law have been proved in the hearing
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of an election petition, the bona or mala fides of any election officer concerned in the election is irrelevant for the purposes of pleading and that it is the election court to say - after the case is heard on the merits - whether the breaches have been proved and if yes, whether any and what consequence will flow from that finding.

I will deal first with the provision of sec.107 of the Representation of the People Act (hereinafter referred to as "the Act"). It is a lengthy provision which was debated by Parliament in 1957 and 1969. The Parent Act of 1944 (Law 44/1944) did not make any such provision. But in an attempt to keep pace with the ingenuity and machination of modern politicians and their ardent supporters in a modern and rapidly changing society, Parliament very wisely made provision to deal specifically with a certain mischief.

The essence of the provision so far as is relevant is as follows. Where an election petition is being heard, the election judge should not make any order declaring the election void for the reason that:

- (a) There was no publication of any official list of electors or of any notice required to be published supplied or given by an election officer as directed by the Act. And the mere fact that the election officer was tardy in publishing the list or notice or in supplying copies to some designated person of what should be published, is not enough to make the election void unless the court is satisfied that the failure on the part of the election officer to comply with the statutory requirement was a result of bad faith. In other words he was not acting honestly or in good faith in the performance of his duty.
- (b) Where there has been a wrongful omission from or inclusion in of the name of an elector, in any official list of electors, such an omission or inclusion is not enough to make an election void unless the court is satisfied that the omission or inclusion was a result of bad faith on the part of election officer engaged in the preparation of the official list.

In addition, the section appears to state generally that the mere irregularity in the appointment of an election officer is not sufficient to make an election void. In (a) and (b) above I have underlined what I regard as a proviso or exception to the mischief which Parliament was dealing with.

When examined in ~~the~~ light of the above paraphrasing of the section - assuming that the paraphrase is accurate - the following consequences flow:

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- (1) Section 107 of the Act may be regarded as curative or saving where election officers honestly performing their statutory duty, committed an error of the kind stipulated. The curative effect of the section prevents a declaration that the election is void.
- (2) The curative element in the section is not to be resorted to until a stage has been reached where the Court would be inclined to declare the election invalid. The section opens with the words:

"notwithstanding anything to the contrary."
- (3) The section implies that no particular formula can be applied with reasonable confidence in every case. In each case, the election judge must try to form a reasonable and practical conclusion as to whether, upon the facts as they appear, there was a general endeavour on the part of an election officer to prepare for an election which was brewing upon the principles and directives outlined in the Act but owing to the frailty of mankind and the vicissitudes of the period his best efforts were bedevilled by a genuine error of omission or commission.
- (4) Before the election court can come to the conclusion that the conduct of the election officer in the face of any transgression of the Act, was genuine and that it ought not to disturb the result in the particular circumstances, the merits of the case must first be heard. The court cannot be "satisfied" by merely looking at the pleadings. The word "satisfied" connotes some standard of proof. It does not connote a mere inspection of the paragraphs in a petition or a balancing in the art of drafting an election petition by an astute counsel when compared with the efforts of a layman who is not precluded from drafting and presenting his election petition. The Court must look at the substance and not to the form.
- (5) The curative medicine which sec.107 contains is not to be regarded as a weapon in the armoury of the petitioner. In the circumstances which find harmony with the public interest and in the light of the events which transpired, the medicine may act as a shield for the winning candidate who finds himself as a respondent. In an attempt to arrive at a just conclusion, the impression must not be created that the Court will be astute to find excuses for the ignoring of specific provisions and directions of the Act designed towards the holding of a clean and fair election.

The case of Powell v. Manley which Mr. Ellis analysed with his usual skill and eloquence is, with respect, not binding on this Court. In that case, the petitioner lost a keenly contested election in a bid for a seat in Kingston Central. The respondent Manley won by 43 votes. In the petition 7 grounds of complaint were made and where applicable, clear particulars were given. See the Jamaica Gazette Extraordinary dated April 20, 1967 at pages 544-545. The conduct of election officers in the running of the

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election was severely questioned. Breaches of the Act which do not fall under the specific umbrella of sec.107 were either expressly or impliedly alleged but no allegation was made that the election officers designated acted in bad faith in the acts of omission or commission complained of. A battery of experienced and learned advocates appeared for the interested parties in the hearing before Hercules, J. There is no reported record of the case other than what appeared in the Gleaner of January 10, 11 and 12, 1968. During the course of the hearing, I was supplied with photo-copies of the Gleaner report. I have read the reported argument of counsel with interest. The learned trial judge appeared to have been converted by the ingenious arguments of counsel who appeared for the respondent Mr. Manley and for the Returning Officer Mr. B. R. Williams. Without any attempt to analyse the submissions made, I shall state in a summary form what I regard as fallacies and defects detected in the arguments and in the decision.

- (a) There was an assumption that an election petition should be carefully combed before evidence is tendered on the merits with a view to detecting flaws in "pleading".
- (b) There was an assumption that the Civil Procedure Code applies rigidly to an election petition. But the application is for the purpose of founding arguments to destroy the petition. Any healing power or discretion which may be found in the Code for the purpose of keeping the petition alive, i.e. amendment does not apply. Without any authority the code is to be applied in part and rejected in part.
- (c) There was an assumption that in the hearing of an election petition, the Court is confined to a mere balancing of the relative rights and merits of two candidates together with the balancing of the ingenuity and foresight of the attorneys for each of the candidates. The fact that the Court is required to go beyond the candidates and protect the public interest and concern in the conduct of an election was inadvertently overlooked.
- (d) In dealing with an election case, the golden rule is that the Court should avoid, if it is reasonably possible, giving effect to technical objections aimed at preventing the trial on the merits. This golden rule was ignored by the technical arguments advanced and the ruling which upheld them resulting in a destruction of the petition without any fact on the merits being outlined in Court.
- (e) Section 3 of the Election Petitions Act shows that a right to present an election petition is granted to any ordinary person who voted or who had a right to vote in the constituency concerned. The Act has not

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prescribed the form which the petition should take as is the case in England, Canada, New Zealand and in other Commonwealth countries. The layman is not required to employ a pleader or lawyer to draft his petition and therefore he cannot be summarily driven from the judgment seat by the election judge owing to a mere technicality in stating an allegation in a paragraph of a petition.

- (f) There was an assumption - and this is a very serious flaw in the argument - that even where a mandatory provision of the Act is found directing an election officer what should be done in a particular eventuality, an allegation in an election petition that the breach was committed must be accompanied by a further assertion that the alleged breach or irregularity was done in bad faith.

The short summary above outlined is sufficient for me to say that the decision in Powell v. Manley is not sound and should not be followed.

I shall now turn to that portion of the argument of Mr. Knight which prayed for a dismissal of the petition on the ground that section 8 of the Election Petitions Act was not complied with by the petitioner. The contention of Mr. Knight is to the effect that sec.8 of the Act quoted ~~above~~ ^{hereafter} is mandatory. That is to say, that it must be strictly complied with by a petitioner. He argued that where - as in this case - a petitioner alleges general grounds of complaint, particulars of the acts complained of must be furnished by the petitioner within ten days of the presentation of the petition. As I understand it, he was urging the point that the duty to supply the particulars is obligatory and the petitioner is bound thereby even if the respondent does not request the further and better particulars. The sanction of a non compliance, according to Mr. Knight, is a dismissal of the petition before the petitioner is allowed to open his case. For the Court to drive away a petitioner from the judgment seat on this ground is such a serious step, that it requires a careful examination to ascertain whether this consequence was intended by the Legislature and whether in fact a liberal construction of the Election Petitions Act as a whole leads to this startling result. I hope I may be pardoned if I pass over the several authorities quoted by Mr. Knight in support of this aspect of his argument. In my view, the authorities cited do not assist me at all. That is why I shall resort to the historical approach in order to elucidate my conclusion on the point. It is sometimes said that where a direct precedent on a point is absent, it is an encouragement to counsel to show valour in advocacy.

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That could be the reason which caused Mr. Knight to demonstrate the brand of advocacy which I witnessed during his final address lasting for eleven days.

Some History

The Election Petitions Act has been in force in Jamaica since April 17, 1885. It was enacted shortly after the arrival in Jamaica of Sir Henry Norman as Governor. Sir Henry arrived in 1883 and brought with him an Order which gave Jamaica a new form of government instead of Crown Government pure and simple. A Legislative Council was introduced and some of the members were to be elected by the people.

The Act of 1885 follows certain provisions of the English Parliamentary Act of 1868 which came into force on July 31 of that year. The object of the statute was to substitute a new tribunal for the trial of election petitions in place of the old election committees. And sec. 26 of the statute specifically provided as follows:

"Until rules of Court have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which Committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the Court and judge in case of election petitions under this Act."

Sec. 20 of the Act provided as follows:

"An election petition under this Act shall be in such form and state such matters as may be prescribed."

The Rules were prescribed in November 1868. It is to be observed that 61 Rules were made and published and in December 1868, March 1869 and in January 1875, additional rules were made. Rule 2(2) of the 1868 Rules had this provision:

"It (election petition) shall state the holding and result of the election and shall state briefly the facts and grounds relied on to sustain the prayer."

And Rule 6 provided as follows:

"Evidence need not be stated in the Petition, but the Court or Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered."

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The Election Petitions Act of Jamaica has not adopted sec.20 of the 1868 English Act. Provision has not been made for the making of Rules to govern the form and content of a petition. But as I have already pointed out, the Act followed the English counterpart in several particulars and it is clear that the new government which Sir Henry Norman introduced, intended that the spirit and intendment of the English Statute should be followed in Jamaica in so far as provision was expressly or impliedly made. It is in the light of the history of the Election Petitions Act of 1885, that the interpretation of sec.8 which Mr. Knight has used to found his argument should be considered. Section 8 is as follows:

" It shall be sufficient that a petition shall state generally the grounds on which the petitioner relies for challenging the election or return, concluding with a statement of the relief sought; particulars, however, of the acts complained of as avoiding the election or return shall be furnished by the petitioner to the respondent, within ten days after the presentation of the petition.

It shall be lawful for a Judge of the Supreme Court, on a summons taken out by the respondent for the purpose, to order further and better particulars to be furnished by the petitioner, or on a summons being taken out by the petitioner to allow such particulars to be added to or amended."

The eighth section, without referring to the form, provides that general grounds of complaint may be made in the first instance; that particulars shall be furnished by the petitioner within ten days after the presentation of the petition. Then the section provides for recourse to a Judge of the High Court by way of summons seeking an order for further and better particulars if the petitioner does not supply them in time or having supplied them, the respondent takes the view that what has been supplied is not enough. The 1885 Legislature, without specifically referring to Rule 6 of the English Rules to which I have referred, adopted the intention of Rule 6 when sec.8 of the Act was being considered. It proceeded on the hypothesis that the stating of a general ground is to be regarded as stating some particular act or fact. Any other view would mean that the new English Governor and his brand new Legislature while intending to follow the English Act and the Rules made hereunder, deliberately provided for a deviation from them. The result would be that whereas action had been taken to provide for the hearing of an election petition in the newly created electoral system, that the steps taken could be easily defeated

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by the Court allowing a technical argument of the kind raised by Mr. Knight to prevail.

In 1885 there was no Chief Electoral Officer. I can find no statute which directed that election documents had to be kept under lock and key for a period and that they could not be produced for inspection without an order of the Court. Under sec.52 of the Representation of the People Act, it is the duty of the Chief Electoral Officer to retain the election documents and election papers after an election. And none of these documents may be inspected or produced without an order of a judge of the Supreme Court or of the Court of Appeal. And where an application is made to a judge for permission to inspect the documents, the judge is not bound to grant permission. A petitioner may allege general grounds in his petition. He may have reasonable grounds to believe that an inspection of the Poll Books for 4 polling stations and an examination of 20 form C applications would be sufficient for him to supply the particulars of the acts complained of. He is under a duty to present his petition within 21 days after the return has been made of the member whose election is being questioned. The time limit for presentation is mandatory. There is no dispute about this fact. In order to supply the particulars extractable from the poll books and the application forms, the petitioner is bound by law to apply to the Supreme Court for an order to inspect. And having obtained a date for hearing, the judge may refuse the application. The period of ten days since presentation may pass before a hearing is fixed or before a determination is made by the judge.

Through no fault of his own the time mentioned in sec.8 would have expired and as a result, the election petition which is of concern to the petitioner and to the public is defeated in limine. The consequence is so disastrous, the result is so unreasonnable and unjust that the Court is bound to avoid it by rejecting Mr. Knight's interpretation and by putting an alternative interpretation on the section. And the alternative interpretation is to hold - and I do hold - that a failure on the part of a petitioner to supply particulars of the acts complained ^{of} within 10 days of the presentation of the petition is not destructive of the said petition. In other words, the first part of the section is directory only. And where the particulars

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are not forthcoming the second portion of the section gives the respondent the right to ask a judge to order the petitioner to supply them.

The conclusion to which I have arrived has been put on a more liberal basis by statute in some Commonwealth Countries. As an example, under Regulations of Ontario ⁱⁿ Canada, made pursuant to the Election Act (Chapter 142 of the 1970 Revised Statutes), a petitioner is under no duty to supply particulars at the time of the presentation of his petition. The duty arises when a date has been fixed for the trial of the petition. Within 14 days before the day appointed for the trial, particulars are required to be supplied subject to the right of the respondent to ask for further and better particulars thereafter. See Regulation 129 of the Revised Regulations of Ontario 1970, r.23 and 27.

Irregularities Alleged

During a period of several days, the petitioner called 8 witnesses. As is expected in a proceeding of the nature before me, reliance was placed on many documents which were tendered in evidence. Lively objections were raised by counsel for the respondents as to the admissibility of some of the documents. And some time was spent by Mr. Knight supported by Mr. Ellis in a discussion on this subject, namely, was the hearing a strict trial or an inquiry. Mr. Spaulding in his closing address made his contribution in the debate. The distinction, even if it is a thin one allowed the entry of a subsidiary question, namely, whether at the hearing of an election petition the court is bound to observe the strict rules of evidence or whether the rules may be relaxed in order to surmount a technical objection. I shall return to this point in due course.

I shall outline certain irregularities complained of by the petitioner and deal with each head. And under the particular head in question, reference will be made to any relevant documentary exhibit tendered in support thereof.

Statement of certain irregularities

- (1) That several persons under the age of 18 were knowingly registered as voters and subsequently placed on the official Voters List.

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- (2) That persons whose names were not on any list of voters, voted at the election.
- (3) That several persons were allowed to vote at polling stations at which they were not entitled to cast their ballots.
- (4) That several persons were allowed to vote without presenting identification cards and without the statutory safe-guard of their being required to be thumb-printed and sworn.
- (5) That several cases of double registration in the constituency were allowed.
- (6) That several cases of personation did take place on election day including persons from the grave appearing to vote as shown in the poll books.
- (7) That double voting was either permitted or was allowed to take place without the statutory safeguard being applied.
- (8) That voting in excess of the number mentioned in the electoral lists was permitted.
- (9) That there was a total disregard of the electoral laws by election officers and notwithstanding the issuing of administrative directions designed to maintain a free, fair and effective election, there was a concerted effort to defeat the electoral process and to bring about a result contrary to the will of the majority.

There were other minor irregularities complained of. To these I shall return in due course.

Registration of young persons
as voters

Under sec.37(1) of the Constitution one of the requirements of a person necessary for his being registered as a voter, is that he should attain the prescribed age. And under sec.111(3) of the Representation of the People Act, the minimum prescribed age is eighteen years. This age was prescribed by Parliament pursuant to the 37th section of the Constitution.

Rule 22 of the first schedule of the Representation of the People Act states as follows:

" Subject to section 5 of this Act, it shall be lawful for any person who is qualified to be registered as an elector in any polling division and whose name does not appear on the electoral register, to make, in duplicate, to the Chief Electoral Officer, at any time whether within an enumeration period or not, an application for registration in the form set out in the Schedule to these Rules."

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This is the authority for the use of a form C whereby a person could get his name on the voter's list for a particular constituency provided certain steps prescribed by the Schedule are followed. The petitioner's contention is that the use of the form above mentioned was contemptuously abused by at least three election officers during the period of registration; that several persons qualified to be registered failed to get their names on the Supplementary Lists although they had done everything necessary to effect that result. And in the case of under age persons not less than 20 were registered and their names entered on the list of electors. A further complaint is that registration took place in a large measure without any scrutineer being present or without any notice being given to the scrutineer for the Jamaica Labour Party stating where and when the exercise of registration would take place. Further it was contended that owing to a conspiratorial move, well planned and brazenly executed, a situation in fact was achieved whereby the number of persons who had applied for registration by way of the form C application and whose names subsequently appeared on Supplementary Lists was low in areas where the petitioner was known or suspected to be strong while the number was high in areas where the respondent King was a winner. To put it in another way, The suggestion is that there was deliberate discrimination against suspected supporters of the Jamaica Labour Party while there was a show of misguided favouritism and besotted fanaticism on the part of election officers in favour of suspected supporters of the People's National Party.

I shall make a brief reference at this point to some of the documentary exhibits to see whether any reflection is indicated which could possibly support this most serious allegation. As I have already pointed out the petitioner has contended that there was a conspiracy in existence to frustrate the electoral process thus causing the people's choice to be defeated. The respondent Campbell (the Returning Officer) is said to have played a prominent part in the nefarious plot.

Certain statistics from documents

- (1) The petitioner Buck won at 35 Polling Stations. The number on the Supplementary List for all these stations was 53. The highest on any list being 9 at Polling Station 39 where the tally was Buck 123 and King 108.

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- (2) The respondent King won at 40 Polling Stations of which 25 of them had Supplementary Lists. The total on the lists was 312. At Polling Station 20A at Hopewell which figured prominently during the hearing, 51 persons had their names on the Supplementary List.
- (3) In the Hopewell area where two famous registration officers operated, namely, Mr. Neville Thompson and Mr. Wilbert Shaw, the respondent King won at 7 Polling Stations with 187 voters on the Supplementary Lists. The petitioner Buck won at one Polling Station with 5 names on the Supplementary List. The majority of the identifiable under age voters whose names were on Supplementary Lists appeared in the Hopewell area records.
- (4) The highest polling for the petitioner Buck was at Polling Station 23. There the tally was -

Buck 220; King 21.

Only 2 names appeared on the Supplementary List and these were namely, 18 year old Marcia Campbell and 18 year old Winsbert Christie. There was threat of violence at this station on election day when several persons - 18 of them - were allowed to vote although their names were not on the Voters List. In fact the Presiding Officer Miss Dawn Dygrave was not supplied with a copy of the Supplementary List by the respondent Campbell. These persons had applied for registration. They had filled in the forms and these had been sent to the Returning Officer Campbell for processing.

I shall show the picture as it appeared at the five highest polling stations for the petitioner and the respondent King in so far as the state of the Supplementary List was concerned:

(1) King a winner

<u>P.S.</u>	<u>King</u>	<u>Buck</u>	<u>Number on Supplementary List</u>
20A	183	115	51
56	179	20	26
7	165	55	28
18A	150	60	47
<u>15</u>	<u>139</u>	<u>33</u>	<u>2</u>
	816	203	154

(2) Buck a winner

<u>P.S.</u>	<u>Buck</u>	<u>King</u>	<u>Number on Supplementary List</u>
23	220	21	2
30	176	41	-
26E	165	19	1
16	144	71	5
<u>58</u>	<u>131</u>	<u>33</u>	<u>1</u>
	836	185	9

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- (5) The evidence of Mr. Roy Chapman, Assistant Chief Electoral Officer is to the effect that there were 3 published Supplementary Lists for Hanover Eastern as follows:
- (a) List dated December 8, 1976 with 351 names;
 - (b) Another list dated December 8, 1976 with 19 names;
 - (c) List dated November 30, 1976 with ² names. There were therefore 372 persons who were listed.
- (6) The evidence of Mr. Chapman shows further that the respondent Campbell forwarded to the office of the Chief Electoral Officer two separate lists (which he produced) showing the names of all applicants on a Form C requesting to be entered on the electoral list. Mr. Chapman told the Court that all the forms received were processed and the names entered on the Supplementary Lists for the relevant polling divisions.
- (7) A check made by the Court shows that one list (exhibit 89A2) has 210 names while the other list (exhibit 89A3) has 384 names. Mr. Chapman's evidence that his office processed all the forms received was never challenged in cross-examination. The inference is that whereas 594 forms were received by the Returning Officer from prospective electors in Hanover Eastern, only 379 were sent to the Chief Electoral Officer. The particulars of the Form C applications tendered at the hearing may be put as follows:

<u>Exhibit</u>	<u>Number involved</u>
89A	230
89B	37
89C	19
102	74
Identifiable under age applicant	<u>19</u>
Total:	<u>379</u>

No explanation has been given why 215 were not forwarded and what has happened to these forms. The respondent Campbell did not enter the witness box to give some explanation concerning this vital piece of evidence. The whole thing is shrouded in mystery and he who was in a position to throw light on the subject, decided to remain silent. And this respectful silence was maintained although shortly after the petitioner closed his case, the Court was assured by Mr. Cruickshank (in the hearing of the Returning Officer) that the Returning Officer would be giving evidence. Mr. Cruickshank was at that stage opening the case for the respondent King.

Evidence from an under 18 voter

Having referred briefly to the picture which certain documents have tended to reflect, I shall make brief reference to a piece of evidence given by a witness Lorna Hamilton called by the petitioner. Miss Hamilton

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was born on April 27, 1959. She was 18 in April 1977 and therefore was not qualified to be registered as a voter for the December 15, 1976 general election. Miss Hamilton told the Court that she and three students were taken to an office in Hopewell by registration officer Neville Thompson where a form was filled up by a lady in the presence of Thompson; and that she gave her correct date of birth to the lady in the presence of Thompson. The form C that was completed shows the date of birth to be 27.4.58. Her age was advanced by one year. After some time passed Thompson fetched her one day and took her to the home of one Mr. Vincent where he thumb-printed her. Thompson assured her that no "trouble" would result in her being registered as a voter. According to the witness the words of Thompson were:

"I want Manley to win the seat down here for if he loses the seat down here, he will not be any Prime Minister for he is depending on us on the Supplementary List."

I shall return to the activities of registration officer Thompson in due course. But if this bit of evidence is to be accepted, it indicates that Thompson as a registration officer was not impartial and honest. He was a functionary of or a recruiting agent for the PNP - with the object of using whatever artifice was available to bolster and guard the supplementary list in order to ensure a victory for his party. And the words "depending on us on the supplementary list" have some significance. Was Thompson referring to "us" (registration and election officers) or generally to those who support the PNP?

Complaint made to Returning Officer

The evidence of Mr. Chapman is that the petitioner complained to his office concerning the manner in which Form C applications were being dealt with. A report on enumeration for the period October 19 to November 12, 1976 was prepared by the petitioner and sent to the Chief Electoral Officer with a copy to the Returning Officer. The report is dated November 12, 1976 and was accompanied with a letter. It has a catalogue of alleged irregularities taking place in the registration process. The General Election was near at hand; the final date for dealing with a Form C in order that the name of the applicant may be entered on the supplementary electoral list was set. It was December 6,

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I shall outline the substance of some of the charges made in the report.

Charges made

- (1) That Form C registration books had not been collected from five named Postal Agencies. The books contained the names of 169 applicants. As it turned out from the result of the election, these Postal Agencies are in areas where the petitioner had strong support.
- (2) That the office clerk to the Returning Officer had been seen preparing Form C applications in various villages with a known organiser of the PNP in attendance.
- (3) That registration of persons under 18 was taking place in the Hopewell and Sandy Bay areas.
- (4) That one Miss Hope at Chigwell Postal Agency was refusing to accept applications for registration from known supporters of the JLP on the ground that she was under instruction from the Returning Officer to do so.
- (5) That three enumerators, namely, Mr. Jackson Beckford of Chester Castle Division, Mr. Wilbert Shaw of Hopewell Division and Mr. Lennox Brooks of Sandy Bay Division were known organisers and campaigning party workers for the PNP.
- (6) That enumerators were refusing to provide written appointments to JLP scrutineers and only provided "verbal appointments" which were not honoured.
- (7) That thumb-printing was taking place in local bars and community centres without JLP scrutineers being present.
- (8) That JLP supporters who had applied to be registered were by passed by enumerators on the ground that "the applicants were not at home."
- (9) That voter identification cards were not being delivered in strong JLP areas.
- (10) That confusion was being caused in the community by rumour that without an identification card no one could vote.

The whole of the procedural steps preparatory to the holding of the election as it affected Form C applicants, was under severe attack; the integrity of certain named enumerators was impugned, the impartiality, and competence of the Returning Officer had been brought under critical examination. It appears that notice had been served - if not before - that unless remedial measures were taken immediately during the remainder of the campaign and for the rest of the registration period, great damage would be done in the constituency to the cause of a clean and effective democratic process.

The evidence of Mr. Trevor Dixon the Chief Electoral Officer is to the effect that 313 identification cards for Hanover Eastern were not

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distributed. His evidence on the point is as follows:

" Identification cards are sent to the Returning Officer of the Constituency. He is required to select electoral officers to distribute the cards to the respective electors."

For the Hopewell area, one Ruthlyn Leslie was the Electoral Officer selected to distribute the identification cards. An exhibit in the case (no.91) shows that she "delivered" 330 cards and was unable to deliver 21. The distribution sheet contains the names of 351 electors. Miss Leslie performed the duties of Poll Clerk at polling station 20A Hopewell. What took place at that station on polling day was strange yet interesting. That will be the subject of special examination.

Exhibit 91 (the distribution sheet for the Hopewell area) indicates the following particulars with reference to the 21 undelivered identification cards:

<u>Endorsement</u>	<u>number</u>
"dead"	4
cannot be found:	11
Gone away	5
Refused	1

Notwithstanding the fact that these 21 cards were undelivered, the Poll Books show that 10 of these did vote and one of the dead was "resurrected" for that purpose. The "dead voter" gave evidence at the hearing to which I shall later refer.

For Polling Division 15, one Estriana Hamilton was the Electoral Officer who distributed the cards. Out of a total of 180 cards, 6 were undelivered with the particulars as follows:

dead	3
removed	1
no endorsement	2.

The Poll Books show that 5 names of the six undelivered were entered. The two persons who did not get their cards (as shown above) returned to vote. And the names of the 3 dead persons figure prominently. I shall return in due course to what was offered as an "explanation" for the entry of the names of the deceased persons in the Poll Book

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Remedial action taken?

As I have already pointed out, the report of the petitioner to the Returning Officer dated November 12, 1976 may be regarded as the serving of notice demanding remedial action in order that the electoral process may be substantially preserved during the remainder of the campaign.

With reference to the "charge" that the office clerk to the Returning Officer had been seen preparing Form C applications with a PNP organiser in various villages, Mr. Chapman inquired into it. After he had given his evidence on the point, the Court commended him for his fairness and sagacity displayed in attempting to settle the dispute. I shall refer to the matter as "the Eda Anderson affair."

Eda Anderson and her activities

The petitioner sent the undermentioned letter to the Chief Electoral Officer (hereinafter referred to as the CEO) with his report on enumeration.

"November 12, 1976.

Dear Sir,

Attached please see report on irregularities noted in the enumeration process in Eastern Hanover over the past few weeks.

It would be appreciated if some action be taken immediately to correct this situation. It is of paramount importance at this stage that the thumb-printing process be fairly carried out in the attendance of a JLP scrutineer to ensure that objections where necessary are recorded.

It is my opinion, that an organised effort is being made in the enumeration process to frustrate and/or manipulate the free will of the voter."

The above letter speaks for itself. It has alluded to the strong possibility that persons were conspiring to effect an unlawful purpose; namely, to frustrate or defeat the will of the people in a general election.

Mr. Chapman who once worked as the Returning Officer for Hanover Eastern paid an early visit to Hopewell with a view to his investigating the general charges. The petitioner and the Returning Officer met Mr. Chapman at the office of the Returning Officer. Mrs. Eda Anderson, the office clerk was on sick leave at her home. The petitioner, in the presence of the Returning Officer related a story of his taking persons, who were desirous of being registered as voters, to the home of Mrs. Anderson. But

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the application forms were not filled in because he the petitioner had received from a former Returning Office for the constituency an advice that the procedure of form C applicants being taken to the home of Mrs. Anderson for C forms to be completed was irregular. Mr. Chapman the Returning Officer and the petitioner then proceeded to the home of Mrs. Anderson. The allegation that she had been preparing and accepting Form C applications at her home was admitted. A decision was taken resulting in the following:

- (1) All applications filled up at the home of Mrs. Anderson were cancelled by Mr. Chapman;
- (2) All certificates of enumeration corresponding with the applications were torn out of the application book and were cancelled;
- (3) The services of Mrs. Anderson were to be terminated by the Returning Officer;
- (4) A list of form C applications already made in the office of the Returning Officer should be sent to the petitioner;
- (5) In order to allow the petitioner to appoint scrutineers a list of all enumerators or registration officers should be sent to the petitioner;
- (6) Other areas of grievance were discussed in the presence of the Returning Officer and agreement was made how they were to be rectified.

There was some change with regard to the termination of the services of Mrs. Anderson. On the return of Mr. Chapman to head office, he found that she had forwarded a medical certificate. Vacation leave was also due to her which when added to the sick leave would have taken her beyond the period of the general election activities. In view of the fact that up to that period Mrs. Anderson had been employed for over 4 years, it was decided that instead of her being dismissed she should be instructed to proceed on leave with a direction that she should have nothing to do with the operation of the constituency office until after the general election.

Resignation of Mr. Shaw - appointment
of Mr. Thompson

On the very day the petitioner prepared his report containing his list of charges, Mr. Wilbert Shaw, a controversial registration officer resigned. The resignation was effected on Friday November 12. By the following Monday, November 15, another controversial figure came into the picture. Mr. Neville Thompson, an ex-soldier and a full time fireman in

Montego Bay was "officially" named an enumerator by the Returning Officer to succeed Mr. Shaw.

From early in the proceedings the validity of the appointment of Mr. Thompson as an enumerator and from what period, and the reason for his selection were put in issue. It was not until during the closing stages of the final address of Mr. Ellis that the Court was told that Mr. Thompson had nothing in writing to show his appointment. The Returning Officer "named" him by word of mouth. This disclosure was made as a result of questions asked by the Court as learned counsel analysed the evidence which touched the conduct of Mr. Thompson. It was the 80th day of the hearing. Whereas valour had been displayed with interesting regularity and breezy exchanges enacted during the hearing, as a result of a relapse, candour in a very vital and sensitive area was limping and lurking for nearly one year. However, there is some consolation. An appearance was put in at the last minute.

What is clear is that on the visit of Mr. Chapman to settle the charges which the petitioner had made concerning the processing of Form C applicants, Mr. Shaw had already resigned and Mr. Thompson had been appointed by word of mouth. But not one word was told Mr. Chapman about this development. In fact, the evidence is that whereas it is the duty of the Returning Officer to inform the CEO of all appointments of enumerators in a constituency, there is no record of any notification to Head Office of the appointment of the three most controversial enumerators in Hanover Eastern during 1976. These enumerators are Neville Thompson, Wilbert Shaw and Lennox Brooks.

Authority for appointment

Rule 27(2) of the Schedule to the Representation of the People Act states as follows:

"The registration of a person who applies for registration pursuant to rule 22 shall not be completed until the Chief Electoral Officer or an election officer nominated by him for the purpose is satisfied after an inquiry under paragraph (2) of rule 36 that there is no objection to the application and endorses the application for registration form to that effect."

The language contained in Rule 36(2) is as follows:

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"In the case of a person who has made an application for registration pursuant to rule 22, the Chief Electoral Officer shall before taking action under paragraph (1) make or cause to be made such enquiry as he thinks necessary to satisfy himself -

- (a) that the applicant is qualified to be registered as an elector; and if so,
- (b) as to the appropriate polling division in respect of which he should be listed as an elector."

And paragraph (1) of the Rule aforesaid requires the Chief Electoral Officer to prepare an identification card in respect of the person whose registration card has been sent to him. The identification card is then sent to the Returning Officer for delivery to the elector. But what is very clear under Rule 36 is this: the enquiry which is to be made to establish whether the applicant is qualified to be registered as an elector may only be carried out by either the Chief Electoral Officer or by some other person delegated by him. A delegate is entrusted with authority to act on behalf of another and where he is required to perform some legal administrative act, his appointment is to be evidenced by some document or memorandum. The rule is that a delegate cannot delegate without authority so to do. Even if every Returning Officer is authorised by the CEO to carry out the enquiry under Rule 36(2), no other person in the constituency may carry it out without the express authority of the CEO.

The Returning Officer having been authorised to make the enquiry, he in turn cannot authorise an enumerator to do so without legislative power. The principle is stated in the latin language as follows:

"delegatus non potest delegare"

On the evidence before me, I hold that the purported appointment of Neville Thompson, Wilbert Shaw and Lennox Brooks as registration officers without the express authority of the CEO was irregular. There is no authority to support their appointment by the Returning Officer acting on his own motion. The Representation of the People Act concerns itself with a very pertinent and momentous subject. The democratic process revolves around its provisions. And no person may perform any function of an administrative or judicial nature under the Act without proper authority.

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Curative provision applicable?

As I have pointed out earlier in this judgment, sec.107 of the Representation of the People Act saves an election return where what is relied on is the irregularity in the appointment of any election officer. But irregularity in an appointment of an election officer is one thing. What is done by that officer under his purported appointment is something quite different. I shall therefore, proceed to outline certain basic provisions of the Act.

Certain administrative provisions

The Act provides for the appointment of a Chief Electoral Officer.

There is a returning officer who is appointed for each constituency. Provision is also made for the appointment of election officers. An enumerator is an election officer. As soon as an election officer is appointed, he is required to be sworn before he begins his duties. And the oath in the form set out in the Schedule is to be sent to the office of the Chief Electoral Officer.

Scrutineers

Where a political party has five or more members in the House of Representatives, it has the right to appoint one person as a scrutineer in respect of each polling division. The name of the scrutineer is required to be supplied to the Chief Electoral Officer as soon as the appointment is made. No inquiry may be made by any enumerator with a view to his registering a person as a voter unless he has first informed the scrutineers of the political parties in the division where and when the inquiry will be made. This means that the Returning Officer is under a duty to select suitable persons for appointment as enumerators and thereafter to instruct the enumerators concerning what is required of them and to see that his instructions are followed. The Act frowns on the appointment of a political activist as an enumerator and particularly where he is a person likely to defy the provisions of the Act relating to enumeration owing to his burning zeal as an activist. It also frowns on the appointment of an

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activist as returning officer, presiding officer or poll clerk. When the Representation of the People Act of 1944 was enacted, it wisely provided this section:

sec.56: "The Chief Electoral Officer shall -

- (a) exercise general direction and supervision over the administrative conduct of elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of this Act;
- (b) issue to election officers such instructions as from time to time he may deem necessary to ensure effective execution of the provisions of this Act; and
- (c) execute and perform all other powers and duties which in this Act are imposed upon him."

The provision above is now to be found under the 63rd section of the Act.

Enumerator Thompson appears

On the 15th November, 1976, the Returning Officer addressed the following letter to the petitioner:

"Dear Sir,

Please be informed that Wilbert Shaw has resigned from the post of Enumerator in the Hopewell area. He claimed that an adherent of the J.L.P. threatened him with arson. Neville Thompson of Hopewell has been appointed to continue enumeration of "Form C" applicants immediately.

Your usual co-operation is solicited to guarantee the success of the present exercise."

The immediate appointment of Mr. Thompson, suggests that there was some urgency. Between Friday the 12th November, 1976 when Mr. Shaw resigned and Monday the 15th when the new oral appointment became effective, there could not have been much time for proper instructions to have been given to the new-comer. But is this picture a true one? The evidence tends to suggest that before the 15th November, 1976 - and this must mean that it was before the resignation of Mr. Shaw on the previous Friday - Mr. Thompson, with the knowledge of the Returning Officer and aided and abetted by him, was on an enumeration drive registering prospective electors. This could be an explanation why the appointment was oral and not in writing. And this may be the reason also why Mr. Chapman was unable to trace having received any notes.

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document or memorandum suggesting that the Returning Officer had informed the CEO of the existence of this interesting enumerator.

The Oath of enumerator or his appointment as is required by sec.13(1) of the Act is in this form:

"Ithe undersigned, appointed enumerator for the constituency of.....swear (or solemnly affirm) that I will act faithfully in my said capacity of enumerator according to law, without partiality, fear, favour or affection."

Mr. Thompson, in his evidence told the Court that he did not remember taking the oath as an enumerator.

Having subscribed to the Oath before a Justice of the Peace or before the Returning Officer, the section requires that the form as executed is to be sent to the Chief Electoral Officer. And under the wide provision of sec.52 of the Act, the form constitutes a "paper" or part of the "records" "in relation to an election" which is required to be retained by the CEO.

Evidence as to acting before November 15

I shall quote at this stage parts of the evidence of Mr. Thompson during a long, careful and searching cross-examination. Mr. Spaulding was cross-examining on December 1, 1978:

Q: "Do you remember making any appointment with any scrutineer before the 15th November, 1976?"

A: "Yes sir, but I cannot remember how many days before November 15 that I contacted the scrutineers."

Throughout his evidence, Mr. Thompson punctuated his replies to questions with the words "I do not remember" or "I do not genuinely remember." It was not surprising therefore, that on March 6, 1979, after an adjournment of nearly 3 months, while the cross-examination was still in progress, Mr. Spaulding returned once more to the subject of the scrutineers.

Q: "Do you in fact remember whether you made an appointment with a scrutineer before November 15, 1976?"

A: "I do not remember the dates but I know that the appointments were made."

The cross-examination continued with interest. Mr. Thompson still continued to show signs of lapse of memory. He once had a good memory but during his army service the sounds of gun and rifle "threw off the memory." However, there were periods during cross-examination when the

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events were lucid and the memory played no tricks.

Q: "I am putting to you that you had in your possession for some days before November 15, 1976, electoral documents which you had received from the Returning Officer?"

A: Sir -- I had documents before the 15th November but the length of time before, I do not remember.

Q: I am suggesting that before the 15th November you were going around in the districts purporting to be working as an enumerator?"

A: Sir on receiving the documents, I started to work after I notified the scrutineers."

The evidence above of this enumerator is very pellucid and revealing. It was not challenged in cross-examination by Counsel for the Returning Officer. Why the Form C applications completed by this enumerator show this situation may be self-explanatory.

- (1) 85 applications were processed within an area of 8 polling divisions within 4 days namely, November 15 to 18.
- (2) On November 15, the date of the appointment as shown in the letter of the Returning Officer to the petitioner, 55 applications were dealt with and these covered several applicants proved to have been under 18 on that date.
- (3) Of a total of about 92 applications not one shows any evidence of a scrutineer being present when the inquiry was made. And yet the witness told the Court that a scrutineer was asked to initial the registration application when one was present. Was the Returning Officer temporarily blind when he received the original forms purported to have been executed by Thompson? Did everyone of the 92 forms escape his attention in this material point, namely, there was no evidence to support the requirement of the Act that any scrutineer had accompanied enumerator Thompson?

Speedy Worker

The witness Thompson told the Court that he could complete the registration of an applicant in about five minutes. His method was so simple. Having received the application form, he made the following moves:

- (a) The number on the registration card which he had was transferred to the Form C;
- (b) The name of the applicant on the application form, the age, address, and occupation would be transferred to the registration card;

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- (c) The name of the applicant's mother as obtained was also noted on the registration card;
- (d) The applicant was asked to sign the declaration and then he Thompson signed after the thumb-print was taken.

When he was shown the application form of under age voter Lorna Hamilton during examination in chief, he was asked this question:

Q: "When you got a Form C like that (exhibit 56A) from the Returning Officer what would there be left for you to do?"

A: I would transfer the number on the registration card to the bottom of Form C and sign my name to it and that is all."

This simple method for registration devised by the enumerator is contrary to the plain provision of the Act. Section 5(1) of the Act states as follows:

"Subject to the provisions of subsection (3) every qualified person shall be entitled to be registered in accordance with the rules contained in the First Schedule as an elector for the polling division in which he is ordinarily resident."

And rule 13 of the First Schedule provides:

That in case of a house-to-house inquiry care should be taken that accurate information is obtained regarding the name, occupation, address and other required particulars of an elector and that a person who is not qualified to vote or to be registered as an elector is not enumerated.

And in respect of an applicant under Form C, rules 27(2) and 36(2) to which I have already referred, provide that the enumerator must satisfy himself that the person in question is qualified to be registered as an elector before registration is effected. The Act is saying in effect that the right of a qualified person who has done everything to have himself registered as a voter is not subject to the whim or caprice of any Returning Officer or of any other person. And where a genuine enumeration is taking place, it is expected that a careful investigation will be made of the enumerator to satisfy himself that there is foundation in the assertion that the prospective voter is qualified to be so registered.

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Fifty five applications in one day

The evidence is that on Monday November 15, 1976, 55 Form C applications were completed by enumerator Thompson. How he was able to do so many on that day is a mystery. Thompson a fire man and a club operator was a part-time enumerator, His appointment book (Exhibit 113) shows that on November 15, his first "Official" day as enumerator, he was to meet the P.N.P. scrutineer (Mr. M. Vincent) and the J.L.P. scrutineer (Mr. S. Clarke) at 3 p.m. Under the Act unless the occupier of the premises consents, the enumerator may not enter upon any premises for the purpose of enumeration after 9 p.m. so that on the face of it, Mr. Thompson and his scrutineers had 6 legal hours at their disposal without any molestation to do their work. But something seems strange about the genuineness of the total output on that day. They may be outlined briefly as follows:

- (1) If, as Mr. Thompson maintained he caused scrutineers to initial the application forms when they were present at the inquiry why is it that not one of the 55 has any such initials or endorsement of any of the scrutineers.
- (2) Mr. Vincent told the Court that he was with Mr. Thompson on that memorable day, i.e. November 15 "when he did the 50 odd registrations." But in cross-examination when shown the application forms of Lorna Hamilton and Valda Vincent two under age electors registered by Mr. Thompson on November 15, he denied being present when these were done.
- (3) The enumerator and Mr. Vincent - according to the evidence - walked the several divisions some of which covered a good distance from the town of Hopewell in order to conduct the inquiry touching each applicant.
- (4) Mr. Vincent at first maintained that he was not instructed to initial any C form when he was present at an inquiry leading to registration. But he discredited himself in the final stages of his evidence when he was shown two C forms in which registration was effected by one Z. Nesbeth a registration officer on May 20, 1976, at Hopewell. In both instances Mr. Vincent initialled the certificate as a scrutineer in attendance at the inquiry.
- (5) There is one particular registration effected on November 15, 1976, by Mr. Thompson which must be mentioned. On October 28, 1976, Mr. Reginald Haughton, mechanic of McQuerrie Drive Hopewell, made an application for registration. His date of birth is stated to be November 21, 1958. From this it follows that the applicant was under 18 when he applied, and under 18 when he was registered. Mr. Haughton's name was entered on the Supplementary List and he voted at Polling Station 20A.

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Other evidence linking Thompson
with misconduct

On the 2nd October, 1978, while Mr. Chapman was giving his evidence, the Court suggested that thought was being given to summon the Director of Public Prosecutions or his representative to sit in during the remainder of the proceedings to listen to the evidence of alleged serious breaches of the Representation of the People Act. Mr. Chapman was dealing with cases of double registration.. On the following day, the press media had a front page news of the suggestion. A young man who was registered by Mr. Thompson was influenced by what he read in the press. He decided to come forward and was called by the petitioner.

Geddes Owen Lemard, a peanut vendor was born on May 8, 1959. His Form C application shows that he was a student on 28.10.76 when he applied for registration. Other particulars on the form show the following:

Date of birth:	May 5, 1958
Address:	Pondpiece, Hopewell
Registration No:	5017694
Date of Registration:	16.11.76

The declaration is signed by the applicant with the same hand and ink as that shown on the line "signature of applicant." But the name "Geddes Lemard" in the body of the declaration is in the ink used in the signature of the registration officer and it was not written by the applicant. The applicant on both lines and places reserved for his signature has written his full name Geddes Owen Lemard.

The outline of the evidence of Mr. Lemard is this: One day he was in the shop of Mr. Gray at Hopewell. While he was in the shop Mr. Thompson entered and told him Lemard that he wanted to take "up my census". Lemard inquired of Thompson what was the age to vote and the reply was 18. He Lemard told Thompson that he had not reached 18. Mr. Thompson assured him that "the responsibility of his signing the form" would not be his Lemard. According to the witness before the day in question Mr. Thompson had approached him twice to take up his "census" but he had refused with the words:

"Rasta does not check on age."

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The witness said he signed two blank forms one being a card. He further told the Court that his thumb print was taken in the shop at the same time that he signed the forms. Mr. Thompson in his evidence admitted that he took the thumb print of Lemard in Mr. Gray's shop but denied that he had induced Lemard to sign the application form knowing that he was not of the prescribed age. The motive for Lemard giving evidence was explained in cross-examination. He said he had read where the judge was going to call in the Director of Public Prosecutions; that he believed he had committed a "felony" when he voted while he was under age and that he wanted to come to Court so that the judge may be informed why he did it. On this aspect of the case, the Court is convinced that the witness Lemard has spoken the truth and that enumerator Thompson knowingly registered under age applicant Lemard and this caused his name to be entered on the official list. And the Court also finds that the inclusion of the ^{name on the} Supplementary List for Polling Division 18 which was brought about by enumerator Thompson was not affected in good faith.

And the evidence of Lemard together with the documentary exhibit supports an important link in the case. On 28.10.76. the date of the application, Thompson was not yet "officially" named an enumerator but on 16.11.76. when he effected ^{the} registration, he had been working only 2 days as the successor to Mr. Wilbert Shaw. The evidence supports Thompson that he was in receipt of registration forms from the Returning Officer before November 15.

A Return to Lorna Hamilton

In the light of the examination so far of the activities of enumerator Thompson, I will return to the evidence of Miss Lorna Hamilton who displayed wit and confidence in the witness box. I have already mentioned that she was born on April 27, 1959 but her Form C has her as 27.4.58. The three other persons taken to the office by Thompson along with Miss Hamilton were:

Glenford Witter, Elizabeth Bemar and Dorothy Fraser.

The following sequence of the numbers on the Form C applications is interesting:

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<u>Applicant</u>	<u>Date of application</u>	<u>Form C No.</u>
Lorna Hamilton	28.10.76.	497429
Glenford Witter	28.10.76.	497428
Elizabeth Bemar	28.10.76.	497426
Dorothy Fraser	28.10.76.	497431

The same sequence on the documents corroborates the story of Miss Hamilton that the application forms were written up at about the same time and at the same place. The date of application is the same.

In the case of Glenford Witter and of Elizabeth Bemar, Thompson registered them on November 15, the day that he registered 55 applicants. And in the case of Dorothy Fraser, Thompson completed the registration on November 16. But Glenford Witter was under 18 when he was registered. He was born on the 27th April, 1959. The Form C application has the date of birth as April 27, 1958. Thompson's girl friend is a cousin of William Hamilton the father of Lorna Hamilton. So that Thompson is no stranger to the Hamilton family.

It was hinted to Lorna by Thompson that one Roger Anthony Anderson of Hopewell had been registered and that Roger and herself were only 6 days apart in age. Thompson was born in Hopewell and lived there for most of his life. He was about 29 in 1976. It is not surprising that he displayed knowledge of the birth dates of the young residents.

Roger Anderson was born on April 21, 1959 exactly 6 days before Lorna Hamilton. A Form C application signed by Anderson shows his date of birth to be April 21, 1958. The date of the application is October 12, 1976. His registration was effected by Thompson on November 15, 1976. And so another person not qualified to ^{be} included in the list of electors is knowingly placed there under the registration of a determined and zealous registration officer.

Lorna's father gives evidence

Mr. William Hamilton was called by the petitioner. He said that he voted at Hopewell on election day. As a result of information received on that day, he spoke to Neville Thompson and told him that his daughter had voted and that he Thompson was responsible. He continued:

"I asked him, suppose you let my daughter get in trouble?

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The reply of Thompson, according to the witness was this:

"She is 17 plus and our party will be in power and there will be no trouble."

At no time was this witness shaken in cross-examination. The more he was questioned, the more he drove the nails harder and exposed the scheme of Thompson to recruit as many under age voters that he could muster for the benefit of the candidature of the respondent King.

I accept the evidence of Lorna Hamilton and that of her father. And without examining in detail any further evidence on the point, I find that the name of Lorna Hamilton and the names of the undermentioned under age persons were wrongly included in the Supplementary List at the instance of enumerator Thompson: and they were included when he was acting otherwise than in good faith.

	<u>Exhibit</u>	<u>Name of Applicant</u>	<u>Date of Birth</u>	<u>Date registered</u>
1.	53	Sandra Ellis	20.10.59	18.11.76
2.	59	Valda Vincent	19. 2.59	15.11.76
3.	60	Annette Jarrett	11.11.59	16.11.76

In (1) above, the application was made 29.10.76. In (2), the application was on 28.10.76 and in (3), it was on 6.11.76. What is interesting to note is this. The certified copy of the birth certificate of Miss Annette Jarrett, shows that she was born on November 11, 1959. But her registration card and the Form C show November 11, 1957. Her age is advanced by two years. It is not out of place, therefore, to show the state of the listings of young electors (between 18 and 20) by three registration officers. And these do not include cases where the actual age of applicants has been proved.

	<u>Registration Officer</u>	<u>18 yr. old</u>	<u>19 yr. old</u>	<u>20 yr. old</u>
1.	Neville Thompson	15	10	7
2.	Lennox Brooks	12	6	1
3.	Wilbert Shaw	16	10	6

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Wilbert Shaw

I shall now turn to the evidence showing how enumerator Wilbert Shaw performed. Before Mr. Shaw gave evidence, the petitioner proved that the undermentioned unqualified persons had their names placed on the list of electors as a result of registrations effected by enumerator Shaw. Did Shaw know that they were disqualified by age when he registered them?

Listing

<u>No.</u>	<u>Name</u>	<u>True date of Birth</u>	<u>Date on Reg. Form</u>	<u>Date registered</u>
1.	Lloyd Dehaney	6. 9.59	6. 9.58	22.10.76
2.	George Clarke	22. 8.59	22. 8.53	26.10.76
3.	Barbara Nesbeth	5. 6.59	5. 6.58	12.11.76
4.	Dale Gilling	21. 7.60	21. 7.58	27.10.76
5.	Godfrey Washington	2. 7.59	2. 7.58	22.10.76
6.	Carl Gilling	5.10.58	25. 7.57	22.10.76

The pattern is the same as in the applications dealt with by enumerator Thompson. The age is either advanced by one year or by two years. In (4) above, the applicant was 16 years and three months old when he was registered. In (6) above, the application was made on September 3, 1976 when the applicant was not yet 18 but the age is advanced by nearly 15 months.

A domestic registers herself

When Aeneas was relating his story to Queen Dido concerning the last struggle of Troy, he used the example of one tricky act and invited the Queen to use it as a yardstick to judge the whole lot. It is not necessary to quote the reference. This example may not be a good illustration of commendable logic. But it may indicate however, how the wind may have been blowing.

One exhibit before the Court, is a Form C application No. 483132 in respect of Miss Sonia Grant, a domestic of Crabwood, Hopewell. Her age is stated to be 19 with date of birth shown as April 23, 1957. Miss Grant made her application on October 28, 1976. The declaration on the form is as follows:

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"I Sonia Grant declare that the particulars stated in the above application relate to me personally and are true and correct, and that I am qualified to be registered as an elector and my name does not appear on the electoral register."

Sonia Grant

The enquiry which is to be made pursuant to the First Schedule to the Act before registration is completed, is shown to have been held by herself. There was no "objection" to the application and she signed on the line reserved for the Registration Officer. The initials of a scrutineer do not appear anywhere. The date of registration appears as 12.11.76. This date was the last official working day of Mr. Shaw as an enumerator.

Although from the document there was no Registration Officer and notwithstanding that under the Act, the Registration Officer who prepares the Registration Card must be the one who effected the registration, nevertheless a Registration Card was prepared and issued by Mr, Wilbert Shaw. All the particulars on the card do not agree with those on the Form C. The card has her as a "student" and her age is 18. But the Form C has her as a 19 year old domestic. Miss Grant's name appeared on the supplementary list. If evidence is wanted that there is an inherent weakness in the Form C registration, the example to which I have referred is proof enough. How this serious error could have escaped the attention of the Returning Officer when he was preparing his list is difficult to understand. And how this error having escaped the attention of the Returning Officer, it also escaped the machinery in the office of the CEO is very perplexing.

Exponent of scientific socialism

Mr. Shaw is 25 years old. He was born in Westmoreland and won a free place to a secondary school. Trained as a teacher, he went to Hopewell in September, 1976 and taught at a school in that area as an Interne. He said he has been a socialist for about 15 years and has been an exponent of scientific socialism. But scientific socialism is not the only subject in which he may be skilled. In the witness box he demonstrated that he is argumentative, an able strategist and that he was nothing if not grandiloquent. He must have mastered Fowler's textbook exposition of the extended meaning of malapropism. If Mrs. Malaprop Sheridan's chief

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character in his famous play, had been alive to see him in action, she would have applauded with gusto.

Within a period of about four to six weeks of his going to reside in Hopewell, Mr. Shaw was appointed an enumerator by the Returning Officer. And within the period of about six weeks after his appointment, he resigned owing to threats. He was accused of being partisan in that he was only concerned with the registration of suspected supporters of the P.N.P.

It is doubtful whether Mr. Shaw was properly instructed in his duties. I shall quote excerpts of his evidence.

" I was not told that a scrutineer should initial a Form C when completed and if present. None of the Form C applications I completed was initialled by any scrutineer."

In the case of enumerator Thompson, he was aware that where a scrutineer was present at the registration of an elector the initials of the scrutineer should be obtained. And if Mr. Shaw was speaking the truth that the Returning Officer did not instruct him to obtain the initials or signature of a scrutineer, if present, at the time that a registration was effected, then an administrative directive of the Chief Electoral Officer dated March 16, 1976 was ignored. A circular No.119/1-43 and addressed to "All Returning Officers" states as follows:

" I have to advise that the scrutineers should be given the opportunity of inspecting the enumeration documents from time to time and in particular at the end of the exercise. Enumerators should endeavour to get the signature or initials of the scrutineers on all certificates issued, when scrutineers are present."

Paragraph 2 of the circular refers to pre-printed certificates and stresses that where changes are noted on the certificates, these should be initialled by the enumerator and the scrutineers. As I have already pointed out, the 63rd section of the Act gives the Chief Electoral Officer the power to issue instructions to election officers. And the Act requires obedience to its provisions.

I shall return to the evidence of Mr. Shaw. He was being questioned about the under age applicants whom he registered. The question was whether he knew that they were not qualified and also whether his inquiry was such that he could have satisfied himself that each applicant had

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attained at least, the prescribed age. Dealing with the 16 year old boy Dale Gilling, he said:

" I was accompanied by two scrutineers when I registered Gilling. No objection was raised by any of the scrutineers. I was guided to the home of Gillings by the scrutineers."

It is a stranger who was being escorted to the home of this youthful applicant. The scrutineers who accompanied Mr. Shaw according to him were Mr. Simpson Clarke for the J.L.P. and Mr. Maxie Vincent for the P.N.D. Mr. Vincent, however, in his evidence told the Court that he did not know Dale Gilling. Mr. Clarke was not called at the hearing. There is, therefore, a clash between these two witnesses on a crucial piece of evidence, namely, the genuineness of the registration of a 16 year old voter.

The court asked Mr. Shaw the following questions. His answers are interesting.

Q: " Do you remember any case where in registering a person who appeared to be young, you asked for a birth certificate?"

A: There was no case where I asked for a birth certificate during my deliberation as a registration officer.

Q: Was there any case where you verified the age by questioning an adult or other person in the yard?

A: No sir - no such case."

So many "gems" flowed from Mr. Shaw during his evidence that I should quote briefly from his cross-examination by Mr. Ellis. He said that a person to be registered as an elector, must satisfy certain requirements, namely, age, residence in Jamaica and identity. Shown a Form C application he was questioned thus:

Q: " Why did you not check any other detail?"

A: Firstly, it would be perspicacious to look for any other detail."

Dealing with his knowledge of the age of boys in his class:

Q: " If you have an 18 year old in your class, how do you know he is 18?"

A: By looking at his date of birth in the register at school. I have to check the register as well to know a 17 year old."

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And then there follows an answer which could point to the extent of his philosophy as a socialist.

Q: " Is there a difference between a 12 year old and an 18 year old - would you know the difference?

A: Yes sir - the 18 year old who looks like a 12 year old is one from a rich parental background."

It was when he was cross-examined by Mr. Sapulding that his total collapse as a witness of credibility took place. There was self-destruction and he attempted to escape from many searching questions by resorting to malapropism, circumlocution, hedging and even rudeness. When shown several Form C applications he dealt with which show that they were either tampered with or that the signature of the applicant on the line reserved and that of the declarant to the declaration was different, Mr. Shaw replied in terms which should be recorded.

Q: " Did you see whether the signature of the applicant match that of the person signing the declaration?

A: I do not possess that sort of dialectical dexterity of calligraphy."

And when the Court commented that he was using too many big words in the witness box, the retort was that he cannot reason "at a lower level." According to him, the use of big words comes to him spontaneously. Dr. Samuel Johnson would have frowned at this show of simulated wit.

The witness admitted that on the P.N.P. platform in support of the candidature of the first respondent, he spoke on the subject of "scientific socialism." And when questioned whether on election day he worked as an indoor agent for the P.N.P. he flatly denied it. It was when he was shown the Poll Book for Polling Station 7 with his signatures in the Book and that he had taken the prescribed oath, that he retracted and admitted that he did perform the duties of an indoor agent.

Q: " How did it come that you were appointed a P.N.P. agent at P.S.7?

A: I cannot recall the dialectics."

The method used by the Greek philosophers (dialectic) in their dialogue and copied by Marx has so overwhelmed the witness that the term had to be recalled in answering a simple question.

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In answer to a question from the Court, he said that he was not interested in the laws governing election. When he was re-examined by Mr. Knight he explained his stance by saying:

"I am not interested in little laws
made by political organisers"

Whereas Mr. Thompson could complete an inquiry and registration in five minutes, Mr. Shaw showed more alacrity. His time was half that of Mr. Thompson. Speed in enumeration was a common factor between them.

Great relief was shown when he left the witness box; he bowed to the Court and walked away. His ordeal was at an end. A discredited enumerator during 1976 had demonstrated that, without strict safeguards, it is not safe to rely on the authenticity of the Form C compilation.

Certain Statistics

An examination of the Form C applications processed by Mr. Shaw, a stranger in Hopewell, shows the following interesting features:

- (1) Between Sunday October 10, 1976 and Friday November 12, he completed the registration of 96 applicants. He was on the job for four weeks and five days.
- (2) His enumeration took him over an area of 8 Polling Divisions, namely, 6,7,13,19,20,21,22 and 24.
- (3) During the month of November alone, he registered 29 applicants and the names of all these electors appeared on the Supplementary Lists.
- (4) On his last day, he registered 7 applicants including one (Sonia Grant) whose Form C does not have his signature as having conducted any inquiry.

Before I turn to the evidence of Lennox Brooks, I must advert to an important piece of evidence to which brief reference has already been made. In the charges made by the petitioner in his report of November 12, 1976, Mr. Wilbert Shaw was named as a P.N.P. organiser and campaign party worker although he held out himself as an enumerator. One would have thought that on the receipt of the memorandum, the Returning Officer would have summoned Mr. Shaw to ascertain whether the political preference if any, of Mr. Shaw, had interfered with the fair and reasonable discharge of his duties. But did this expected move take place? The cross-examination on this point gives a clue to the puzzle.

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Q: "Were you informed that the petitioner Buck had written a report to the Chief Electoral Officer and to the Returning Officer in which he had named you as being a known organiser and campaign party worker for the P.N.P.?"

A: It is the first time I am hearing this. Buck is a liar."

But the point here is not whether the petitioner Buck is a liar but whether he having made such a serious allegation to the Returning Officer, silence was kept by him, or whether he did something to ascertain the true state of affairs. The fact that on the date the report was signed Mr. Shaw tendered his resignation, did not relieve the Returning Officer of the duty to find out whether any or all or how many of the applications completed by Mr. Shaw resulted from an overpowering intention to support the P.N.P. as against an honest desire to discharge the functions of an enumerator in the manner in which the Rules under the Schedule of the Act demand. Was someone closing his eyes at what was very clear? Was it sheer incompetence or was it a situation where Mr. Shaw could not or should not have been queried?

The Court is satisfied beyond any doubt that Mr. Wilbert Shaw as a Registration Officer knowingly registered unqualified persons while engaged in the preparation of the official list for the constituency; in particular acting otherwise than in good faith, he caused the following to be included in the Supplementary List, that is to say, Lloyd Dehancy, George Clarke, Barbara Nesbeth, Dale Gilling, Godfrey Washington and Carl Gilling. The latter elector though registered when he was 18 years and 16 days old, was unqualified when he applied for registration on the 3rd September, 1976, a breach of Rule 22 of the First Schedule.

Lennox Brooks named enumerator

Mr. Lennox Brooks, now a Police Constable, was a registration officer during November, 1976. He is a native of Sandy Bay and is 23 years old. The Form C applications which he completed have been examined. There are 42 of them in evidence covering 6 Polling Divisions, namely, 2,3,4,5, 14 and 15. I shall outline a few particulars.

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- (1) The 42 applications were processed between November 15 and 19.
- (2) On November 19, 17 applications were completed and the names of all 17 applicants did appear on the Supplementary List. But a closer look at what was happening must be made. The 42 processed applications were distributed as follows:

<u>P.D.</u>	<u>Date Processed</u>	<u>Amount</u>	<u>Supplementary List</u>
2	November 16	1	1
3	November 17,18,19	7	7
4	" 15,16,18,19	8	8
5	" 15,16,18	14	14
14	" 19	10	10
15	" 19	2	2

The voting pattern on election day at each of the Polling Divisions above must be shown:

<u>P.D.</u>	<u>Buck</u>	<u>King</u>	<u>Suppl. List</u>
2	18	26	1
3	259	211	7
4	83	105	8
5	63	84	14
14	71	210	10
15	33	139	2

The list of enumerators which the Returning Officer sent to the Chief Electoral Officer does not show the name of Mr. Lennox Brooks. And the form of oath which Mr. Brooks was required to have taken and which should have been dispatched to the CEO was not produced although every opportunity was available for this to have been done. Each of the Polling Divisions above outlined had an enumerator according to the list. Why Mr. Brooks processed Form C applications for a period of only 2 weeks was not explained. And why the supplementary lists for each of the Polling Divisions he worked in only contained the number corresponding with what he processed is somewhat puzzling. What is a remarkable coincidence is this. The date of the first processing by Mr. Brooks was the date when Mr. Thompson "officially" started as an registration officer in nearby Hopewell. The appointments fitted in with the exodus of Mr. Wilbert Shaw.

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Main points in evidence of Brooks

Mr. Brooks as a witness showed more frankness than Mr. Shaw. His training as a Policeman appeared to have influenced his demeanour. Caution was observed, respect to counsel was displayed although a certain amount of uneasiness under cross-examination was detected. He admitted that during the period he acted as registration officer he was accused by the petitioner of being a P.N.P. activist. This he said was denied by him. And he further disclosed that the Returning Officer had informed him that the petitioner had lodged a complaint to the effect that he was an activist for the P.N.P. As a result of the accusations made against him, he ^a took certain precaution. The evidence on the point is as follows:

- Q: "Did you do anything in particular to protect yourself in terms of your work?"
- A: Yes Sir - I made sure that Mr. McKenley was present when I was working.
- Q: Were you in collusion with Mr. McKenley to register P.N.P. people?
- A: There was no irregularity, we functioned smoothly."

The witness was under examination in chief. Mr. Pickersgill was then examining him. The scrutineers in the area were Mr. William Kerr for the P.N.P. and Mr. Clinton McKenley for the J.L.P.

During the cross-examination, Mr. Knight took several objections to questions asked. I shall summarise briefly what came out during cross-examination.

Summary

- (1) He was instructed by the Returning Officer to go it alone if an appointment with a scrutineer was not kept.
- (2) He completed 41 registrations without the presence of the P.N.P. scrutineer and this scrutineer (Mr. Kerr) broke all the appointments made with him.
- (3) The signature of the J.L.P. scrutineer was obtained on 11 of the forms although Mr. McKenley was not present when the enquiry in each of them was held.
- (4) The signature of Mr. McKenley was requested as a safeguard against the accusation of being a P.N.P. activist. His evidence on the point is in these words:

" I compelled Mr. McKenley to sign the eleven Form C applications. I was taking precautions."

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- (5) A request was made of Mr. McKenley to sign 30 other forms but this was refused.

Certain documents

Some of the Forms dealt with by Mr. Brooks called for explanation. On the face of the documents, what may euphemistically be called "errors" do appear. His explanations were interesting. I shall refer to about 4 of them:

<u>No.</u>	<u>Document</u>	<u>Explanation</u>
1.	Registration Card No.5004986 for Mr. Seymore Perry of Sandy Bay. On the card it is shown that Mr. Perry is illiterate. His "mark" is put for his signature but it was shown to Mr. Brooks that Mr. Perry had signed his name on a previous occasion, i.e. on Form C 409749 when he applied on November 5, 1976.	"I wrote the name of Perry and his mark on the registration card. I cannot recall why I wrote his name.....I put the X representing his mark." And then later he continued: "When I was completing his card I saw that he had signed his name to the Form C but he left before I completed the form."
2.	Form C 409748 for Loreen Dias of Sandy Bay - Date of Birth: Nov.17,1958 Date of Application: Nov.5,1976 Registered: Nov.18,1976	Was instructed by the Returning Officer to the effect that if a person was under 18 when he applied to be registered it is proper to register him when he attained 18 and over.
3.	Form C 527309, Hugh McFarlane 24 of Sandy Bay the applicant. Two different persons signed the same form as applicant and the same two as declarant, one signature is that of Clinton McKenley.	Cannot explain how two signatures get on the application line and two as declarant. Something is wrong.
4.	Form C 527322 Stanford Atkinson 18 year old applicant . Two persons applied on the same form and two signed as declarant.	"I cannot explain how this one passed me."

In (1) above, the signature of Brooks as Registration Officer does not appear and there is nothing to show that any scrutineer was present.

In (2), the law requires that the applicant must be qualified to vote at the date of the application. The advice of the Returning Officer was erroneous. And it is to be observed that the registration was effected on the day after the 18th birthday of the applicant. No scrutineer was present.

In (3) above, the witness appears to have contradicted himself. He said that J.L.P. scrutineer Clinton McKenley was never present at any registration but the form suggests that either McKenley was present or that he was a witness to the mark of McFarlane. Many forms have an X on the line reserved for signature probably as an indication where the applicant

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should sign his name.

In (4) above, there are two different signatures on the line, namely, Stanford Atkinson and Bevan Walcott. No scrutineer was present.

Widespread questionable registration

The documentary evidence has disclosed that the irregularities and breaches of the law which took place during the registration period were widespread. The question is: was this wide and consistent operation knowingly performed or was there a sickening lethargy which had afflicted election officers (including the Returning Officer) during the period when the official list was being prepared?

I shall outline particulars of some questionable documents touching certain polling divisions. And these documents shall be taken at random from 6 polling divisions.

<u>No.</u>	<u>Document</u>	<u>P.D.</u>	<u>Brief Content</u>
1.	Certificate of enumeration No.454242 issued to Miss Marlene Scott	18	Miss Scott was born on November 11, 1959. On May 7, 1976 during the house-to-house enumeration she was enumerated by F. Wright. The date of birth on the certificate is April 11, 1958. The age is advanced by 19 months. On the date of enumeration, Miss Scott was 16 years old. Her name appeared on the voters list.
2.	Form C.527434 Oliver Wint of Haughton Grove, Ramble	56	The form shows that the applicant was born on April 28, 1959. He was under 18 on October 7, 1976 when the application was made and under 18 on November 4, 1976 when he was registered by one Beckford (Registration Officer). Mr. Wint's name appeared on the Supplementary List.
3.	Form C.527466 Dalton McFarlane of Ramble	39	The applicant was born on November 14, 1958. He made his application on November 3 when he was under 18, a breach of Rule 22 of the Schedule. On November 18, he was registered by Registration Officer Beckford. The name of the elector appeared on the Supplementary List.

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<u>No.</u>	<u>Document</u>	<u>P.D.</u>	<u>Brief Content</u>
4.	Form C.527519 Robert Albert Grant, 19, of Chester Castle	60	The application was made on November 21, 1976 but registration took place on November 17, 1976, 4 days <u>before</u> the applicant applied. The Registration Officer was one Beckford. The name of the elector appeared on the Supplementary List.
5.	Form C.672175 Hubert Shaw, 19, of Cascade	32	The application is dated November 5, 1976. But there is no signature of the declarant on the line or elsewhere. No scrutineer was present on November 20 when M. Grant completed the registration. The applicant's name appeared on the Supplementary List.
6.	Form C.672755 Vinola Morita Gilling, 18	42	The application was signed on November 5, 1976. But the declaration was signed by a different person, one Adassa Patterson. Registration was completed on November 19 by E. Grant.

In Polling Division 18, as I have already adverted to, Mr. Neville Thompson and Mr. Wilbert Shaw figured prominently. The voting pattern in each of the above 6 Polling Divisions was as follows:

<u>P.D.</u>	<u>King</u>	<u>Duck</u>
18	247	121
56	179	20
39	108	123
60	104	90
32	80	52
42	67	22

Humour was generated when it was shown that a 6 month old child was "registered" to vote and did vote. A winsome poll clerk (Miss Imogene Mulgrave) was called by the respondent King. She was the poll clerk at Polling Station 41. According to her, she was "enumerated" by Returning Officer Campbell. Her form C has her date of birth as May 3, 1976 with the date of application as November 6, 1976. But she was born on May 3, 1955. The Form C and the registration card show one Beckford was the registration officer. No scrutineer was present. The evidence that the second respondent "enumerated" the ^{witness} was not challenged.

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Many erasures on documents

There are several application forms which show on the face that the date of birth was erased or written over in order to bring the applicants within the minimum prescribed age. Some of these erasures are crude and there is nothing to show that the applicants or even the Registration Officers did attempt to initial the corrections. And with regard to the statutory requirement that enumeration should take place in the company of scrutineers, this was noted in its breach than in its observance. The three most controversial registration officers to whom reference has already been made, were allowed to function without any hindrance. Each was his own informant, judge and jury. And protestations made concerning their partisanship were treated lightly. In the case of Mr. Shaw the challenge to his fairness and suitability as a registration officer although brought to the attention of the Returning Officer, was treated with bold contempt.

Rhetorical questions

Before leaving the subject of form C applications, I hope I may be pardoned if I outline five questions which could be asked. The evidence prompts one to ask them. The questions are as follows:

- (1) Of the 379 form C applications (out of a total of 594 which the Returning Officer collected) three Registration Officers, to wit, Mr. Neville Thompson, Mr. Wilbert Shaw and Mr. Lennox Brooks, attended to about 232 of them. They operated in 14 Polling Divisions. Why is it that three men were permitted to process so many applications?
- (2) Each of the 14 Polling Divisions had an enumerator according to the list dated January 12, 1976, which the respondent Campbell sent to the Chief Electoral Officer. What did happen to those 14 enumerators during the period the 3 enumerators above completed the registrations? And what has happened to the forms containing the oath of office which each was required to take?
- (3) The evidence shows that the 232 applications were processed between October 10 and November 19, 1976, a period of 41 days. A parody of Sir Winston Churchill may be excused. When had so many been registered in such a short time in so many polling divisions by so few?
- (4) Mr. Lennox Brooks "compelled" the J.L.P. scrutineer to initial 11 of the completed applications although the scrutineer was not present when the inquiries took place. It means that contrary to the directive of the Chief Electoral Officer and to the intention of the Act, the 232 applications were completed with the "purported holding" of an inquiry without any scrutineer being present. Each of the registrations was telling a lie

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about itself. Why was this done and why is it that the attention of the Returning Officer was not directed to these irregularities although he was warned by the petitioner that the three enumerators were organisers and campaign workers for the P.N.P.?

5. A collary follows. Under Rule 25 of the schedule, every registration officer is required to keep an inventory in respect of every registration record card used by him. And at the completion of the registration, he is required by Rule 35, to deliver to the appropriate returning officer all cards, records and forms completed, or used by him in the performance of his duties. What has happened to the registration card inventory form prepared and signed by each of these three registration officers?

Double registration

The act has made specific provision against double registration.

Section 5(5) states:

" Notwithstanding anything to the contrary no person shall be entitled to be registered as an elector for more than one polling division!"

What is the intention of the section? It is that no opportunity should be given to a person to breach the principle that each man should only have one vote. And the principle is spelt out in section 34(4) which states as follows:

" No elector shall vote more than once in the same constituency at the same election nor in more than one constituency on the same day."

And in order to put the position beyond any doubt whatever, a later section of the Act provides as follows under section 111(2):

" Subject to the provisions of subsection (3) every person whose name appears upon the official list of electors for any polling division shall be entitled to vote in that polling division, notwithstanding that he is not resident in that polling division upon the day of the election:

Provided, however, that no person shall vote in more than one constituency or in more than one polling division in the same constituency."

Subsection (3) of the section states:

" No person shall be entitled to vote in any polling division if -

- (a) he is under the age of eighteen years; or
- (b) he is not a Commonwealth citizen resident in Jamaica; or
- (c) he is a person who is disqualified from voting under subsection (3) of section 5."

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Despite the solemn provisions of the Act which are designed to ensure that the enumeration or registration process is maintained at a point in harmony which is with accuracy and cleanliness, it was proved that there were 23 cases of double registration. And there is a prominent feature in most of the registration cards. There is an attempt to mislead in some material particular. For example: On March 27, 1976, Mr. Howard Wilson, a fisherman of Hopewell was enumerated for polling division 7 and was assigned number 5001025. His height is given as 5 feet 4 inches and his age to be 24. But another registration card 2417250 is found for the same Howard Wilson of Hopewell having the same mother but this time he is a gardner and is 5 feet 7 inches tall. His age is put at 21 and there is nothing to show when he was enumerated or registered although the registration record requires this to be done. In the second registration, Mr. Wilson's name is placed in polling division 20.

What is interesting is this. The registration cards indicate that both registrations resulted from an application on a Form C. Where a house-to-house enumeration is effected, a certificate of enumeration is made out in duplicate. The duplicate is handed to the person enumerated. Different forms of the certificate, depending on the circumstances, may be used.

I shall refer to about three more of these double registrations:

	<u>Name</u>	<u>P.D.</u>	<u>Height</u>	<u>Age</u>	<u>Occupation</u>	<u>Enumerated</u>
1.	Aleatha Spence of Zion Hill	53	5'2"	20	Domestic	9. 2.76 (5004457)
	Aleatha Spence of Thompson Hill	47	5'6"	19+	Domestic	11. 3.76 (5004613)
2.	Renford Graham of Blue Hole	3	5'10"	45	Farmer	26. 2.75 (2415218)
	Renford Graham	5	5'7"	45	Labourer	----- (5004023)
3.	Karl Williams Hopewell	6	6 ft.	not shown	Pay Clerk	15.11.75 (2421226)
	Karl Williams Hopewell	7	6 ft.	19	Clerk	----- (245126)

In the case of Karl Williams both cards show his date of birth to be November 22, 1954. Mr. Williams was one week short of his 21st birthday on the 15th November, 1975 when he was enumerated with the number 2421226.

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Although the second enumeration does not show the date on its face, if it is true that the elector was 19 when he was enumerated then this would have been prior to November 1975.

Double registration in same polling
division

One of the cases of double registration occurred in polling division number 37. Mrs. Joan Bowen-Ottey, a district midwife acted as an enumerator in 1972 and again in 1976. She enumerated Miss Bethune Brown twice in the same polling division. Miss Brown and Mrs. Bowen-Ottey are not strangers. They attended the same school together. On November 2, 1972 the first enumeration took place. Registration Card 2421937 was made out for Miss Brown with the following particulars: domestic, 23 years old, height 5'3" and household 26. And on February 9, 1976, another enumeration took place. Registration Card 5004039 compare exactly with those ^{particulars} in the first card (2421937) except in two vital points. In the first registration, the address of Miss Brown is Shepherds Hall, Great Valley, household, 26 and the "distinguishing marks" on the elector show in the column of the card as follows:

"two scars in forehead"

In the 1976 registration, the address is the same but the household ^{is} number 22. And the "distinguishing marks column" has "scar in forehead." What has happened to one of the scars on Miss Brown's forehead is not clear. A change of house could have taken place during the period which elapsed between November 1972 and February, 1976. It is unlikely, however, that one of the scars in the forehead of Miss Brown would have disappeared.

Elector's name in two lists

The name of Miss Bethune Brown, domestic of Chigwell, 2421937 appeared in the official voters list for polling division No.38. It is number 3 on the list. This means that the first registration in November, 1972 was duly dispatched to the Chief Electoral Officer for appropriate action. The name of Miss Bethune Brown, helper of Shepherds Hall, Great Valley, 5004039 appeared in the official list for polling division No.37. It

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is number 55 on the list. This means that the second registration was successful. Why the Chigwell address in one list and Great Valley in the other although both registration cards show the same address is somewhat confusing.

Enumerator explains

The enumerator Mrs. Joan Bowen-Ottey, a petite and charming witness was called by the first respondent. Her explanation of what took place was interesting. I shall outline briefly what she related. She said that Miss Brown was registered twice.

"Q: How did this happen?

A: I was the first enumerator who got Bethune Brown on the voter's list. When I got to her next time, her name was not on that list."

Miss Brown was asked to search for the documents given to her on the first occasion and time was granted while the enumerator called at other homes nearby. The scrutineers of both political parties were present. On the return of the enumerator, the documents had not been found and the elector insisted that she be thumb printed and re-registered. The request was granted. It was during the cross-examination by Mr. Ellis that Mrs. Bowen-Ottey explained the dilemma she was in.

"Since her name was not on the list which I had and she had no documents to prove she was registered, I had no choice but either to re-register her or leave her out."

This kind of logic goes very near to what is contained in "Hobson's choice." But it is not satisfactory and it runs headlong against the provisions of the Act. In 1976, the elector's name was already on the list and Mrs. Bowen-Ottey admitted that she got the name on the list so that the absence of the documents to prove "she was registered" is, with respect a lame excuse which I reject.

I shall refer to another double registration in which an explanation was offered to the Court.

Carpenter registered twice

Mr. George Lyons, a 47 year old Carpenter of Shepherds Hall, Great Valley, was registered on November 27, 1972 by Mrs. Bowen-Ottey. His name was entered in respect of polling division 37 and his registration
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number was given as 2422021. The name of Mr. George Lyons with registration number 2422021 appeared in the official list for Polling Division 37 at consecutive number 82. On a date which is not entered on registration card 2422277, Mr. George Lyons of Chigwell, Carpenter, 47 years old with the same date of birth as in the first registration -- was duly registered by one Mrs. Hope Thomas. His name was placed in polling division 38. In the official list for polling division 38 under consecutive 205, the name of Mr. George Lyons appeared. The registration number is stated as 2422277.

Giving evidence about her knowledge of Mr. Lyons, this is what Mrs. Bowen-Ottoy said in answer to questioning by the Court.

" I know George Lyons; he is a carpenter. I remember registering him in 1972.....He is married and living within the area."

Then to a further question, the witness, made the position clear.

Q: "Can you help me, how is it that he is again registered for P.D.38?"

A: No sir. He is living in the same area and within P.D.37 where I registered him in 1972. As far as I know Mr. Lyons has never lived in Chigwell. I know this man well. I am giving particulars of my own knowledge."

The Court is prepared to take judicial notice of a certain fact of life in Jamaica. And it is this. Where a public officer like a teacher, district nurse or district constable has worked in an area for some time, within a reasonable time after assuming office that public officer gets to know the names, occupation and even the family of the well known persons in the area and of several other persons living within that area of residence. Mrs. Hope Thomas was at all material times, a shopkeeper and the operator of a Postal Agency at Chigwell. As a result, the questioning of Mrs. Bowen-Ottoy continued as follows:

Q: "Are you prepared to say that Mrs. Hope Thomas knows Mr. George Lyons very well?"

A: Yes your honour."

With the leave of the Court, Mr. Ellis asked this question:

Q: "Do you know the boundary between P.D.37 and P.D.38?"

A: Yes sir -- I know. Mr. Lyons is within P.D.37. I do not know if Mr. Lyons has any interest to establish a home in P.D.38"

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Mrs. Hope Thomas explains

In 1971 and 1972, Mrs. Hope Thomas was an enumerator in the Chigwell area. During the 1976 enumeration, she did not perform the duties of an enumerator. But on polling day, she was the P.N.P. agent at polling station 38. Mr. George Lyons was registered by her in 1972 and Mrs. Hope Thomas knew where the elector lived. According to her, it was the first time she was working as an enumerator and she did not know that Mr. Lyons had been previously enumerated.

During her examination in chief by Mr. Pickersgill, she vehemently denied the suggestion that she had refused to register known members of the J.L.P. as instructed by the Returning Officer. This charge emerges in the report of the petitioner dated November 12, 1976 and to which I have already referred. As an operator of a Postal Agency, Mrs. Hope Thomas was supplied with Form C application books for the use of qualified persons who were desirous of having their names entered on the voter's list. But she made her own ruling in the handling of these forms. During cross-examination she was asked this question:

Q: "Did you operate the C Forms on the basis that you would only take the names of persons who live in P.D.38?"

A: Yes Sir."

Under Rule 36(2) of the First Schedule it is the Chief Electoral Officer (presumably with the assistance of the Returning Officer) who determines the appropriate polling division in respect of which the elector should be listed. She admitted refusing to register about two persons who had been taken to her Post Office but she refused on the ground that they did not belong to her section.

It appears that polling divisions 37 and 38 serve the areas of Chigwell, Shepherds Hall, Forest and others. And there is a Post Office at Great Valley which serves Shepherds Hall. According to the witness, Chigwell is separate from Shepherds Hall. I can find nothing to support the unilateral decision of Mrs. Hope Thomas who in 1976 refused to make Form C applications available to persons who lived outside of polling division 38. After all, during the same period and in the same constituency, certain registration officers like Mr. Neville Thompson were permitted to register persons residing in several polling divisions. To deny an applicant the
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opportunity to have his particulars entered on a form C on the ground that his polling division is different from the one where the Post Office is established, is in my judgment arbitrary, foolish and discriminatory. The evidence is that the forms were located only at Post Offices, Postal Agencies, and at the Registration Centre at Hopewell. And a time limit was given for applicants to take action so that those who had not been registered could do so.

I was not impressed by the witness (Mrs. Hope Thomas) and I am not satisfied with her explanation that she did not know that Mr. George Lyons a man of about fifty summers, was not registered on the date she registered him. And I reject her explanation that Mr. Lyons was living in Chigwell at the time. I accept the evidence of Mrs. Bowen-Otley on this point.

Double registration - elector
explains

On a date which the Registration Card does not show, Miss Cynthia Oates, 18, domestic of Woodlands, was registered. Her number on the card is 2417983. In the voter's list for polling division 22, the name Cynthia Oates, domestic, 2417983 appeared. The consecutive number is 223. Another registration of the elector took place on March 1, 1976, This time her Registration Card shows number 5001580. The address of the elector is stated to be Fustic, Elgin Town Postal Agency, with occupation as Special Constable. She is now a Corporal in the Special Constabulary. In the official list for Polling Division 1 under consecutive number 172, there is this entry:

Cynthia Oates, Special Constable, 5001580

Explanation outlined

The first enumeration of the elector (now Mrs. Cynthia Oates-Finnikin) took place in 1973 during the preparation for the Parish Council Election held in 1974. The elector voted in that election. She subsequently removed from Woodlands to Elgin Town. At Elgin Town which is about 17 miles from Woodlands, an enumerator interviewed the elector. The enumerator was told that the elector had been enumerated at Woodlands in preparation for the 1974 election. It was also disclosed that the elector had intended to reside in Elgin Town whereupon the enumerator advised that enumeration "all over again" had to be done. And this was done.

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This was in clear breach of Rule 26(2) of the First Schedule which has made provision against the possibility of double registration. The substance of Rule 26(2) may be stated as follows:

"Where a person has already been registered and he is interviewed at a different polling division by an enumerator with a view to the compilation of the list, the enumerator is required to issue a certificate in the form mentioned in the schedule showing particulars as to previous constituency, polling division, registration number, present address of elector and address on last official list. The Chief Electoral Officer is to be informed accordingly and he will then give what direction he thinks fit in order to meet the change of residence."

It is clear that Mrs. Oates-Finnikin appeared as a witness in order to clear her name and ^{meet} any suggestion that she might have voted more than once as a result of the double registration together with her name appearing in the list of two separate polling divisions. I am satisfied that she voted at the Police Barracks, Lucea as is provided by law and that no use was made of her name in any of the Poll Books in the two polling divisions where she was registered. But her evidence brings into the limelight the question as to the competency of the election officers (including the Returning Officer) engaged in the compilation of the electoral lists in Hanover Eastern. In the alternative, the state of mind of these officers has emerged for some kind of scrutiny.

Certain particulars highlighted

It was proved that Miss Norma Edwards, a domestic of Sandy Bay, was registered in polling divisions 3 and 4. One registration card was used to effect the double registration. And the operation was very simple. Registration Card 2413598 was issued by Registration Officer Mais on a date which is not shown. That was the basis for including her name in polling division 4. Then a photo-copy of the same Registration Card was made out. Under heading Polling Division, the number 3 is written in ink and that was sufficient to include her name in P.D.3. The elector's name appeared in the lists for both polling divisions.

On the card, the date of birth is given as April 6, 1954 and the age is put at 18. If this is true, then, the registration took place between April 6, 1972 and April 5, 1973. How this manifest irregularity and illegality escaped the attention of the Returning Officer of that period and the

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"machinery" in the office of the Chief Electoral Officer, is one of the mysteries at the hearing.

The so called "registration" of Miss Edwards in polling division 3 should have raised suspicion in the mind of a reasonable person as soon as the photo-copy of the Registration Card appeared. A photo-copy suggests that the original was lost or that something had happened. But how could the entry of the letter 3 in ink under polling division be explained? The mystery deepens the more one examines the documents.

Ranold Malcolm riddle

Mr. Ranold Malcolm, Labourer of Jericho was born in August 1952. On the 7th November, 1972, he was registered and registration card 2415190 was issued. His name was entered for polling division 12. As in the case of Miss Norma Edwards, a photo-copy of Registration Card 2415190 was prepared, but the number did not come out in the copy. The number 2415190 is written in ink with all other particulars appearing on the photo-copy. On the 12th April, 1976, a certificate of enumeration A896057 was issued showing that Mr. Ranold Malcolm, farmer of Haughton Grove, Ramble, was then living in Polling Division 56 and that he was an elector in Polling Division 12 with number 2415190. Despite the issuing of the above certificate, the official lists for Polling Divisions 12 and 56 show the name of Mr. Ronald Malcolm as indicated hereunder:

P.D.12: Consec.78: Malcolm, Ronald, Lab. Jericho:2415190

P.D.56: Consec.37: Malcolm, Ronald, Farmer,
Haughton Grove:2415190.

Was this an example of innocent bungling in the preparation of the electoral lists? If the bungling can be called "gross negligence" is it reasonable to draw an inference that it is more than that? The zenith of the apparent bungling was attained in the case of Miss Lorna Samuels. In a real case of double registration, one expects to find two separate registrations followed by two separate lists with the name of the elector appearing in each of them. But this was not so in the case of Miss Samuels as I shall outline.

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- (a) Miss Samuels, a domestic of Mountpelier, Jackson Taylor District, was born on December 29, 1946. That is what is shown on Registration Card No.2415848. She was first registered when she was 26 years old. Ordinary calculation will show that this would have been between December 30, 1972 to December 29, 1973. The card shows Polling Division 14 as the registered location.
- (b) With the identical particulars, on January 20, 1975, Miss Lorna Samuels was again registered. Registration Card 2419204 was issued and this time she was placed in polling division 15. The official list for Polling Division 15 used in the General Election shows that her name was entered twice in the same list at consecutive numbers 35 and 42.

How the suggested reliable machinery at the level of first, the Returning Officer ^{and} second, the office of the Chief Electoral Officer, did not detect this obvious irregularity is almost as puzzling as the ancient magical formula of Egypt.

Brief summary of the whole

An examination of the documents relating to the 23 double registrations, shows the following:

- 1. Date of enumeration not shown on one set of registration cards : 12 cases
- 2. Date of enumeration not shown anywhere in the double registration : 3 cases
- 3. Same registration officer : 2 cases
- 4. Registration Officer not stated : 2 cases
- 5. The applicant able to write his name and not able to write his name : 2 cases

Cases of double voting

There was a lot of evidence tendered to the effect that the second respondent took steps to instruct the presiding officers and poll clerks concerning their duties on polling day. Each presiding officer and poll clerk was given a "book of instructions" by the Returning Officer . I have examined the booklet. It contains a lucid summary of the main provisions of the Act and of what is expected to be observed by all election officers.

Mr. Ellis in his closing address was permitted to give what he called "a breakdown of the calibre of election officers used in the constituency as presiding officers on election day." What he outlined was not proved in evidence since his client did not give evidence nor called any witness. His breakdown is interesting. Included in the 75 appointed were the following: /.....

(a)	Teachers	: 34
(b)	Government Servants	: 12
(c)	Housewives	: 10
(d)	Students	: 8
(e)	Midwives	: 3
(f)	Ministers of Religion	: 2

There was even a psychiatric nurse. But at this station to which I shall refer later, confusion and irregularities reigned supreme. The Chief Electoral Officer (Mr. Trevor Dixon) took a swipe at the teachers. He said this in his evidence:

"Teachers are known to make a lot of mistakes as presiding officers."

Particulars of double voting

It was proved that at least 8 cases of double voting did take place. Where it is shown that a person has voted under a certain name and there is a subsequent entry of the same name with the same consecutive number as shown on the official list, that is evidence of personation. It means that either the elector himself has voted twice or that he has voted after someone voted in his name. It could also mean that he was twice personated. Section 93 of the Act provides as follows:

" Every person who at an election applies for a ballot paper in the name of another person, whether that name be the name of a person living or dead, or of a fictitious person, or who having voted once at any election applies at the same election for a ballot paper in his own name, shall be guilty of personation within the meaning of this Act."

Under the Act, if an elector having voted on election day should return to vote either at where he first voted or elsewhere, he commits the offence of personation. The principle of one man one vote is put in serious danger when he attempts to vote once more after having voted. The penalty for personation is severe. On conviction before a Circuit Court, the offender is liable to imprisonment with hard labour for five years. In addition he is disqualified from being registered as an elector or voting at any election, for a period of seven years from the date of conviction. If the offender is an elected member

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of the House of Representatives or of any Parish Council or of the Kingston and Saint Andrew Corporation, he loses his seat and suffers a disability for a period of seven years from the date of conviction.

The booklet of instructions to Presiding Officers and Poll Clerks to which I have already adverted, gives clear guidance at pages 7 and 13. How a "personated elector" problem is to be handled is outlined. Where voting has already taken place and the elector himself thereafter reports at the polling station to cast his ballot, the elector must be sworn and must satisfy the presiding officer of his identity before he is allowed to vote. A note of what was done must be entered in the remarks column of the Poll Book. The oath taken on the prescribed form is required to be safely kept by the Presiding Officer. And page 13 of the booklet has this ^{terse} entry :

"Have disorderly person and personators arrested."

Personation at 20A Polling Station?

A charitable interpretation to place on the events that took place at Hopewell (Polling Station 20A) on election day is to say that a comical display most lamentable was enacted. At the head of the show were Mr. Stanley Holden, the Presiding Officer and Miss Ruthlyn Leslie the Poll Clerk. Copious tears flowed from Miss Leslie in the witness box as she revealed the difficulties which she claimed she had to face. As the scenes alternated during the hours of polling, the two indoor agents for the political parties stuck to their last. The P.N.P. indoor agent was Mr. Clifford Arnold, a veteran in the field. Describing himself as "a dangerous man when on election duties", he gave evidence for the petitioner in support of a claim by a witness that someone personated her at the polling station shortly after 9 a.m.

Mrs. Noel Stennett

On election day, Mrs. Noel Stennett acted as the outdoor agent of the petitioner at polling station 6 in Hopewell. Within walking distance of polling station 6, Mr. Holden and Miss Leslie were in control of the operation at polling station 20A. And at polling station 20B - both on the premises of ^a Mrs. Smith - the operation was in the command of the close relatives of Mr. Neville Thompson, the enumerator whose evidence I have

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already examined. The Presiding Officer at 20B was Miss Dorrell Thompson, a sister of Neville Thompson while the Poll Clerk was Miss Cecile Darling, his girl friend. Mrs. Stennett and her husband were well known to all the election officers. The voting was quite heavy at both stations. Her vote was on the list for 20A. Polling Station 20A was required to handle list numbered 1-235 together with the Supplementary List of 51 names. Station 20B was required to handle list 236-469.

Mrs. Stennett's name was listed at consecutive 120, while her husband's name was at 210 of the Supplementary List.

Mrs. Stennett left her husband in bed and proceeded to polling station 6 to await the opening at 7 a.m. At about 11:10-11:15 a.m. Mrs. Stennett voted at 20A. She presented no identification card, and was not sworn. Mr. Arnold the P.N.P. agent noted her presence and the fact that she voted once only. An entry in the Poll Book after 11 a.m. shows that Mrs. Noel Stennett voted. There is nothing in the "remarks column" opposite her name.

Earlier entry shows voting at 9 a.m.

Two entries in the Poll Book shown as numbers 46 and 47, indicate that Mrs. Noel Stennett and Mr. Noel Stennett voted shortly after 9 a.m. and that the husband voted immediately after his wife. There is nothing in the "remarks column" opposite their names. Mrs. Stennett's evidence is to the effect that the entries in the Poll Book suggesting that she had voted at about 9 a.m. and that her husband followed her, are false and that they were entered by the Poll Clerk who knew of the falsity. When Mrs. Stennett was cross-examined by Mr. Knight and Mr. Ellis, both gentlemen proceeded on the basis that the witness had voted twice and that she was not being frank to the Court. Of course, a cross-examination which is launched on such a prong has its inherent vice. If the witness had voted twice and if - which was never challenged - she was well known to the election officers, then it must follow that a corrupt machine was in full swing at that polling station. Why? Because it was made so easy. Not one syllable was entered in the Poll Book to suggest that there was a "second vote" or that the voter was challenged or that she would be reported for prosecution. A bare faced personation was committed with impunity.

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Security Officer called

In order to challenge the bona fides of Mrs. Stennett, the first respondent called Mr. Desmond Sangster who was the Special Constable on duty at the premises which housed polling stations 6A, 6B and 7. He said that at about 8:45 a.m. Mrs. Stennett told him that she had to go and vote. He saw her go inside the building and she came out at about 9:15 a.m.

" There is a pipe in the yard -
she was washing her hands and I saw red
thing coming from her finger."

Mr. Sangster suggested that Mrs. Stennett had voted at one of the stations 6A, 6B or 7 at about 9 a.m. His credibility as a witness was suspect from early. He took a phial of Vicks Vaporub with him into the witness box and played with it. But the Court gave him time with his article so that a careful assessment could be made before he was ordered to put it away. What Mr. Sangster hinted was never in issue. At no time was it ever suggested that Mrs. Stennett had voted at any of the 3 stations 6A, 6B or 7. Mrs. Stennett had no vote at any of those stations. What was in dispute was whether she had in fact voted along with her husband at polling station 20A (some chains away) at about 9 a.m.

Particulars of other cases
of double voting

<u>No.</u>	<u>Name of Voter</u>	<u>P.S.</u>	<u>Remarks</u>
1.	James Mitchell	6A 6B	No oath administered No note in Poll Book
2.	Clovis McKenzie	20A 20B	No oath administered Nothing noted in Poll Book
3.	Alvita Scott	14A 14B	Same as above
4.	Ivan Smith	14A 14B	Same as above
5.	Rupert Daley	13B 14A	Elector was registered twice. Two votes used
6.	Lloyd Russell, Mason of Great Valley	16	The elector voted twice at the same polling station - before 8 a.m. and before 9 a.m. (see entries 30 and 50 in poll book)
7.	Ashburn Campbell (Jackson Taylor)	15	Elector voted twice at the same polling station. The entries at 147 and 148 in poll book indicate that the elector was given a ballot twice in succession.

<u>No.</u>	<u>Name of Voter</u>	<u>P.S.</u>	<u>Remarks</u>
	<u>Note</u>	<u>Note</u>	
8.	Rollin Hosang, Clerk at Hopewell	6 18	Elector was registered in two polling divisions with the same registration number.

With regard to No. 8 (above), Mr. Knight in his final address placed the name of Rollin Hosang in the list of persons who voted twice. I have examined all the relevant poll books and registration cards. Whereas I have found that Mr. Hosang was registered in two separate polling divisions with the same registration number, I am not satisfied that his name appears in two separate poll books. There is an entry in the poll book for polling station 6A indicating that Mr. *Hosang* voted once.

In all the cases (1-7) above, there is no note in any of the poll books to indicate that the relevant provisions of the Act dealing with personation and double voting were observed. On the contrary, it appears that the instructions in the booklet to which I have already referred were put at defiance. And the section hereunder was disregarded: Section 36 of the Act states:-

"36(1) Subject to all other provisions of this Act as to proof of qualification as an elector and as to the administration of oaths, if a person representing himself to be a particular elector applies for a ballot paper after another person has voted as such person, he shall be entitled to receive a ballot paper and to vote after taking the oath of identity, in the form set out in the Second Schedule, and otherwise establishing his identity to the satisfaction of the presiding officer.

(2) In such case, the presiding officer shall put on the ballot paper his initials, together with a number corresponding to the consecutive number given to the voter and entered in the poll book opposite the name of such voter, and the poll clerk shall enter in the poll book --

- (a) the name of such voter;
- (b) a note of his having voted on a second ballot paper issued under the same name;
- (c) the fact of the oath of identity having been required and taken, and the fact of any other oaths being so required or taken; and
- (d) any objections made on behalf of any and of which of the candidates."

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Persons voting and names
not on list

Under the Act if a person's name is not on the official list, he has no entitlement to vote. And except in the case of members of the Security Forces or where a person is to be employed at a polling station as an election officer or an agent, no person may vote at any place other than at the polling station where his name appears. And where the official list is divided at a large polling station, no elector may vote at that part of the station which is not allotted that part of the list upon which his name appears.

Concession made

One fact which the respondents conceded during the hearing is that at Polling Station 23 at Haddington, 18 persons whose names were not on any official list for the constituency were permitted to vote and did vote. The first respondent called the presiding officer at that station (Miss Dawn Bygrave) to explain what happened. I shall call this episode, the "Haddington incident." It was proved that at Polling Station 52, Mrs. Rosetta Wilson, a housewife, was permitted to vote although her name was not on any official list in the constituency.

The voting strength at each of the two polling stations above was as follows:

(1)	P.S. 23	on official list	- 238
		on supplementary	2
(2)	P.S. 52	on official list	- 132
		on supplementary	3

Without attempting to repeat statistics already outlined, I shall re-state what actually happened on polling day as far as voting went:

<u>P.S.</u>	<u>Buck</u>	<u>King</u>
23	220	21
52	89	28

The polling was therefore in the ratio 6 to 1 in favour of the petitioner when both stations are looked at.

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Haddington incident

Miss Dawn Bygrave, a secretary, who gave her evidence with a perpetual smile, presided at Haddington. It was her first visit to that part of Hanover. She was provided with a Poll Clerk ^{from} the area but no form of security was provided at her station. When she reached Haddington on polling day at about 7:20 a.m. a large crowd had already gathered outside the polling station. No copy of any supplementary list for the station was given to her by the Returning Officer.

During the day, a number of persons kept coming into the station. They showed slips to indicate that each had made an application at the Post Office at Haddington to be registered by way of the C Form. And these persons told her that their names should have appeared on the Supplementary List. Her Poll Clerk had no copy of that list but an elderly gentleman hinted that he had one and that about 21 names were on it. The man left to get the copy of the list but did not return. In the meanwhile the demand to be allowed to vote by persons who continued to come in with slips grew. The people became extremely boisterous. They issued threats to the presiding officer and she became afraid. She had no means of communicating with the Returning Officer and a decision had to be taken in the face of the menacing situation. The decision taken was that she would allow to vote persons who had "slips" showing that they had made application to be registered, that she would thumb print and swear each of them and then collect the slips. Twenty slips were collected and of this amount, it was later discovered that two names Marcia Campbell and Winsbert Christie were on the Supplementary List.

Form C series detected

The Form C for Marcia Campbell is 692058. She was born on September 16, 1958 and was registered by one R. Russell on November 17, 1976.

Mr. Christie's Form C is 692051. He was born on September 10, 1950 and was registered on November 17, 1976 by R. Russell.

In the report of the petitioner dated November 12, 1976, he complained under the heading of "Form C" that certain Form C registration books at Ken Jones P.A. (including Haddington) had not been collected by the Returning Officer. Identified among the books, is the series from which

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the Form C of the two eighteen year old electors abovenamed, were taken. The particular book mentioned is 692044 to 692075 (32 names). What has happened to the remainder of the 30 applications in the series in this strong J.L.P. area is another mystery in the case.

Miss Bygrave must be acquitted of any suggestion that she deliberately acted in a manner designed to defeat the intention of the Act or of any of its provisions. She found herself in a tight spot. The menacing and embarrassing position in which she was enveloped, was not of her making. But what was in fact done was manifestly irregular. It was illegal but it was enough to show that she had no guilty mind.

A miniature Haddington incident

Another incident similar to what took place at Haddington but on a minor scale, was related by Basic School Teacher Mrs. Alma Freckleton. She presided at polling station 52 at Axe and Adse. An elector Rosetta Wilson whom Mrs. Freckleton knew well ^{was} permitted to vote although her name was not on any official list of voters. I shall outline the evidence of Mrs. Freckleton touching the incident.

Q: "When Miss Wilson came did she have anything with her?"

A: Yes - a Form C receipt from the Postal Agency. She said she was registered and she liked to vote.

Q: How did you feel?"

A: I was not sure what I should do. I decided to treat her as a new person. I thumb printed her and wrote other particulars on the form and put the completed form in the envelope."

The boy friend of Miss Wilson was outside watching the spectacle. When the presiding officer showed signs of reluctance at the request of Miss Wilson, the gentleman is said to have used these words:

"she will have to vote because she is registered."

And so Miss Wilson voted without her name being listed as an elector. About five other persons reported at the polling station to vote. Each had a "slip" or a "receipt" from the Postal Agency. But the presiding officer refused their request to be allowed to vote. It seems that more courage had been summoned in order to deal with the problem. What would have happened if the five others had decided to enforce their "rights" as in the Haddington case, is not clear.

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Breach occurred at Polling Station

Mrs. Freckleton has been a Basic School Teacher at Axe and Adse for about 30 years. She knows every elector who voted at her station. One of them Mr. Roland Heaven is a tailor in the area. The name of Mr. Heaven appeared in the list for polling division 51 so that he was required to vote there and not at polling station 52. But Mrs. Freckleton permitted him to vote at her polling station. Mr. Heaven related a story that he was in a hurry and that he wanted to get the ink off his finger so that he could go on with his tailoring work. Mrs. Freckleton submitted to the entreaty and therefore caused a breach of sections 30(5) and 111(1) of the Act.

As soon as it was discovered that Mr. Heaven had voted at the wrong station, Mrs. Freckleton informed the presiding officer at polling station 51 and she sent to tell Mr. Heaven what had been noted.

Softly speaking, Mrs. Freckleton impressed me as an honest and upright person. She related the two incidents which marred her polling day activities with truth and clarity. I acquit her of any imputation that she was knowingly involved in breaching the provisions of the Act or of attempting to defeat the will of the people. But mandatory provisions of the Act designed to ensure that the conduct of an election is kept at the standard prescribed and expected, were breached.

Persons voting at the wrong
polling station

It was proved that 94 electors were allowed to vote at the wrong polling station. The error - if it may properly be so called - occurred at 6 polling stations as shown hereunder:

<u>No.</u>	<u>Polling Station</u>	<u>Number wrongly admitted</u>
1.	6B	1
2.	14A	1
3.	20A	56
4.	25C	33
5.	52	1
6.	53	2

In law, there were 94 separate breaches of the law under this head.

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The relevant provisions breached have already been mentioned. No harm will be done if I re-state them. I quote from the Representation of the People Act.

30(5) "Where any official list is divided in accordance with the provisions of this section, every elector shall vote, if he vote at all, at the polling station to which is allotted the division of the official list upon which his name appears."

111(1) ".....no person shall be entitled to vote in any polling division unless his name appears upon the official list of electors for that polling division."

There is no discretion granted to any election officer permitting him to relax the law in favour of any elector. He is permitted to commit a genuine error without incurring any criminal liability. But committing a genuine error still leaves open the question whether what was done was substantially in accordance with the law relating to parliamentary election. The sanction of allowing a voter to vote at a polling station other than where he is allotted is that in a scrutiny, such a vote is struck off the record. That was the ruling in the Oldham case [1869] O'M & H. 151 at p.163. In that case, the contravention complained of was in these words:

"No person should be admitted to vote except at the booth allotted for the district wherein his place of abode may be."

How some of the contraventions occurred

1. The first person to vote at polling station 6A was Mr. John Gordon, a Bank Clerk of Hopewell. His name was not on the list for 6A but on the list for polling division 7. The Presiding Officer at 6A was former veteran headmaster Mr. Rupert Dinham who taught for over 40 years. He spent over 30 years teaching in Hanover. When cross-examined by Mr. Sapulding, the portion dealing with Mr. Gordon was as follows:

Q: "Can you say how a person who is not on the voters list at your station is entered in your Poll Book?"

A: It may be a mixed up by the Poll Clerk. I know John Gordon.

Q: Teacher is it not a fact that as a responsible presiding officer, you only caused your Poll Clerk to write a name in that Poll Book once you were satisfied that the person's name was on the list for your station?

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A: No sir. John Gordon is so well known to me."

The aging retired teacher was off guard when he answered the last question. The answer should have been in the affirmative. He was inclined to shift the blame for the "mixed-up" on his Poll Clerk. Three polling stations 6A, 6B and 7 were sited in the same building. Mr. Gordon should have gone into the compartment marked 7 but he entered Mr. Dinham's area. And without checking to see whether the elector's ballot could be properly cast there, he was allowed to do so. And to compound the confusion, when Mr. Gordon's name is entered in the Poll Book, the consecutive number of another person is put opposite the voter's name.

Another error committed at this station is that both 6A and 6B allowed voting from the Supplementary List. The practice is that in order to avoid confusion and to allow orderliness only one of two stations handling a divided list should allow voting from a Supplementary List. And before polling begins it should be known which one of the two polling stations would be admitting those electors.

And still another error emerged from the ~~evidence emerged from the~~ evidence of Mr. Dinham. It is contained in this portion of the evidence:

"Several persons came without identification cards but I allowed them to vote because I was confident of their identity with the aid of the poll clerk."

What went wrong here is this. The Poll Book does not show any entry in the "Remarks Column" indicating that anyone was thumb printed and sworn where an identification card was not produced. What the presiding officer permitted was allowable only if section 34(5) and section 34(7) of the Act were satisfied, that is the oath of identity in the form prescribed had to be taken. And the form should have been preserved and handed over to the Returning Officer at the close of poll along with the other documents as required.

Mr. Dinham has been acting as a presiding officer since 1944. He struck me as a true representative of the teacher of the old school - didactic, testy and sincere. He rules and directs the show. Like the village headmaster so graphically depicted by Goldsmith in the "Deserted Village", he means well even where he allows his zeal to have the better of him. He too, I acquit of any suggestion of mala fides. But the errors

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committed still remain to be examined in the light of the law.

2. Polling Station 25C

Polling Station 25C was not mentioned in the grant of poll. Thirty-three persons were allowed to vote at this station when their names were not on the divided list for that station. In addition there was more than one hundred per cent voting recorded there. The voting was 168 but the official list contained 159 names. The Poll Book was kept badly. I have noted the following:

- (1) The oath of the Agent of a candidate is not written up as is required.
- (2) The oath of the Presiding Officer is not written up and subscribed to.
- (3) The oath of the Poll Clerk is not written up and subscribed to.
- (4) The statement of the Poll after the counting of the ballots is not written up in the Poll Book as is required by section 44(9) of the Act.

Apart from the writing up of the names of electors in the Poll Book everything else is blank. The "remarks column" has the signature of C. Grant on 3 pages. Each page has 32 entries. And the signature of V. Shaw on two full pages and on another page with 13 signatures. Who C. Grant and V. Shaw are, is not made clear anywhere. Presumably they acted as agents for the candidates.

The Presiding Officer at this station was Youth and Social Development Commission Officer Miss Lurline Hosang. She was working for the first time as a Presiding Officer.

Explanation for the confusion

Polling Division 25 had 423 names on the official list. There were 3 names on the supplementary list. There were 3 polling stations. Two stations 25B and 25C operated on the premises of Cacoon Castle Primary School. Numbers 117-263 on the list were allotted to Station B and 264 to 423 allotted to Station C.

In accordance with section 30(1) of the Act, the Returning Officer had divided the official list into so many separate lists as there were polling stations in the polling division. Another station 25A was allotted numbers 1-116.

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Polling was heavy in the morning. At about 11:30 a.m. Miss Hosang became aware that persons who should have voted at 25B were voting at her station 25C. And she gave this explanation.

"When polling started on that day I did not see the dividing line for my polling station."

The witness reduced her frankness to the bare essentials. A jolt was felt at about 11:30 a.m. when the Poll Clerk from the adjoining station hinted that 25C was getting too many voters. It was then that the "error" was discovered. Miss Hosang said that she graduated from a secondary school after taking her "O levels" examination. Instructions were given to her by the second respondent as to her duties. One lecture was attended and she obtained a copy of the booklet of instructions. I shall quote from her evidence in order to show the extent of the instructions given her or if properly given, the depth of her understanding of what was required of her.

- (1) "I thought I had to handle the whole 423 voters at the station."
- (2) "Mr. Campbell the Returning Officer did not instruct me where my list started and where it ended."
- (3) "The first time I was aware that I had to handle 423 voters was at the polling station on the morning of December 15. At that time I did not think that 423 voters at one station was too large. I did not go through the list to see if there was a line or mark drawn through it."

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This apparent display of innocent ingenuousness is too tricky to be accepted. Credibility is being given too hard a test. From her station not even one form (of the oath and thumb print) was received by the Chief Electoral Officer. On the face of the Poll Book, it is difficult to understand what was happening. There is nothing to show who operated the polling station, or whether any incident occurred. Two entries (25 and 26) show that the electors were sworn presumably on the ground of incapacity. But that is all.

Before I turn to another matter I shall point out another irregularity that took place. Miss Hosang was born at Cacoon Castle; her grandparents, now deceased, lived there. She spent most of her childhood in the area and knows most of the people in the district and its immediate environs. During the cross-examination by Mr. Spaulding she said:

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"There were a number of voters who did not present identification cards. I knew all of them that came to vote at 25C."

But the safeguard of thumb-printing and administering an oath to those without identification cards was only observed in respect of 5 voters. And although according to her - she placed the forms in an envelope which she handed over to the Returning Officer, none reached the Chief Electoral Officer.

Polling Station 20A revisited

What took place at Hopewell (Polling Station 20A), is disturbing to relate. It was there that many of the under age electors voted. And it was at this station where Mrs. Stennett and her husband are said to have voted at about 9 a.m. which the petitioner has disputed.

List divided

As I have already pointed out, only persons whose names were listed consecutively from 1-235 and on the Supplementary List (178-228) were permitted to vote at 20A. Yet the Poll Book shows on its face that the 7th and 8th electors were wrongly admitted to vote there and by the time the first 50 electors had voted, 12 of them had voted at the wrong station. And of the last 50, seven (7) had been wrongly admitted. According to an entry in the "remarks column" the last wrongly admitted elector reported at 3 p.m. when Mrs. Clement Brown, (321 on the list) voted.

Poll Clerk incompetent

A quick glance at the entries made in the poll book leaves one in no doubt that the poll clerk (Miss Ruthlyn Leslie) displayed gross incompetence. She opened the proceedings with recording the names of two electors at page 7. But page 7 was reserved for recording objections to ballot paper. She then turned to page 8 and entered correctly the consecutive numbers (1-6) of the names of electors as they came in to vote but the consecutive number of the elector as it appeared on the official list is not mentioned in the appropriate column. The first entry of the number on the official list appeared when the 67th voter reported. Then having entered ^{on the left} the first six consecutive numbers as the electors reported ~~on the left~~, she seemed to have had second thoughts about the accuracy of these entries. When the 7th elector reported, the number 250 (the number on the official list) is placed where the number 8
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should be. The column for the first ten entries has a reading of 1, 2, 3, 4, 5, 6, 250, 435, 69, 75. The last four numbers are then crossed out and 7, 8, 9, 10 are written in consecutively. And every number from 7 to 32 is crossed out as a result of what is called a "mistake." I believe that a graduate from a Jamal course would have done better. Mr. Holden, the psychiatric nurse, and the Presiding Officer appeared to have given little or no assistance to this Poll Clerk.

Miss Leslie explains

It was the night before the election that Miss Leslie was hurriedly summoned by the Returning Officer to act as Poll Clerk at 20A. The call came at about 11 p.m. when some last minute reshuffling had to be done. Miss Nesta Whittingham should have performed the duties of the poll clerk at 20A but she was shifted to Woodland as Presiding Officer at polling station 22B. The lady who should have gone to Woodland took ill suddenly and so the Returning Officer made the change.

Miss Leslie passed civics out of three subjects which she sat in the J.S.C. Examination. She left Primary school in the 9th grade. Since then she has taken a course leading to a diploma as a cashier. She got no instructions as a poll clerk. The returning officer was told on the night of December 14 that Miss Leslie would not be competent to perform the duties required of her. Miss Leslie herself expressed the doubt as to her ability. But he advised her to make a try.

During the day, according to her, she entered "guessing time" in the poll book but Mr. Holden did not know of this. And the only instruction she remembered receiving from Mr. Holden was that when a voter came in, the name should be looked for in the official list then after ticking the number, it should be entered in the poll book.

Discovery made

Between mid-day and 1 p.m. Mr. Holden informed her that persons who should have voted at 20B had voted at 20A. As a result she said this action was taken:

"I stopped from letting the people who should vote at 20B voting at 20A."

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How was this done? In answer to the Court's question she explained:

Q: "How were you able to stop it?"

A: There was a red line that divided both stations so that I did not go over the red line again."

But as I have already pointed out, electors who should have gone to 20B were still being admitted at 20A up to 3 p.m.

Two questions in cross-examination and the answers given must be recorded.

Q. by Mr. Spaulding:

"Explain how you came to record the name of Mrs. Noel Stennett twice that day?"

A: Well I don't know. I did not know Mrs. Stennett at that time. Maybe it was a mistake?"

Q. by Mr. Ellis:

"Am I correct that whatever irregularities appear in Poll Book 20A are the result of genuine errors?"

A: Yes sir."

Earlier in this judgment, I pointed out that it was this very witness who was selected by the Returning Officer to distribute the identification cards of electors in Polling Division 6 which is in Hopewell proper. There are 351 names on this identification card list and by her certificate, she delivered 330 of them. But she must have been named by the Returning Officer and she must have accepted the nomination, on the basis that she had a good working knowledge of the identity of the people of voting age in and around the limit of Hopewell. I, therefore, reject her evidence that on polling day she did not know Mrs. Noel Stennett. Mrs. Stennett said that Miss Leslie and Mr. Holden knew her well and as I have already observed, this bit of impliedly evidence was not challenged. What was suggested to her was that she had in fact voted twice.

Explanation of Mr. Holden

Mr. Holden was called by the first respondent and was examined by Mr. Cruickshank. As a witness he was very frank at intervals and reserved where the point was sensitive and telling. He has been living in Hopewell since 1972 and was officiating as Presiding Officer on the 3rd occasion.

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It was the first time he was working at a divided station. To use his own words, it was "rough going" in the morning but with the help of the indoor agents, he was able to cope with the situation. However, it is clear that he was not happy with the situation. He was definitely a presiding officer in distress. And apart from the physical and mental strain he experienced, he worked under a handicap. No thumb print pad was put in his box by the Returning Officer. Said he:

"it was quite an uncongenial atmosphere for an election."

Q: "What do you mean by uncongenial atmosphere?"

A: It was both physically and mentally uncongenial.

Q: What do you mean by uncongenial?

A: I was referring to the fact that I had thrust on me overnight an inexperienced poll clerk along with the extra rush at the beginning of poll and failure of proper communication with the Returning Officer."

When about 40 persons who should have voted at station B had voted at his station, Mr. Holden discovered the irregularity. According to him, he made a list of those persons who had wrongly voted at his station. This list was given to Miss Thompson the Presiding Officer at 20B. The following precautions were also instituted:

- (a) He kept the list for the remainder of the day and paid attention to it;
- (b) Efforts were made to see that none of those who had voted did return;
- (c) Persons who were required to vote at section B were directed to do so if they reported at his section.

Notwithstanding the elaborate precautions instituted by Mr. Holden, persons who should have voted at B section were still allowed to vote at his station. Miss Dorrell Thompson, an intelligent and ^{fast} thinking witness was called to assist the Court on this incident. She maintained that it was about 1 p.m. that Mr. Holden spoke to her about his discovery of the wrongful admission of voters to his section.

I have examined the poll book and have noted that after the time 1 p.m. is entered, 63 persons voted and of this number 10 of them were wrongly admitted. How can this be explained? Something must have gone wrong somewhere. I fail to understand how an intelligent and projected honest Presiding Officer could allow a development of his polling station wherein

he discovered an irregularity at 1 p.m. and two hours after, the irregularity is still in progress.

The statutory endorsement in the Poll Book showing the statement of the Poll after the counting of the ballots was not completed by Mr. Holden. He entered quite correctly that the number of names on the official list used at his station was "235 plus Supplementary List." That made it 286 electors. But he failed to give the summary such as:

- (a) How many each candidate received;
- (b) The number of ballots found in the box;
- (c) The number of spoiled ballots.

And it is clear to me that this omission was deliberate. Over 100% voting took place at 20A. With a total of 286 on the list, 302 voted. At the hearing it was pointed out to Mr. Holden that although the Poll Book showed 300 voting, in fact it was 302. And it took some time with a lot of patience shown by Mr. Spaulding in the cross-examination and by the Court to convince Mr. Holden that the formula $(32 \times 9) + 14$ produce 302. The poll book contained 9 pages of 32 names on each page with an additional page of 14 names.

Other points in his evidence

In dealing with the alleged double voting in the name of Mrs. Noel Stennett, Mr. Holden was both positive and negative. This question was asked him in chief:

Q: "Can you give the Court any explanation as to how the name of Mrs. Noel Stennett appears twice in the poll book?"

A: I am afraid I cannot explain that. The name is entered twice and it is suggestive that she came twice but if she did, I did not get any help from any of the indoor agents."

But in cross-examination, his stand was more bold and he was positive. He said that it was not possible for the name of Mrs. Stennett to have been entered by someone when the voter did not appear; that the poll clerk only wrote a name after the voter reported and the name was found in the list.

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Q: "Whenever a person presented himself to vote did you tick off the name to show that that person had voted?"

A: Yes sir.

Q: So that at p.14 when Mrs. Stennett's name is again recorded, what could have happened?

A: Someone beat me - slipped through without being detected by me and without my being getting help from both the indoor agents and the poll clerk."

Mr. Spaulding pointed out to him that one Clovis McKenzie voted at both 20A and at 20B and that at 20A the wrong consecutive number on the official list was put opposite Mr. McKenzie's name. Asked to explain he said:

"There is confusion here. I did not write it. I cannot explain it."

If he was doing the "ticking" of the names of voters, he failed to observe or to check the correct number that was to be entered opposite the name of the voter McKenzie.

Other breaches occurring

1. Mr. Holden said that about 25% of the persons who voted did not produce identification cards. But by a strange co-incidence even if he wished to comply with the Act by his taking the thumb print of each of about 75 voters before permitting the elector to vote as each arrived, there was no thumb printing apparatus in his box and he was unable to reach the Returning Officer after he found himself in the dilemma.

Section 111(3) of the Act states:

"No person shall be entitled to vote in any polling division if -

- (a) he is under the age of eighteen years; or
- (b) he is not a Commonwealth citizen resident in Jamaica; or
- (c) he is a person who is disqualified from voting under subsection (3) of section 5."

The poll book shows that objection was raised by the petitioner's indoor agent against the following on the ground of age:

- (1) Devon McIntosh, (2) Roger Anderson,
- (3) Valda Vincent, (4) Dale Gilling
- (5) Glenford Witter.

It has been proved that nos. 2, 3, 4, 5, were under 18 on polling day.

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2. Miss Leslie said that she felt that under 18 voters did vote at her station but she could not stop it as their names were on the voters list. This view is wrong in law. The objections should have been allowed unless the challenged elector was able to satisfy the presiding officer that he was of the prescribed age. A person under 18 is not entitled to vote; he has not got the legal capacity to do so. A man whose name is on the voter's list but who is serving five years at hard labour for rape on polling day cannot be allowed to vote even if he escapes from the General Penitentiary for the purpose. An escapee from Bellevue whose name is on the list cannot be allowed to vote if the presiding officer is made aware of his status. And when the question of capacity arises, the mere appearance of the name on a voter's list does not cure the disability.

Summary of events at 20A

I find that Mr. Holden did labour under difficult circumstances. An incompetent poll clerk was thrown at him at the last minute and he was enfeebled by the lack of an important piece of equipment, namely, a thumb print pad. On both points, he cannot be held responsible. It is clear, however, that he did not give the kind of supervision and assistance which the occasion demanded. The poll clerk was given too much rope to wander about. Even the hourly entries were not all entered in the poll book and what was entered was - according to the poll clerk - guess-work.

I have my doubt whether he did consciously join in any move aimed at defeating the electoral process at polling station 20A. But his performance was enough to disqualify him in his undertaking any future work as a Presiding Officer. Vigilance, ability to handle an emergency arising on polling day and preparedness are some of the characteristics required of a Presiding Officer and the evidence shows that he is lacking in them.

In the case of Miss Leslie, her proved incompetence must be examined in the light of the evidence. She bathed the Court with her tears and acted the part fairly well of a damsel in distress who was in no position to help herself though the facts showed that she could. I find that she deliberately entered a false entry in the poll book suggesting that Mrs. Noel Stennett and Mr. Noel Stennett voted at about 9 a.m. and that one followed the other in the polling compartment. To that extent, at least

she either on her own committed herself or by that act, played her part in a wider move designed to defeat the will of the majority.

Polling Station 20B

Mr. Spaulding in his final address made a broad hint that all was not well when the sister of Neville Thompson was named Presiding Officer at station 20B with Thompson's leman Miss Cecile Darling as Poll Clerk. It seems that counsel was suggesting that this strategic positioning of electoral officers was enough to excite suspicion. But the evidence does not support this point. My examination of the Poll Book shows that it was well kept and properly and neatly written up. Only 144 out of a possible 234 electors voted at Miss Thompson's station. The remarks column in her poll book are naked but she said that all persons who voted at her station presented an identification card. That was unlikely and remarkable but there is no evidence to the contrary. Mr. Clovis McKenzie voted at her station at about 7.15 a.m. But that was the place where he was required to vote. When Mr. McKenzie went next door and cast another ballot neither Miss Thompson nor Miss Darling contributed to this move.

The only blemish on the performance which from the poll book looks creditable, is that a statement of the poll after the counting of the ballots is not entered at page 28 of the book. But this is a common feature. An exhibit in the case is a batch of 48 poll books (exhibit 86). And of this number, 12 of these books do not have any statement of the poll written in, a requirement under section 44(9) of the Act.

On the evidence, I can find nothing to connect either Miss Thompson or Miss Darling with any wrong doing. Each performed at station 20B what was substantially required under the law.

Did the dead attempt to vote?

In the Poll Book for Polling Station 6A (Hopewell), there is an entry at consecutive 79. It shows that Wilhel Witter, a housewife of Hopewell voted. There is no entry to show that the voter was thumb printed and sworn. But the identification card of Mrs. Witter with the Identification Card Receipt sheet for Polling Division 6 was returned to the Chief Electoral Officer. The endorsement opposite the name of the elector is in one word "dead." When this piece of evidence was led by Mr. Spaulding,

Mr. Cruickshank informed the Court that Mrs. Witter was alive and that she would be produced. The promise was kept. On the 6th March last, an amusing and charming old lady took the stand. She was armed with all her papers including her passport to prove, according to her she was not dead.

Mrs. Witter, 84, was born in St. Catherine and was taken to Hopewell by one Mrs. King, her daughter. She said that apart from her "Church people", she hardly knew anyone else, after living there for five years. She did not remember being thumb printed and sworn before being allowed to vote. The only significance in this evidence is that if - as the return indicates - the old lady did not have her identification card with her on polling day, then section 34(7) of the Act which calls for an oath and thumb print in the circumstances, was breached.

3 dead persons at polling station 15

In the poll book for polling station 15, there are three entries, to wit, consecutive 161, 162 and 171, with the names Mrs. Edwin Cunningham, Zachariah Hamilton and Franklyn Grant respectively. And in the remarks column, the word "dead" is written, but there is no note of "voted" written in. Here again, there is no statement of the poll endorsed in the poll book at page 28. The Recapitulation Sheet shows the following for polling station 15:

<u>Total on list</u>	<u>Counted including rejects</u>	<u>Rejected</u>
182	172	nil

And in the Poll Book the consecutive numbering stops at 176. There are, therefore, 4 ballots to be accounted for since 172 were counted. As I have already mentioned elsewhere in the judgment, Mr. Ashburn Campbell a cultivator is entered twice at entries 147 and 148. If one of those is regarded as a surplus and is added to the 3 "dead" ballots (names entered but not recorded as voted), one may get the difference of 4 to make the 172 ballots counted. But is this view correct? Mr. Knight's submission on this bit of evidence is that the names of the three dead voters were entered by the poll clerk to ensure that no one could come forward purporting to personate any of them. Any other construction would be ridiculous. Mr. Spaulding's argument on the other hand is that it is a case of at least

attempted personation. He based his submission on the construction of section 43 (4) of the Act. The relevant portion reads thus:

" When it has been ascertained that that elector is qualified to vote at the polling station, his name, address and occupation shall be entered in the poll book which shall be kept by the poll clerk in the form set out in the second Schedule, a consecutive number shall be prefixed to his name in the appropriate column of the poll book etc."

The name, address, occupation and consecutive number of each elector have been entered in the book. The names are not entered in a "running batch" i.e. 161, 162, 163 but 161, 162, 171. A dead elector is not qualified to vote at any polling station so that the interpretation of Mr. Knight must be rejected. It is an explanation in the nature of evidence. But counsel in a final address cannot give "evidence", He must confine himself to the evidence or to reasonable inferences from the facts proved.

No entry of a name is expected to be made unless:

- (a) A person representing himself to be that person reported at the polling station to vote, or;
- (b) No such person reported but nevertheless the entry is made hoping for an opportunity to include it as a ballot.

I accept the approach of Mr. Spaulding as being in accordance with good sense. If section 43 (4) above quoted is looked at carefully, the only possible conclusion - and that is my conclusion - is that three persons representing themselves as the dead, attempted to vote contrary to section 93 of the Act. The poll book is silent in this respect. Consequently the further conclusion is that at least the poll clerk who entered them knowingly made false entries and breached section 100 (a) of the Act. I make no specific finding against the Presiding Officer since the section requires that it is the poll clerk who should make the entry as the occasion arises. The situation, however, is unsatisfactory and the Presiding Officer can have nothing to cause her to feel that she has been wholly absolved.

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Problem with identification cards

Throughout the hearing, the problem with the identification cards of electors played an important part. Counsel for the petitioner in his final address raised the question whether what was proved in evidence as an "identification card" is sufficient to satisfy the requirement of the law. Restating certain particulars mentioned elsewhere will do no harm.

- (1) The number of persons on the Supplementary Lists for the Constituency was 372.
- (2) The number of undelivered identification cards:313

And it was proved that the number of persons who voted without identification cards and without being "tested" or "verified" in accordance with section 34(7) of the Act to which I have already adverted was not less than 357. This is a serious state of affairs and several factors contributed to it. Let me state some of them.

Contributing factors

A. There was a feverish registration drive immediately prior to the holding of the general election. With the drive in action in all constituencies, the machinery at the office of the Chief Electoral Officer was put under heavy pressure. The cut-off date for the Form C registration was December 6. That is to say, all applications received up to and including December 6 were to be processed for the Supplementary Lists. The evidence of Mr. Chapman is interesting:

" Up to now I am at a loss to understand how we got through all of this work. I lost 28 pounds in weight."

With polling day on December 15, there were only 8 full days to go. Under such a strain, errors, confusion and even rascality are encouraged while clear thinking, serenity and accuracy are brought in jeopardy. The time was not sufficient for identification cards to be prepared and delivered. In the rush, where a name appears on the Supplementary List, the elector would have no identification card.

B. Suffucient attention has not been paid to the simple point that holding a general election one week after the last application for registration is handed in, tends to defeat the intention of the Act and, in particular, it tends to circumvent certain statutory rights and duties. I shall elaborate on this in due course.

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Whereas the election officer has no control over (a) and (b) above, he is never nevertheless bound by law to observe the law. It cannot be argued that because the elector did not have sufficient time to obtain his identification card, he will not be required to be thumb printed and sworn. Until that section of the Act is repealed it must be obeyed even if in its observance it is going to cause delay at a polling station.

C. Persons entrusted to deliver identification cards to electors may not have had sufficient time to do so or may not have had sufficient knowledge of the identity of the elector or of his address. Section 34(5) of the Act states:

"Notwithstanding anything to the contrary no elector shall receive a ballot paper or be permitted to vote unless -

- (a) he produces to the presiding officer his identification card or other prescribed document establishing his identity."

The first question is this: When does a prescribed document establish identity? And the second question is, does the present identification card or the identification card issued and used comply with the intention of the Act?

The first respondent called 11 presiding officers and 3 poll clerks from among the witnesses called on his behalf. In almost every case, all said that where an identification card was produced that of itself was of no use to them. I will quote briefly from the evidence of two witnesses.

- (a) Miss Nesta Whiting, ^{Jan} Presiding Officer (P.S.22B)

"The identification cards people presented did not help me to establish the identity of voters and so I had to rely on the indoor agents."

- (b) Miss Melsada McBean Poll Clerk (P.S.25A).

"The identification card did not enable me to identify the person I did not know."

As to the first question therefore, the answer seems to be that if the Act calls for a document which by itself is capable of proving that the holder is the person whose name is mentioned therein, then the identification card falls short of that proof. There is no photograph to identify the holder, and height, age, colour, and marks if any, are not shown.

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The sixth paragraph of the petition states as follows:

"That persons who did not produce a proper identification card were allowed to vote and cast ballots without being thumb-printed and sworn."

Mr. Spaulding's contention was wide enough to envelop the proposition that if in fact the identification card used was not ^a proper one within the meaning of the section, then even where it was produced, the holder was required to be thumb-printed and sworn. This argument is very attractive and it is a logical deduction from a reasonable premise. But the weakness in it is that the section is not wholly mandatory. An alternative is built in the provision allowing by implication the production of some other recognized identification i.e. driver's licence, firearms licence, business licence or even a passport to be relied on in assisting the establishment of identity. The result is that although I hold that the identification card does not comply with the intention of the Act, where it was produced to the presiding officer as an aid towards establishing the identity of the elector and the elector was allowed to vote as a result, that by itself would not be enough to upset the election. But what is kept alive is the breach committed in the case of each of the 357 electors who were permitted to vote without producing the prescribed identification card and without the further precaution of taking the oath of identity in the form stipulated by the Act.

No return from 61 polling stations

Where the oath of identity has been administered on Form 11 (prescribed in the schedule), it is the duty of the presiding officer to hand it over to the Returning Officer in the appropriate envelope. And it is the duty of the Returning Officer to forward it in due course to the Chief Electoral Officer. It was proved that only 14 of the 75 polling stations made any return of oaths of identity. And of the four polling stations recording over 100% voting, only one sent in a return. The particulars are shown hereunder of the six highest returns.

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<u>No.</u>	<u>Polling Station</u>	<u>Forms Returned</u>	<u>Remarks</u>
1	7	22	
2	23	20	Over 100% voted
3	61	9	
4	3D	3	
5	32	3	
6	53	3	

Polling station 23 was established at Haddington and it was here that the Presiding Officer (Miss Dawn Bygrave) was threatened.

The remaining three stations recording over 100% and no return sent in are as follows:

<u>No.</u>	<u>P.S.</u>	<u>Location</u>	<u>Listed</u>	<u>Voted</u>
1	3C	Sandy Bay	144	146
2	20A	Hopewell	286	302
3	25C	Welcome (Haddington)	159	168

Polling stations 22B and 25A where Miss Whittingham and Miss McBean officiated respectively, sent in no return although each of them said that the identification card did not of itself assist in establishing the identity of the electors.

Oath taken but no thumb print

Two of the 14 stations sent in returns of oath taken without the thumb print. These were polling station 33, (B) and polling station 44, (3). Why the oath was administered and no thumb print was taken is not clear. One reason could be that whereas the appropriate forms were placed in the box by the Returning Officer, the thumb print pad was left out. But I need not speculate. No evidence was given on this point. One presiding officer Mr. Holden did complain that no thumb print pad was placed in his box.

A strange co-incidence with explanation

During the hearing the Court announced that an examination of the poll books had disclosed that 13 polling stations had shown that exactly 100% polling took place. This caused counsel for the first respondent to call a number of witnesses who said that an "error" was made when the statement of the poll was being prepared after the counting of the ballots. An example of what happened will be given in 8. Three polling stations will be

referred to:

<u>No.</u>	<u>P.S.</u>	<u>Voters on list</u>	<u>Voting</u>	<u>Statement of Poll</u>
1	12	123	108	108
2	19	206	183	183
3	41	213	180	180

In (2) and (3) above, the presiding officers in their evidence said that they made a mistake in preparing the statement of poll. It seems that the mistake was widespread. Did it flow from a misunderstanding of the use of a past participle? Was it forgotten that a participle may be used as a verb or an adjective?

One part of the form which must be completed after counting the ballots has this query which is in the nature of a question:

"Number of names on official list of electors used at the poll....."

It is clumsily worded. The list used includes the supplementary and the word "used" refers to "official list" which in turn refers to the total on both the official and supplementary, if any. The wording should be:

altered to read:

- (1) Total on list (official and supplementary).....
Total voting..... or
- (2) Number on list.....
Number voting.....

This simple change will prevent any future widespread error, if it was an error.

Miscellaneous breaches detected

A. The poll book used at a polling station is the record which contains the list of persons who voted, the names of those who supervised the taking of the poll, the events, if any, which took place during the poll and the statement of the poll after the ballots are counted. It is a permanent record to be kept for at least one year and where the election is contested, it is to be kept for one year after the determination of the contest.

There are two forms in the poll book which must be completed and kept attached to the book. They are at pages 6 and 28. At page 6, is the

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oath of the Presiding Officer and of the Poll Clerk. Each is required to swear that the record of the votes is true and correct and that the duties were faithfully performed. In addition the Poll Clerk is required to swear that he will keep secret the names of the candidates for whom any of the voters may have marked a ballot in his presence. These are solemn oaths.

At page 28, is the statement of the poll. This is completed after the ballots are counted in the presence of the agents of the candidates when polling has ended. The presiding officer must sign the statement as being correct. There is no discretion in the matter. The Act directs that the presiding officer and the poll clerk "shall take and subscribe the oaths." And the presiding officer "shall make the necessary number of copies of the statement of poll.....one to remain attached to the poll book." Despite these clear provisions, I have noted that there was widespread disobedience of the enactment. The particulars are as shown hereunder:

1. Statement of poll not prepared:	<u>number</u> 15	<u>Polling Stations</u> 3B, 5, 8, 9, 13A, 20B, 25A, 25C, 30, 31, 35, 42, 43, 44, 60.
2. Statement of poll not properly prepared	4	13B, 20A, 47, 52.
3. No oath recorded after taking of poll.	4	3E, 19, 23, 25C.

B. Evidence of widespread disregard of the Law in Form C registration

Where action is being taken to prepare the official list, there must be a condition precedent before enumeration or registration may take place. An inquiry is to be held by "an enumerator accompanied by scrutineers".

In order to support the petitioner's contention that enumerators did not keep the J.L.P. scrutineers informed of the time and date of an inquiry and where a date was arranged the enumerator did not honour it, a batch of 286 Form C applications was tendered in evidence (exhibits 89A, 89B and 89C). Another batch of 74 (exhibit 102) was tendered. An examination of the 360 applications shows the following:

- (1) One scrutineer present: 80 registrations
- (2) Two scrutineers present: 33 registrations
- (3) No scrutineer present 227 registrations.

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Certain miscellaneous matters

Before I turn to certain points of law and the submissions made thereon, I should refer to some miscellaneous bits of evidence which emerged during the hearing. I shall summarise the evidence as shown hereunder from:

1. Mr. Trevor Dixon - Chief Electoral Officer:

There is no prescribed form to identify a voter other than the identification card. Election officers were instructed that when a voter did not produce an identification card, an oath must be administered and his thumb print taken before he was allowed to vote. And this procedure was required to be followed even where the voter was known to the presiding officer. Dealing with the alleged voting of three "dead" electors at polling station number 15, Mr. Dixon quoted from the records to show that 250 ballots were issued to the presiding officer, 77 were returned and 176 were issued to voters. He was unable to say whether ballots for the three dead voters were in fact issued. There were 16 clear days between nomination day and polling day in the last election.

The only occasion in which a returning officer may cancel a certificate of enumeration is when he holds a sitting hearing objections by a scrutineer or an elector. And where a returning officer comes across a case (from documents in his possession) that a person has been registered twice in the same constituency for different polling divisions, he should inform the office of the Chief Electoral Officer.

2. Roy Chapman - Assistant Chief Electoral Officer:

All documents submitted to the C.E.O. by the returning officer are required to be prepared in quadruplicate. The returning officer is expected to keep a copy for his records. It is the duty of a returning officer to examine the registration cards and the other documents which he gets from an enumerator. Enumerators are instructed to put the date of registration on all registration cards. They were also instructed to have any alteration or correction on a document initialled by the respective parties concerned.

The respondent Campbell was named Returning Officer for Hanover Eastern in November, 1975. He is a Public Health Inspector employed to the Hanover Council. Each returning officer is required to

be neutral and the first instruction given to him on his appointment is the provision of section 102 of the Act which calls for complete neutrality on the part of a returning officer. He is barred from associating himself with the campaign or political party of any candidate.

On the occasion when the complaint of the petitioner was investigated concerning the alleged partisan approach of enumerators Shaw, Brooks and Jackson in their work as registration officers, the respondent Campbell denied the allegation and gave the assurance that the enumerators were not political activists.

The house-to-house enumeration in 1976, began in February and ended in June - a period of about four months.

3. Barrington Gray - Building Contractor of Hopewell - Was an elector in the 1976 general election. Voted at polling station 6 where former headmaster was the presiding officer. Did not present an identification card before voting, was not sworn or thumb printed. Did not sign for any identification card and did not give anyone authority to sign on my behalf. Signature on sheet for Polling Division 6 that identification card delivered denied. Christian name Barrington spelt wrongly on the receipt column.

4. Documentary Evidence (letters dated November 22, 1976 written by second respondent to petitioner and reply of petitioner dated November 26. The petitioner paid a visit to the home of the returning officer on November 19 when a very "frank discussion" took place. The returning officer complained in his letter of threats made against him). I quote from the letter of the petitioner:

" It is now imperative that I set the record straight. Firstly, I told you that there were many of my supporters who are totally convinced that you are working with certain individuals to frustrate and possibly negate the free will of the people of Eastern Hanover. Secondly, you told me of incidents that took place regarding threats to an enumerator and demonstrations against another."

And the letter continues:

" Thirdly, I told you that some of my supporters have attempted to take things into their own hands and have threatened demonstrating at your office and residence to be thumb-printed in that they were being passed over by enumerators and were not receiving their voter cards."

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5. Mr. Lester Beckford (48 year old Public Health Inspector with 26 years in public health; was the relieving presiding officer on election day. A frank and intelligent witness with power of description). Received report from Miss Dawn Bygrave at P.S.23 concerning incident at Haddington. Did not see any security or police in the area. But saw "strange looking creatures" in the village, some on motor bike. Reached Haddington when polling was almost ended. Was on a tour of polling stations observing the situation. Did not take out any supplementary list for distribution.

6. Mr. Cleveland Jackson (Farm Manager, Nyerere Community Centre, candid and impressive witness who was the presiding officer at P.D.19; admitted being a supporter of the P.N.P. a fact known to all P.N.P. supporters but said his support did not affect his duties as presiding officer).

Was born in the area. Applied for the job as presiding officer. First time was working as a presiding officer. There were 206 names on list of electors; 183 voted. Entered 183 in statement of poll as number on list indicating that 100% voted. Error made in so doing - it was an oversight. Knew most of the people who voted. Was not instructed that if a voter did not have an identification card he was required to be sworn and thumb-printed before being allowed to vote. If the voter was not personally known, the identification card did not help to connect holder with the name mentioned in the card. No less than 15 persons voted without producing any identification card.

7. Mr. Maxie Vincent (P.N.P. scrutineer and the only scrutineer who gave evidence. He sweated heavily in the witness box. A watchman who was born in Hopewell. A well dressed and respectful witness but evasive and unreliable).

Was present when enumerator Thompson did 50 or more registrations in one day and when Mr. Shaw did between 20-24 in one hour. Geddes Lemard was under 18 in November 1976 when he was registered. Would have "suspected" him if present at the registration. Got pay by the "head" - that is, by the number of persons registered. Depended on Shaw and Thompson in making claim. Did not keep a record of registrations attended as scrutineer.

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Broke many appointments with Thompson. When it was suggested to him in cross-examination that he was part of a conspiracy to give evidence with the intention to mislead the Court, about three minutes elapsed before a negative reply was uttered. After that period the Court asked him to answer the final question of counsel.

Submissions made on certain issues

Head I: Scrutineers

Mr. Knight and Mr. Ellis made submissions concerning the functions and utility of a scrutineer. They were frightening. Mr. Knight contended - as I did understand him - that the statutory requirement that a scrutineer should be present at an enumeration and that the enumerator should keep him informed, of the time and place of the holding of an inquiry must be regarded as directory and not mandatory. Furthermore, where the scrutineer is present at an enumeration he need not sign any form or certificate suggesting he was present even if the directive of the Chief Electoral Officer to the contrary is disobeyed. The directive, if not followed cannot entail any invalidating consequences. And still further where a registration did take place without the J.L.P. scrutineer being present, it must be shown that he would have objected if he had been present. In the alternative the presence of the J.L.P. scrutineer need not have prevented any departure from the intention of having only qualified persons on the list. The summit of Mr. Knight's submissions was attained when he argued forcefully that even where an enumerator should find that a scrutineer has died since serving notice, the enumerator was free to go it alone. There would be no need to postpone the day's activities.

Mr. Ellis put a question to Mr. Thompson in cross-examination and that was the basis of his supporting argument.

Q: "Was it your instruction to seek to be accompanied by scrutineers?"

A: I was so instructed by the Returning Officer but who selected them I do not know.

Q: I suggest that a registration officer has not got to be accompanied by scrutineers?

A: Yes sir - he can go it alone."

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Mr. Spaulding argued with eloquence to the contrary of what Counsel for the respondents outlined. I found the arguments of Mr. Knight and Mr. Ellis, with respect, self-defeating though somewhat ingenious. There is a big difference between giving a man reasonable notice to be present at an inquiry and what actually takes place if he does not wish to attend. Parliament has not made any provision to force a scrutineer to be present at any enumeration. What it has done is to provide that the scrutineer for the particular polling division should be given an opportunity to do so. Fairness, accuracy and truthfulness are some of the elements required in the enumeration process. But in order to secure them in a day's work, the parties involved must themselves be fair, accurate and truthful. And I am afraid that the arguments I listened to for hours on this point could never advance or support the intention of Parliament.

Since the 17th August when the hearing ended, Parliament has enacted Act 21 of 1979 which has amended certain sections of the Act. Under a move to effect electoral reform, certain changes have been made to section 13 of the principal Act and to Part 2 of the First Schedule which may partially smother an argument of the type which Mr. Knight and Mr. Ellis put forward. But a little life could be left so that some courageous advocate who likes to indulge in distinctions may raise it again in a future case.

I, therefore, suggest the following:

- (1) That the schedule should be amended to show beyond any doubt that where a registration under R.22 (Form C) is to be completed, the notice which the enumerator is required to serve in the case of a house-to-house inquiry is applicable.
- (2) Where the scrutineer does not attend an inquiry as a result of illness, an emergency or for some other sufficient ~~case~~ ^{cause}, and the scrutineer so informs the enumerator or the returning officer within 3 days of the date of the inquiry, a list of the enumeration or the registration effected on the day in question shall be made out and given to the scrutineer within 3 days of the scrutineer giving the information.
- (3) Where a scrutineer dies after notice is served on him or becomes so ill that he is unable to travel or to attend to his duties and this fact is brought to the attention of the enumerator or the returning officer, the inquiry for the day appointed shall be postponed.

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- (4) Where a scrutineer falls ill while on duty or where owing to some emergency or other sufficient cause he is unable to continue with his duty for that day, the operation of (2) above shall come into force.
- (5) Where the Returning Officer has submitted a list of the names of new electors to be included in the official list for any polling division, the copy of the list retained by him shall be open to inspection by members of the public during ordinary working hours for at least 4 hours daily for 3 days per week and over a period of 12 days from the date of the submission of the list.
Provided always that it shall be open to the Returning Officer to decide how many persons may be admitted to his office at any one time and in case the office space is not convenient for this purpose then the Returning Officer may exhibit the list at a convenient place at the door or window of his office for the time and period aforesaid.

Head 2: Does the Civil Procedure Code apply to an election petition where the Election Petitions Act is silent?

The question above was argued by Mr. Knight when he submitted that section 8 of the Election Petitions Act is mandatory and as a result the failure of the petitioner to supply particulars within ten days of the presentation of the petition / I have already given reasons why this broad submission must be rejected. I now turn to the question posed above which Mr. Knight answered in the affirmative. Mr. Ellis adopted Mr. Knight's submission on the point. The relevant provision of the Election Petitions Act which admits of the submission is at section 24(3) which provides:

" An election petition shall be deemed to be a proceeding in the Supreme Court and, subject to the provisions of this Act and to any directions given by the Chief Justice, the provisions of the Judicature (Civil Procedure Code) Law and the rules of court shall, so far as practicable, apply to election petitions."

When the Parliamentary Elections Act was passed in 1868, it specifically provided under section 2 that an election petition was to be regarded as "an ordinary cause within their jurisdiction". In this context "their" referred to the Common Pleas at Westminster. And section 29 provided that on the trial of a petition the judge shall -

"subject to the provisions of this Act, have the same powers, jurisdiction and authority as a judge of one of the superior courts and as a judge of assize and nisi prius etc."

In the earlier part of this judgment I pointed out that the Election Petitions Act was fashioned after the 1868 English Act. Parliament was taking action /.....

to remove a delicate subject like the trial of an election petition out of the hands of a political assembly and to place it within the jurisdiction of Her Majesty's Judge of the Superior Court where justice rather than political considerations was more likely to be upheld. But certain procedural steps as outlined were to be followed. In Jamaica the same principle was adopted. And it was adopted as soon as the electoral process was instituted. The Rules of Court "so far as practicable" as mentioned in section 24 (3) refer to matters as discovery, inspection, interrogatories and particulars. A respondent has no right to file a defence; he cannot take out a summons to dismiss the petition on the ground that no reasonable cause for instituting the petition has been disclosed; he cannot serve notice to argue a point of law before trial. In other words, the respondent is not a defendant in the shoes of one against whom a civil action has been instituted.

The argument of Mr. Knight must be rejected; the answer to the question posed above must be in the negative. And if the case of Powell v. Manley (supra) purports to lend assistance to an argument of the kind Mr. Knight and Mr. Ellis have advanced, it is with regret that I dissent.

Head 3: Where a hearing into an election
 petition is being pursued is it
 a trial or an inquiry?

During the hearing and while Mr. Chapman was assisting the Court on the issue of double registration, he produced not the original but a photo-copy of a registration card as the basis on which the second registration of Miss Norma Edwards (P.D.3) was made. Mr. Chapman was producing the document from his custody sent to the C.E.O. from the office of the Returning Officer for Hanover East. But Mr. Cruickshank objected to its admission on the ground that a proper foundation had not been laid; there was no explanation as to the whereabouts of the original. Without calling on Mr. Spaulding, the Court overruled the objection and in its reasons stated that the hearing was not a trial (where strict rules of evidence have to be observed) but something in the nature of an inquiry. It was this observation which prompted Mr. Knight in his final address to use a lot of valuable time arguing that it was a "trial" and not an "inquiry" being held and that the ruling opened up the "floodgates". He even argued that about
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7/8 of the evidence would not have been admitted but for the Court's mistaken view that the hearing was in the nature of an inquiry. In his final address, Mr. Spaulding outlined 13 grounds why he supported the observation that the hearing was in the nature of an inquiry. The argument of Mr. Knight was not based on any authority. Any merit in it was based on its novelty and ingenuity.

His argument completely ignored the history of the trial of an election petition; that it was at first entrusted into the hands of a non-judicial assembly which formulated its own rules and practice completely oblivious of the rules of evidence as used in the Courts of the day. But this was a good thing to a certain extent because when the trial was placed in the hands of the judges, they too followed the practice hitherto established and one rule was to allow hearsay to be admitted in a hearing where the truth was relentlessly being pursued. Since an election petition is not confined to the rights of the petitioner and the respondent but includes the public interest and concern as well, it is only just and fair that if reaching at the truth may be attained only by relaxing the rules of evidence, so let it be. And as recent as 1960, an experienced election judge in England said this:

" an election court is not bound by ordinary rules regarding hearsay evidence, it is open to the petitioner to give the result of the canvass for what it is worth although it is based on hearsay evidence." per Streatfeild, J.

(See Re Kensington North Parliamentary Election
[1960] 2 A.E.R. 150 at p.151 B.)

(See too Halsbury's Laws 3rd edit. vol.14 para.523.)

In the ruling given, the witness Chapman was referring to a document received from an election officer in Hanover Eastern relating to a matter germane to the proceedings and in which action was taken. The question of hearsay would not arise nor could the technical argument concerning an explanation as to the whereabouts of the original prevail. The rule that in the hearing of an election petition the strict rules of evidence are not applicable, springs from the very nature of the proceedings. No judge in the hearing of a petition should fetter himself with rules designed for the ascertainment of private rights.

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On my recent visit to Canada, I had an opportunity of reading certain areas of the reports of two recent Commissions. A fresh and enlightened approach to the problem of ascertaining the true facts during an inquiry was enunciated.

In the report of the Royal Commission of Inquiry into Civil Rights, 1968 vol.I at p.216 this passage appears:

" Unless otherwise provided in the statute conferring the power, a tribunal should have a discretion to ascertain relevant facts by such standards of proof commonly relied on by reasonably prudent men in the conduct of their own affairs. The nature of proof should go to the weight of the evidence not to its admissibility."

The above passage was cited with approval by Morand, J who was appointed Commissioner to inquire into allegations made against certain members of the Metropolitan Toronto Police Force. At p.263 of the report of the learned judge which is dated June 30, 1976, this passage appears:

" A Commissioner appointed under the Public Inquiries Act, 1971 has a right to hear relevant evidence whether admissible in a Court of law or not. It may be that he has not the right to act on evidence that is neither probative nor cogent in law."

With respect, I entirely agree. Where a judge is hearing an election petition, his role in the probe is almost the same as a Commissioner inquiring into some matter of public concern. And the views expressed in the reports above could be used as guidelines to an Election Judge in Jamaica.

Recommendations on content of petition
and preliminaries

This petition took a long time for the hearing to be completed. Precious time was consumed in arguing preliminary points and in attacking the form and content of the petition. After a petitioner has presented his petition, facts may reach him which, in the public interest should be included in his complaint. A frightened witness who at first was afraid to come forward and to relate what he observed on election day may muster courage after it is known that a petition has been filed. If the conduct of an election is to be kept on a reasonably acceptable plane, then the

Court and the judicial process should be able to deal with the problems which may arise. I, therefore, take this opportunity to recommend that legislation be considered with a view to providing for the following:

- (1) Where an election petition has been presented within the time limited by law, the petitioner may apply by summons or motion to a Judge of the High Court to amend the same provided that application is made not later than 3 calendar months after the presentation of the said petition. And where an application is made the Judge shall make such order including an order for costs as the justice of the case may require.
- (2) An election petition shall be in such form and state such matters as may be prescribed. See section 20 of the Parliamentary Act, 1868 and the Rules made thereunder and published in Michaelmas Term 1868. The Election Act of Ontario, Canada, (Cap.142 of the 1970 statutes) has a similar provision.
- (3) Where an election petition has been presented, all matters relating to particulars, interrogatories and other matters incidental thereto shall be disposed of within 4 months of the presentation and thereafter no such point may be raised at the trial without the leave of the trial judge and for good cause shown.

It is not in the public interest that an election petition should take an excessively long time before it is heard. Nor is it in the public interest that a hearing having started it should be inordinately stretched.

The Constituency involved has a right to know within a reasonable time whether the return of their parliamentary representative is good. And the member affected has an equal right to know when a petition which has been launched against him may be determined. It seems that in Jamaica, it is only when a recount of the votes is being taken before a Resident Magistrate that any anxiety is shown to see that the contest is concluded as early as possible. Under section 47(3) of the Act -

" All such recounts shall proceed continuously from day to day until the last of them has been completed."

Apart from a Sunday when people are expected to take a rest and observe the Lord's Day, there must be no adjournment in a recount unless it is for rest or refreshment or for sleep.

In Ontario (Canada), the trial of an election petition must commence within six months from the date of presentation and it is to be continued from day to day until its conclusion "unless it appears to the election court that the requirements of justice render it necessary that the
/.....

trial should be adjourned." See section 42(1) of the Controverted Elections Act (Cap.84 - 1970, Ontario Revised Statutes).

And in England, the trial of every election petition is to continue from day to day on every lawful day until its conclusion -

" so far as is practicable and consistently with the interests of justice in respect of the trial."
See section 42 of the Corrupt and Illegal Practices Prevention Act, 1883.

This election petition has shown that consideration ought to be given to the enactment of legislation along the path which obtains in England and Canada.

Position of the Returning Officer

The returning officer in a constituency is appointed by the Governor-General. A quick look at section 102, shows that Parliament has directed, under pain of punishment, that he must be fair and neutral in the discharge of his duties. The oath which he is required to take calls for a "faithful performance of all duties to the best of my ability." The Chief Electoral Officer is to exercise general direction and control over him and to enforce on the part of all election officers (including the returning officer) fairness, impartiality and compliance with the provisions of the Act. Under the Act, the returning officer enjoys functions of an administrative and quasi-judicial nature. Let me deal with the last point first.

Under Rule 16(1) of the First Schedule the returning officer is empowered to cancel a certificate of enumeration issued by an enumerator where -

" in consequence of information received by him he suspects that a person enumerated is not qualified to be enumerated in respect of that polling division."

But before action is taken to cancel the certificate, the person to be affected must be summoned by him and afford "a fair hearing." This means that he has been constituted a judge of the matter to be probed.

And under Rule 19(1) when a returning officer is conducting a sitting to hear claims, objections and other matters under the Rules, he enjoys

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all the powers of a Resident Magistrate in relation to the calling, swearing and examination of any witness. And it seems that a decision given by him is final. He is thus clothed with wide powers which can affect the right to vote where a claim is dismissed or where an objection to registration is allowed. And in his administrative capacity, he represents the Chief Executive (CEO) in the constituency. He is required to act with the utmost impartiality throughout the campaign period and in particular during the period when the electoral lists for his area are being prepared and on election day when he is in charge of all the presiding officers and poll clerks. The returning officer is required to act whenever he knows or has reasonable ground to believe that an enumerator is misconducting himself in the performance of his duties. Every violation of the Act or of any Rule under the Schedule by any enumerator must be investigated by him. If he finds that dishonesty, partiality or any form of serious misbehaviour can be imputed against an election officer, then he must summon the officer and investigate him. If the imputation is substantiated, the guilty election officer should be dismissed. In a case where the question was whether a returning officer should be joined as a respondent, Grannum, J.A. had this to say:

" There should be no shrinking away by a Returning Officer from a petition which contains allegations which are aimed at his management of an election. Speaking for myself I would go as far as saying the Legislature contemplated the Returning Officer as being the superintendent or chief steward of an election, insofar as his particular constituency is concerned and it would not be improper to join him as a respondent to a petition in any case where there is material in the petition which could fairly be regarded as calling into question, his acts or omissions or negligences in connection with the election, and which could reasonably be regarded as requiring him to give an account of his stewardship in relation to that election."
(See Supreme Court C.A.39/1972 - Williams v. Manley and Young (unreported)).

If I should attempt to improve on the words of the learned judge I would be repeating in less felicitous language what he has so admirably expressed. I am content, therefore, to say that I adopt his words as my own. Unfortunately, the Chief Steward, the Superintendent, the Local Judge and Administrative Officer in this case did not attempt to answer /....

the grave charges made against him and his administration. He kept silent and at the last minute (exhibit 113) -- Neville Thompson's appointment book -- is put in evidence by the first respondent, although the book is not coming from the custody of either Neville Thompson or of the first respondent. The fact that on the face of it, the exhibit called eloquently and loudly for some explanation did not mean anything. Ten stubs missing from the book cannot speak for themselves. But the charge that he had armed Thompson with materials to do registration long before Thompson was "officially" named an enumerator still continued to ring its tune. The tintinnabulation still echoed in his ears.

A summary at this stage of what has been proved by the documents in evidence may be useful. But in looking at the documentary material, the suggestions made must not be forgotten.

I will put in simple terms what I understand the petitioner is saying:

Main Complaint

- (1) That the Returning Officer and certain individuals were working to frustrate and negate the free will of the people of Eastern Hanover. This is a charge of conspiracy.
- (2) That supporters of the J.L.P. had threatened to demonstrate at the office and residence of the Returning Officer to force him taking action so that they may be thumb printed. This is a charge or at least some notice that discrimination against suspected supporters of the J.L.P. was being practised in the Form C registration process.
- (3) That irregularities in the registration process were taking place and in particular that in the Sandy Bay and Hopewell area persons under 18 were being registered.
- (4) That certain named enumerators were known as P.N.P. organisers and campaign workers and among these were Wilbert Shaw and Lennox Brooks. Later Neville Thompson joined the team.
- (5) That enumerators refused to give written appointments to J.L.P. scrutineers and refused to honour verbal appointments.

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- (6) That certain Form C Registration Books (already completed and in known J.L.P. strongholds) had not been collected.

What the documents and the
relevant facts have disclosed

- (1) That the Supplementary Lists were very high in areas where the respondent King won and extremely low where the petitioner won. A total of 312 names at 25 polling stations as against 58 names at 13 polling stations.
- (2) That 215 Form C applications which reached the hands of the Returning Officer have not been accounted for.
- (3) That at one polling station where the petitioner was a winner by a ratio of about ten to one, only the names of two eighteen year old reached the Supplementary List and a disturbance was only averted when 18 angry voters were allowed to vote although their names were not on any official list. Their names failed to reach the list although they had done everything in time for this to be done.
- (4) That at another polling station about 5-6 persons turned up expecting to see their names on the supplementary. This is a J.L.P. stronghold and one person whose name was not on the list was allowed to vote.
- (5) That three ^{of} the alleged organisers of the P.N.P. who acted as enumerators registered 232 persons in 14 polling divisions within 41 days, a remarkable performance.
- (6) That apart from eleven certificates, no other issued by them has any evidence of the presence of a scrutineer. And in the case of the eleven executed by Lennox Brooks he admitted "compelling" the J.L.P. scrutineer to sign them although the scrutineer was never present at any inquiry.
- (7) That of an examination of 360 applications, 247 show no evidence of any scrutineer being present when the inquiry was held. The Act and the Rules were contemptuously disregarded.

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(8) That about 19 to 20 under age persons had their names on the Supplementary Lists and some of them were registered in the Sandy Bay and Hopewell areas. But registration took place in other polling divisions as well, as the evidence shows.

(9) That several documents purporting to show that applicants were over 18 at the date of registration were crudely tampered with. No attempt was made to have the erasures or alterations initialled in compliance with the directive of the Chief Electoral Officer. No action was taken pursuant to Rules 16(1) and 36(2) of the Schedule to query the apparent. They were dispatched to head office with speed. In some cases, the signatures of applicants as declarants differed plainly from those as applicants. A condition of blindness had overtaken the local chief executive and supervisor of the registration exercise.

The evidence is so overwhelming that it leads me ^{easily} to the conclusion and I so find - that the Returning Officer was party to a conspiracy to defeat the democratic process in the constituency; that he gave his aid and assistance to Messrs. Thompson, Brooks and Shaw, and allowed them to roam a wide area knowing that their main purpose was to recruit and register only known and suspected supporters of the P.N.P. and that his influence in this regard touched other areas. The result of his influence in other areas, was that persons who were applicants and who were suspected supporters of the petitioner failed to get their names on the list although they had applied long before December 6, 1976 the cut off date. In the recruitment drive, provisions of the Act which he had sworn to uphold were openly defied to his knowledge and when he was beseeched by the petitioner to take remedial action, the entreaty was summarily dismissed. Even the promise to Mr. Chapman that remedial action would be taken with regard to the complaint of the petitioner was treated with disdain. The Returning Officer with his coterie resorted to manipulation, improperly used their power under the Act and the Schedule and schemed their way to victory. The prediction of Neville Thompson to Lorna Hamilton to the effect that a win would depend on the state of the Supplementary Lists turned out to be correct.

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Other evidence in the case

I have spent a long time examining the vast amount of evidence which points to the several breaches of the law which took place prior to and on election day. The petitioner has used as one of his grounds, a sweeping allegation which covers a lot of material. In this regard he is in fact relying on section 38(1) of the Constitution which states as follows:

" Any law for the time being providing for the election of members of the House of Representatives shall -

- (a) contain provisions designed to ensure that so far as is practicable any person entitled to vote at an election of members of the House of Representatives shall have a reasonable opportunity of so voting; and
- (b) contain provisions relating to the conduct of elections of members of the House of Representatives, including provisions relating to the identification of electors, designed to ensure that as far as is practicable no person shall vote at an election of a member of the House of Representatives -
 - (i) who is not entitled to vote; or
 - (ii) when he is not entitled to vote; or
 - (iii) where he is not entitled to vote."

Relying on this provision, the petitioner has stated the following in paragraph 10 of his petition:

" That the said Election was not carried out in accordance with the Representation of the People Act as a result whereby persons were allowed to vote at the said Election:-

- (a) who are not entitled to vote;
- (b) when they are not entitled to vote;
- (c) where they are not entitled to vote."

It appears to me that two things are being complained of under this paragraph with its wide dimensions: Firstly, that the law as to the conduct of parliamentary election insofar as it is enshrined in the Representation of the People Act, was put at defiance. Secondly, that particular examples of the breaches of the Act that took place are as stated at (a-c) above mentioned.

The evidence as to the operation of the Form C registration including the proved cases of double registration and the compilation of the

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list consequent thereon, are matters relating prior to election day. But nevertheless, they have reference to the "conduct of elections" within the meaning of section 38(1) of the Constitution. And the events on election day together with the preparation made for that day, form the sum total of the "conduct of an election" for the purposes of dealing effectively with the 10th paragraph of the petition. The evidence has been examined to show that on election day, massive irregularities took place on a wide scale resulting in personation and at one station, the "dead" attempted to vote; about 94 persons were permitted to vote where they were not entitled to do so; about 19 persons whose names were not on the list were permitted to vote; in 357 cases, persons who had no identification cards were allowed to vote without the necessary safeguards being observed; at 19 polling stations there was no proper observance of the statutory requirement that a statement of the poll is required to be attached to the poll book and in 4 polling stations, the requirement that the form of oath to be taken after the closing of the poll shall be left attached to the poll book was defied. And added to all this, is the odour of corruption flowing from the conspiracy between election officers which I have already found.

The law as to elections

In a very able manner, the three attorneys who addressed the Court, analysed the authorities dealing with parliamentary election. Each of them displayed great ability in his presentation.

Mr. Knight and Mr. Ellis in particular dealt ^{carefully} with the principles enunciated in the famous case of Woodward v. Sarsons [1874-80] All E.R. Rep. 262 and in the cases following that decision. I observed that the careful analysis given to the Woodward's case by the English Court of Appeal in Morgan v. Simpson [1974] 3 W.L.R. 517, C.A., was not touched by either Mr. Knight or Mr. Ellis. As was expected Mr. Spaulding dealt with it. Every authority which could be found including textbooks was cited to the Court. The exertions and industry of counsel caused the Court to be buried under a wealth of authorities. I have read all the authorities cited and of course, counsel took nearly all their books with them to Lucea where the Court had an opportunity to read the relevant passages cited as counsel went along. I hope I will cause no offence if I do not mention all the

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cases cited and what they purport to decide.

The Woodward and Sarsons case has been cited and applied in Jamaica for many years. I shall outline in this judgment what principle was enunciated in the Woodward v. Sarsons election petition. I shall cite from the judgment comprising (Brett, Archibald and Denman, JJ.).

" We are of the opinion that the true statement is that an election is to be declared void by the common law applicable to Parliamentary elections if it was so conducted that the tribunal, which is asked to avoid it, is satisfied, as a matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. The tribunal should be so satisfied i.e. that there was no real electing by the constitution at all, if it were proved to its satisfaction that the constituency had not, in fact, had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively, according to their own preference, by general corruption or general intimidation etc."

(See /1874-80/ All E.R. Rep. 262 at p.266 B-D).

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And while agreeing with Woodward, the three experienced judges (Lord Denning, M.R., Stephenson and Lawton, L.JJ) in Morgan v. Simpson, were of the opinion that in the future, the case should be cited as an authority only for what it decided and not for what was said in it.

If I may be permitted, I will say that Lord Denning summed up the true legal position admirably in these words:

1. " If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected or not."
2. " If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls - provided that it did not affect the result of the election."
3. " But, even though the election was conducted substantially in accordance with the law as to elections, nevertheless if there was a breach of the rules or a mistake at the polls - and it did affect the result - then the election is vitiated."
(See /1974/ 3 W.L.R. 517 pages 525-526.

About 85 years ago, the approach of the Jamaican Courts was enunciated very clearly in the case of Solomon v. Sharp, /1894/, S.C.J.B.

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vol. 6 at p.327 -

" We have no section in our law providing that irregularities shall void an election. The Court is bound to enquire in each case whether the irregularities complained of are of so serious a nature as to materially affect the result of the election, and thus, apart from the election laws, to void the election at common law." per Northcote, J. (cited in Stephens Reports vol.1, p.827 at pages 828-829).

In this case the "result" is in the margin of victory achieved by the first respondent over the petitioner. That margin is 150 votes. The Jamaica of today is quite different from what it was in 1894 when the above words were uttered. The Election Petitions Act was only nine years old. Tremendous changes have taken place since then. And the law must march with the changes that are taking place. Once the law is out of step - once the ingenuity of the man in the society is in advance of the law - then difficulties of a perplexing nature will be bound to plague the body politic.

A judge is bound to look at the expositions and declarations of the common law by the Courts. But it must not be forgotten that social development and reform may give rise to new aspects and conditions which have to be regarded in applying old principles detected in the exposition of the common law.

Summary of the law

As far as Jamaica is concerned, I am prepared to hold and declare the following:

1. Where it is proved that in the preparation of an official list for a constituency, election officers engaged in the process acted in concert to defeat the provisions of the Act governing the enumeration of electors, any election based on the use of such a list is void.
2. Where it is proved that a wrongful omission from or inclusion in any official list, of the name or names of any elector or electors, is the direct result of the act of an election officer engaged in the preparation of the list and who was acting otherwise than in good faith, then a prima facie case would be made out for the election to be declared void. But before such a declaration is made the Court will take into consideration all the circumstances

including the extent of the mischief and the margin of victory.

3. Where it is proved that on the part of election officers, a scheme was arranged on or before polling day and designed to defeat the will of the majority and it is further proved that the scheme was put in operation on polling day, the election is void. And the same result will follow if the scheme was formulated and executed by persons other than election officers.
4. Where the Court is satisfied that the electorate was prevented from electing the candidate of its choice or that there is reasonable ground to believe that that has happened, the election is void.
5. If what did take place in the constituency or in the Parish Council Division (and this includes the steps preparatory to the holding of the election) was not conducted substantially in accordance with the law as to elections, the election is void. To put it in another form: where it is proved that there was not a real election by ballot and that the ordinary citizen in the village square is moved to condemn the result as a sham, the election is void.
6. Where the election is conducted substantially in accordance with the law, the result is good and should be upheld unless it is proved that mistakes or breaches of the law did take place during the election and that the result was thereby affected.
7. A free and fair election presupposes that election officers engaged in the preparation for, and in the conduct of the said election, are honest, resolute and fair. Once it is proved that the election was not likely to reflect the will of the majority or that corrupt election officers manipulated the result obtained, then in either case, the election is void.

There are many people who reject anything which looks like a sham.

Voltaire the French historian disliked it greatly. Speaking of the "Holy Roman Empire", he said it was neither holy, nor Roman nor an empire.

If what was being pursued in Hanover Eastern was the holding of a free and fair election, it was not fair nor was it an election and the

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evidence shows that it was not free in the widest meaning of that word. A measure of false pretences lined the inner cover of what took place and it is a matter of profound regret that men including at least two public officers could have been found to take part in this unhealthy show.

In my judgment, the election must be annulled.

Certain comments following order
of nullity

In view of the conclusion to which I have arrived, I must make certain comments. I shall be as brief as I can.

1. Head Office Control:

In so far as Hanover Eastern is concerned, I am not satisfied that the office of the Chief Electoral Officer exercised that vigilance and power of supervision which section 63 of the Act demands in the conduct of elections. There were too many errors on the face of the Form C applications which escaped any form of supervision which that Department has devised. Even the instructions issued to the Returning Officer appeared to have been disobeyed easily without any strong stand being taken.

The requirement that a certificate of enumeration is to be initialled by a scrutineer when present and that an alteration or erasure is to be similarly dealt with was not observed and the supervisory personnel unfortunately did not observe that it was not being observed in the constituency registration process.

And how is it that one enumerator could have been appointed to roam in 8 polling divisions when the Schedule proceeds on the basis of one for each polling division? Was this an effective form of supervision? What did happen to those enumerators who were appointed early in 1976 and whose names were sent to the head office by the Returning Officer? This case shows that there will have to be a new approach to the question of supervision and control. A Returning Officer should not be allowed to do as he wishes. If he refuses to comply with instructions and directions designed to ensure fairness and effectiveness in an election he should be fired.

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It was made clear that the head office was put under a terrible strain when a decision was taken to hold the poll on December 15 with a "cut-off" date on December 6 for Form C applications. With a load of 60 constituencies to carry, an almost impossible task was imposed and it was a decision which unwittingly caused certain statutory provisions to be circumvented as I shall point out shortly. Mr. Chapman said that the two major political parties agreed to this course. But this has no relevance to the point which I shall explain.

2. Polling Day - December 15

A quick look at the calendar for December 1976 shows the following:

S.	Mon.	Tu.	Wed.	Thu.	Fr.	Sat.
	6	7	8	9	10	11
	(cut-off date)					
12	13	14	<u>15</u>	(polling day)		

There is an ancient proverb which says:

"Haste and wisdom are things far odd."

When registration under Form C (Rule 22 of the First Schedule) is in progress, it is a step with a view to "the preparation of the official list of electors in a polling division" within the meaning of section 8(1) of the Act. As such, the provision in the section that a scrutineer shall accompany the enumerator applies with the same force as if a house-to-house enquiry was in operation. The enquiry must be conducted in accordance with the rules in the First Schedule and the First Schedule contains three parts. And under the Rules, the following is provided for:

- (a) Care is to be taken to see that particulars obtained are correct: R.13
- (b) The registration officer is to satisfy himself that the applicant is qualified to be registered: R.36(2)(a).
- (c) Where a scrutineer objects to the issue of a certificate of enumeration the registration is to be deferred until the Returning Officer has decided the issue: R.26.
- (d) The Returning Officer is required to decide the objection at a sitting and he must observe the rules of natural justice. So that a "fair hearing" must be held and reasonable notice given.

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- (e) If the Returning Officer receives information which makes him suspect that an unqualified person has been registered, he is required to summon the person to whom a certificate of registration has been issued and hold a "trial" of the issue. He is sitting as a kind of Resident Magistrate when he tries the issue. Again reasonable notice must be served to the parties concerned. See Rules 16(1) and 19(1).
- (f) Section 34(5) of the Act proceeds on the basis that no person shall be permitted to vote unless he produces an identification card or some other prescribed document. Mr. Dixon has stated that the identification card, to which I have referred earlier in this judgment, is the only prescribed document. If the elector has not received his identification card by reason of the fact that the Chief Electoral Officer has not caused it to be delivered to him or if having received it, the identification card has been lost, stolen, destroyed, mutilated or defaced, the elector is permitted to vote if he takes the oath of identity and he is otherwise able to establish his identity.

But the inability of the Chief Electoral Officer to cause an identification card to be delivered, ought not to be traced to some executive or administrative act whereby he is unable, as a result of the shortness of time available, to comply with his primary statutory duty, namely, to prepare and issue in time an identification card for delivery to every person who is registered as an elector.

- (g) A supplementary list is "part of the official list of electors for use at a polling station" within the meaning of section 32(1)(f) of the Act. And under that section:

"the returning officer shall furnish to each presiding officer at least two days before polling day"

certain materials one of which is the official list of electors to be used at the polling. It was this failure insofar as the supplementary list is concerned which contributed to the decision whereby 18 persons whose names were not on any list were permitted to vote at polling station 23.

If the requirements above outlined are expected to be observed, then it is impossible for a returning officer with or without a heavy registration up to the cut-off date to comply with his statutory duty. And the statutory right of a scrutineer to object to the registration of an applicant cannot be lightly overturned.

And since the returning officer is restrained from doing his job efficiently owing to the short period given to him, it follows that the machinery at head office is also put out of gear. A blue-print for error, fraud, and neglect would have been granted by sheer pressure. Where a clear and present danger in the electoral process is identified, a salve must be found.

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I venture to suggest that recent legislation has not satisfactorily considered this aspect of the problem. Another "Hanover Eastern brand" petition may again face the Court if serious consideration is not given to the problem. An executive order may not be given which requires a public officer to circumvent the law of the land in the execution of his official duties. And where such order has been given and an attempt is made to implement it, any person who can prove that his statutory or constitutional right has been breached or threatened thereby has the right to move the Court for redress. Neither the Constitution of Jamaica nor any other law as far as I am aware, permits the suspension of an Act of Parliament or any of its provisions by the mere word of mouth of the Executive or by the administrative directive of an official.

3. A powerful argument stated:

Mr. Spaulding in his final address put up a powerful and very persuasive argument which attacked the validity of the three supplementary lists issued for Hanover Eastern. I shall state his line of attack shortly. But I must state what the evidence is.

The three supplementary lists used show the following:

- (1) List dated 30.11.76: 2 names
- (2) List dated 8.12.76: 351 names
- (3) List dated 8.12.76: 19 names.

There were several new applications made after October 30, 1976 which were processed and the names of the applicants appeared on the supplementary lists. For example, the last 17 applications processed by enumerator Brooks have dates of application starting on October 29, and ending on November 6. And all 17 names appeared on the lists. But only one, namely, Valrie Anderson, 18 of Sandy Bay made her application before October 30, 1976.

Under section 7(1) of the Act, the Chief Electoral Officer is required to publish annually "during the enumeration period and in accordance with the rules" an official list of electors in respect of every polling division. And the term "enumeration period" is given a restrictive meaning.

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That is:

"a period of twelve months commencing on such date as the Minister may from time to time prescribe."
(See section 7(2)).

By an order dated November 4, 1976 and gazetted on November 5, the Minister, pursuant to section 7, directed that the official lists to be used in respect of elections to the House of Representatives held during the period November 1, 1976 to October 31, 1977 shall be those published by the Chief Electoral Officer between October 25 to October 30, 1976. Mr. Spaulding submitted that what was meant was that the "enumeration period" for the 1976 general elections is to be reckoned as twelve months ending on October 31, 1976. This means the period from November 1, 1975 to October 31, 1976. Any list therefore not published within that period could not be properly used in the general election of 1976. But a statement of changes and additions made to those lists in respect of registrations completed on or before October 31, 1976, could be published outside of that period and used. Put it another way, it means according to Mr. Spaulding that there cannot be a continuous addition of new names to the lists in contravention of section 7 of the Act and of Rule 35(3) of the Schedule which requires a publication of the lists before the expiration of twelve months -

"during which such official list is prepared pursuant to section 7 of this Act."

I have found the point raised by counsel for the petitioner to be interesting and attractive. But it does not form the basis of any ground relied on in the petition. It is a good rule that in a case - particularly a complicated one that is strongly contested - the judge should not say more than is reasonably necessary to arrive at a fair and just conclusion. Neither Mr. Knight nor Mr. Ellis considered the point in their address. What I will say, however, is that the point raised should be carefully considered by the Chief Electoral Officer and the Minister responsible for Parliamentary Elections. And the spirit and intendment detected in a careful study of sections 8-15 of the Parent Act (Act 44/1944) should be considered with a view to deciding whether the present Act has destroyed the original intention and also whether under the present Act, Rule 22 of the

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Schedule by itself is sufficient to justify an argument that Mr. Spaulding has urged an untenable proposition.

4. Certain Polling Stations not opened:

It was proved that a list of 88 Polling Stations appeared on the grant of poll but only 75 in the 62 polling divisions were opened. It was also proved that in other constituencies the Returning Officers advised the Chief Electoral Officer of the proposed changes after the publication of the grant of poll. Where the advice was received by the Chief Electoral Officer, he took steps to advise the public by a notice in the press. In the case of Hanover Eastern, the Returning Officer failed to advise the head office of the proposed changes and as a result in the publication advising the public of the changes made, no mention was made of this constituency. The second respondent, in his report to the Chief Electoral Officer, gave several reasons why the changes were made. I will give examples in 7 cases:

"one station found to be adequate"; or

"more centralised"; or

"nearer to electors".

I find that some of the reasons given are lame and whimsical. But it was not proved that the changes did have the effect of preventing electors from discharging their franchise. What it did prove is that the Returning Officer for Hanover Eastern appears to have enjoyed too much licence in the performance of his duties. He seems to have been given too free a hand, and he was fully aware of the grant.

5. Part played by first respondent:

No evidence was led to connect the first respondent personally with any malpractice. There is nothing to show that he was a party to any breach that occurred in connection with the election. Many questions were asked by Mr. Spaulding of several witnesses concerning one Boysie Pine and his activities. The evidence on this point, which I accept, is that Pine drove a jeep belonging to the first respondent in support of his candidature or in the alternative, even if the jeep did not belong to the first respondent, nevertheless Pine was working in

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support of the candidate for the P.N.P. It was also proved that Lorna Hamilton and other young voters were transported in the jeep driven by Pine to the centre in Hopewell where they made out Form C applications with false dates of birth.

But the evidence fell short of proof that the first respondent knew what was happening. What I do find, however, is that what was done by Pine was in support of the candidature of the first respondent.

As I understand it, an election may be annulled on the following grounds. Firstly, in cases where the complaint touches the candidate or his agent personally. Examples may be shown in bribery, treating, and illegal practice as defined. Secondly, in cases where the complaint touches the general conduct of the election. And thirdly, where the complaint partakes of a combination of the two above mentioned. If Pine had negligently injured any person while driving the jeep with his load of young applicants aboard, the question of agency would have arisen to connect the first respondent with liability. But agency in such a case is determined on a basis different from agency for the purposes under the Act.

The main thrust in the argument of Mr. Spaulding was urged thus:

" There is no evidence that Dr. King knew what Pine was up to. But there is evidence that Dr. King must have known that Pine was acting on his behalf in his campaign, namely, driving of the jeep up and down for the purposes of his election."

When put in this form, no one can possibly pick a quarrel with it. In effect what it amounts to is that the jeep was put to use for an improper purpose when it was used to convey under age voters to the recruitment centre. And whereas it cannot be proved that Dr. King knew or approved of what was done, nevertheless ^d was in aid of his campaign and at least, if for no other reason, this fact may be taken into account when the consideration of costs arises.

Two more points

Before I turn to the question of costs, I am persuaded to deal with two matters. I have already touched on one of them but in view of its importance, I shall return to the theme.

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(1) Under 18 voters:

A person who is not 18 years old is incapable of being registered to vote. And the incapacity is to be tested from the date the application is made. Under section 6(1) of the 1944 enactment, the minimum age was twenty-one but for the purposes of enumeration, it was provided that if he or she

"is of full age of twenty-one years or will attain that age on or before polling day at the pending election"

it was lawful to enter the name as a prospective elector.

In the case of the 1944 general election, it was known for months what date the polling was to be held. The provision of section 6(1) is, therefore, understandable. A useful provision could be made as near as possible as it is in the English Act. If the poll falls within a period between October 1 in any year and ending on February 15 the following year, then any person who will not be 18 on say October 1, but will attain that age by January 31 of the following year will be entitled to be registered as a voter and to vote provided that some letter "Y" or "U" is entered in the register beside the elector's name and that at the time of polling he has attained 18 years.

Rule 22 of the First Schedule to the Act to which I referred earlier in this judgment, is the authority for the Form C application. Let me re-state its provision:

" Subject to section 5 of this Act, it shall be lawful for any person who is qualified to be registered as an elector in any polling station..... to make in duplicatean application for registration in the form set out in the Schedule to these Rules."

And section 5 outlines the classes of persons who are incapable of being registered as electors. Among them are lunatics and persons serving a term of imprisonment exceeding six months.

It follows that if a person was under 18 when he applied to be registered under the Form C, he is disqualified from being registered whether or not he was 18 or over when the registration was effected. Unless Parliament amends the appropriate sections to
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introduce an element of futurity measured from the date of application as in the old enactment, the disqualification is caught by the Act. Where the applicant is under 18 at either the date of application; or at the date of registration or at the date of polling, there is no entitlement to vote and the mere fact that the name of the elector appears on the official list does not cure the incapacity. If at the polling station, the under age voter is challenged on reasonable grounds, the presiding officer should uphold the objection and refuse any attempt to vote unless the elector proves entitlement.

Similarly if an elector is reasonably challenged on the ground that he is an alien who procured his name on the list by fraud, the objection should be sustained unless the elector can show that he is qualified to vote. An unqualified person who gets his name on the voters list commits at least, a summary offence under section 86 of the Act. And any election officer who knowing that a person is not qualified to be registered, registers such a person, commits at least, an indictable offence under section 100(a) of the Act. And the general rule is, that a man cannot claim a right which springs from his own criminal act.

There is another serious consequence which flows from the procurement of ^{an} an unqualified person to vote. Both the voter and the procurer are guilty of an illegal practice under section 97(a) of the Act. And in addition to any other penalty which may be imposed, a conviction for an offence declared to be an illegal practice, carries a disqualification under section 103, of not being able to be registered as an elector or if already registered, inability to vote for a period of five years from the date of conviction. It follows that every under age voter at the last general election and every enumerator who knowingly registered them have all left it open for action to be taken against themselves whereby they can be barred from discharging the franchise for five years from the date of conviction.

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Recommendation

I suggest that consideration be given to the question of introducing legislation in terms of Rule 24 of the English Representation of the People Regulations 1974. The relevant portion reads as follows:

"The registration officer before registering any person (other than a service voter) may, if he thinks it necessary - require that person either to produce a birth certificate or to make a statutory declaration as to the date of his birth."

(2) Director of Public Prosecutions:

This case has shown that there is need for legislation to permit the Director of Public Prosecutions or his representative to attend the trial of an election petition and to obey any directions which may be given to him by the election court in respect of certain breaches of the criminal law which may emerge from the evidence. This has been the position in England since 1883 and there can be nothing wrong to the introduction of legislation along the path indicated if it is thought prudent to cleanse impurities from the electoral process and to punish transgressors. As I have already indicated, it was the publicity given to the Court's suggestion that the Director should be called in why an important witness Geddes Lemard came forward at the hearing.

And provision should also be made to empower the Court to grant a certificate of indemnity to any witness who has answered all questions honestly, truly and fairly in the course of his evidence at the hearing. Except in a prosecution for perjury, the certificate would act as a bar against using his answers to the prejudice of the witness in any proceedings civil or criminal.

Question of costs

Section 28 of the Election Petitions Act deals with costs. It is in the exact terms as provided in section 41 of the English Parliamentary Elections Act, 1868. The costs and expenses of and incidental to the presentation of a petition are to be defrayed by the parties to the petition:

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" in such manner and in such proportions as the Court or Judge may determine."

However, certain elements have to be taken into account like expenses incurred as a result of vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent.

There are several cases in which a successful petitioner may be deprived of his costs. I shall give about three examples.

- (1) Where there is evidence that in the conduct of the election, the petitioner has personally acted illegally or improperly.
- (2) Where many charges have been laid in the petition against the respondents, the majority of which have failed.
- (3) Where the main grounds in the petition have failed but the petition has succeeded on a minor ground.

In this case, there is nothing to be relied on whereby the petitioner should be deprived of his costs or of any part thereof. The question, therefore, remains as to how and in what proportion the respondents are to be called upon to pay the costs of this lengthy hearing.

As to the first respondent, I have already found that his candidature benefitted from the conspiracy which was in operation. But for it, together with such other assistance his total votes may have been benefitted from the other massive irregularities which occurred, it is my view that he would have been defeated. The evidence points strongly to this conclusion.

In a paragraph of the petition, there is a prayer by the petitioner asking for an order declaring him as the candidate duly elected. Mr. Spaulding did not pursue this prayer and I think he did advise himself correctly. In an election like this which is riddled with so many irregularities and smeared with a conspiracy designed to defeat the electorate, it would be impossible for the Court to consider any such entreaty.

As to the second respondent, I am satisfied from the evidence that he acted as a kind of leader of the team in the conspiracy. It was wilful and inexcusable misconduct on his part. He sought refuge in silence at the hearing. This did not help him. The silence in the face of the mass

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of damaging evidence, brought into play the inference that he did not go into the witness box because in truth he could not have denied his deep involvement.

As between the first and second respondent, I direct that the costs shall be apportioned in the ratio of 2 to 3. The first respondent must pay 2/5 of the taxed or agreed costs and the second respondent 3/5.

Finally, I must follow the advice of Lord Bacon in his essay on the "Judicature". He said this:

" There is due from the Judge to the Advocate some commendation and gracing, where causes are well handled and fair pleaded, especially towards the side which obtaineth not; for that upholds in the Client the reputation of his Counsel and beats down in him the conceit of his cause."

Every counsel in this case who led for each of the three parties involved performed creditably. I have obtained great assistance from the advocacy displayed although there were times when the medley of style and method caused a little concern here and there. I support the view that in any election petition, once there is evidence that there was impurity in the conduct of the election, it should be diligently probed. It is in the public interest that it should be so. That may be the reason why so much time was spent in the hearing.

The final order is that the election is declared void. The first respondent is to pay 2/5 of the taxed or agreed costs. The second respondent is to pay 3/5.

I shall certify my determination to the Honourable Speaker of the House of Representatives in due course.