J A M A I C A

Election Court

Held at the Saint Ann's Bay Court House, Saint Ann

Before: Smith, C.J.

MATTISON, STEPHEN	-	PETITIONER
JUNOR, JOHN	-	RESPONDENT
AND		
RICHARDS, NEWTON	-	RETURNING OFFICER

W. Spaulding and A.J. Dabdoub, for Petitioner
K.D. Knight and J. Sinclair, for Respondent
L. Ellis and R. Langrin, for Returning Officer

- October 3, 4 & 5, 1977 -

SMITH, C.J.

On March 8, 1977, a general election was held for the return of councillors to serve on the Parish Council in this parish, and at the election for, what I shall call, the Boroughbridge division, electoral division No. 19, the petitioner Mr. Mattison and the respondent Mr. Junor were the candidates. As is ~~stated~~ in the petition, the respondent Mr. Junor was declared duly elected. It was agreed by the parties that at that election Mr. Junor obtained 1,286 votes, Mr. Mattison 887 votes, 2 ballots were rejected and so Mr. Junor had a majority of 399 votes. Those were the figures upon which the respondent Junor was returned as duly elected and the figures have not been challenged.

On April 5, 1977, the petitioner Mr. Mattison filed an election petition in which he claimed, on the allegations made in the petition, that he is the only person who was properly nominated for that electoral

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division, that he should have been declared duly elected and returned, that the respondent was not qualified to be nominated nor qualified to be elected, consequently he is the only person so qualified, being the only person properly nominated.

The allegations made in paragraphs (4) to (8) of the petition are as follows: "(4) that at the time of the nomination Mr. Junor, the P.N.P. candidate, was not on the list of electors to vote for an election of persons to the House of Representatives as provided by the Parish Councils Act; (5) that at the time of such purported nomination the said John Junor was registered as an elector on the list of voters at P.D. 60 No. 19 on the Voters' List with an address at No. 1 Hollywood Close, Kingston 6, in the Constituency of S.E. St. Andrew in the parish of St. Andrew; (6) that at the time of the election the name of the said John Junor appeared on the said list of voters for the said constituency in St. Andrew as stated in paragraph (5) hereof; (7) that at the time of the election the name of the said John Junor appeared on the supplementary list of voters for the parish of St. Ann in respect of the division of Boroughbridge, purporting that he was a bona fide elector for the said parish; (8) that having regard to the facts set out above and paragraphs (4), (5) and (6) in particular of which the said Returning Officer and the Chief Electoral Officer knew or ought to have known and in respect of which they were subsequently informed, the respondent John Junor could not have been properly and legally registered as a voter in the said parish of St. Ann."

Section 17(2) of the Parish Councils Act sets out the qualifications for nomination of a candidate to fill a vacancy on a Parish Council as a councillor. The sub-section provides as follows :

> " Any six or more electors qualified to vote in an electoral division for which an election is to be held may nominate any person qualified to be a councillor of the Parish Council as a candidate by signing a nomination paper in the prescribed form and causing such nomination paper to be handed to the returning officer between the hours referred to in sub-section (1). "

Now, to find who is qualified to be a councillor of the Parish Council, one looks at s. 7 of the Parish Councils Act and sub-s. (1) provides as follows :

> " No person shall be capable of being elected or having been so elected of sitting or voting as a member of the Parish Council in any parish -
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> (a) .....
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> (b) who is not entitled to vote at the election of a member of the House of Representatives for some constituency comprised in the parish. "

So that, on the day of nomination, for a person to be qualified for nomination he must be entitled to vote at the election of a member of the House of Representatives for some constituency comprised in the parish and he can only be entitled so to vote if his name appears on the official list of electors for a constituency in the parish.

The emphasis here is on a local representative. The person who is to serve on the Parish Council must be a local person, someone who is resident in the parish, and this is to be contrasted with the provisions for a general election to fill seats in the House of Representa-

tives, where a candidate may present himself for election although he does not live in the constituency or in the parish of which the constituency is a part. And, of course, the law contemplates that any person who offers himself for election to a Parish Council must be a bona fide resident of the parish.

On nomination day, which was February 21, 1977, it is clear that the respondent Junor was not qualified to be nominated as his name did not then appear on any official list of electors for any constituency in the parish of St. Ann. This requirement must have been known to Mr. Junor because, on February 12, 1977, he made application to be registered as an elector in the constituency of St. Ann, S.W. The application was made in pursuance of rule 22 of the rules for the preparation of official lists contained in the First Schedule to the Representation of the People Act. That rule allows for continuous registration of persons who are qualified to be registered as electors in any polling division but whose names do not appear on the electoral register. The rule allows any such person to make application to the chief electoral officer for registration at any time, whether within an enumeration period or not, and there is a prescribed form which he must complete and submit.

There is no evidence as to what happened to Mr. Junor's application after it was made, to whom it was handed or anything to that effect, but it turns out eventually that it was processed. The application form provides for a declaration to be made by the applicant that the particulars stated in the application relate

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to him personally, are true and correct, that he is qualified to be registered as an elector and, a matter which is relevant to this case, that his name does not appear on the electoral register. Now, those last words are no doubt included in view of the provisions of s. 5(5) of the Representation of the People Act, which provides that, notwithstanding anything to the contrary, no person shall be entitled to be registered as an elector for more than one polling division. The facts show that when that application was made by Mr. Junor his name appeared on the electoral register for the constituency of St. Andrew, S.E., polling division No. 60. So that if it was known to Mr. Junor when he made his application on February 12 that his name was on the official list in the constituency of St. Andrew S.E., the declaration that his name does not appear on the electoral register was a false declaration, known by him to be false. Mr. Junor must have had that knowledge because, as the evidence shows, on February 18 he wrote a letter to the chief electoral officer in which he stated that he was a candidate in the upcoming Parish Council election in the Boroughbridge division of South West St. Ann, that he "presently" held a vote in Mr. Eric Bell's constituency and in the light of the law relating to this matter he applied for a revocation of his vote in the constituency now held by Mr. Bell. That letter, according to the evidence given by the chief electoral officer, was not received by him.

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On nomination day no objection was made to Mr. Junor's nomination, although it appears that those opposing him in that electoral division, particularly Dr. Gallimore, opposing him in the sense of being members of the opposing party, knew or had reason to believe that he was not qualified to be nominated. The evidence given by Dr. Gallimore is that on nomination day he telephoned the chief electoral officer informing him of suspicions or information that he had that the respondent Junor was registered as an elector in St. Andrew, although he could not say precisely where in St. Andrew. The chief electoral officer admits receiving a telephone call from Dr. Gallimore, but he apparently did nothing about it.

Subsequently, Dr. Gallimore made enquiries and discovered that Mr. Junor's name appeared on the list in St. Andrew, S.E., and he discovered the precise polling division and the number on the official list of electors. On March 1, he wrote a letter to the chief electoral officer concerning the information he had received. The letter made the allegation that the respondent Junor was not qualified to be nominated as a candidate in St. Ann for the division in which he was nominated as he was not registered in the parish as an elector. The letter called upon the chief electoral officer to direct the returning officer for St. Ann, S.W., to declare the petitioner as the only candidate properly nominated and, thus, the duly elected candidate for the Boroughbridge division. It was pointed out that the respondent Junor was not eligible to be an elector for the parish of St. Ann since his name already appeared

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on the electoral register. This letter was copied to the returning officer, who is the second respondent in this case, and the evidence, which is not denied, is that on the day following, that is on March 2, Dr. Gallimore accompanied the petitioner to see the returning officer, handed him a copy of the letter and called upon him to declare the petitioner as the duly elected candidate for the division. The returning officer replied that he had no power in the matter, that it was a matter for the court, or words to that effect.

The chief electoral officer said he sought the advice of the Attorney General's department when Dr. Gallimore's letter was received and it may be that he took no action because of the advice that he received. One cannot, therefore, blame him for not taking any action which would result in the petitioner being returned as the duly elected candidate. But it seems to me that as a responsible officer he should at least have taken steps, since according to his evidence he had power to do so, to see that a double registration did not remain on the electoral lists on the day of election, which in fact is what occurred. There is no evidence that Mr. Junor voted at all on that day. It seems clear that he did not vote in St. Andrew S.E. because of what transpired when the chief electoral officer was asked to produce the relevant poll book for that constituency during his evidence before me. Nor is it alleged that he voted in St. Ann S.W. The fact is, insofar as the lists were concerned, if he were dishonest he could vote at both places or claim to be entitled to vote. It is said that people voted more than

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once during the elections, so there must be some means whereby the ink can be removed from one's digit, as the law refers to the finger. So if Mr. Junor knew the art of doing that he could have gone and voted in two places, and the chief electoral officer, so he said, had the power to prevent that by having one or other of the two registrations deleted before election day, but he took no steps to that end.

So far as the returning officer is concerned, it seems clear on the authorities that he was functus officio and would have no power to comply with the request made of him that he should declare the petitioner to be duly elected, but, again, as a responsible officer, he should have taken steps to bring the matter of double registration, or the likelihood of double registration, to the notice of the chief electoral officer. Of course, it might be said for him that it must have been clear to him that Dr. Gallimore had already done this so there was no point his taking this action. But reference was made to rule 16, of the rules in the First Schedule to the Representation of the People Act, which places the duty on a returning officer, if he suspects that a person, in respect of whom a certificate of enumeration has been issued by an enumerator, is not qualified to be enumerated in a particular polling division, to command that person to appear before him and after a hearing shall cancel a certificate of enumeration if he is satisfied that that person is not qualified as aforesaid. The certificate of enumeration in respect of Mr. Junor, which was issued as a result of his application of February 12, 1977, was

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issued in the returning officer's constituency and he, therefore, had the power and the duty under rule 16 to take steps to cancel Mr. Junor's certificate of enumeration. But, as I said, he took no steps.

At this time, the whole question of the electoral system in the country is being discussed publicly with a view to improving the system that we have at present. What is being said is that an independent electoral commission should be set up to run elections. Of course, that is not my concern, it is the concern of the people who make the laws in the country; but may I just say that no matter what system is devised, no matter how perfect the system, no matter what safeguards are written into the law, once human beings are going to operate the system there can be no guarantee that we will have a completely watertight electoral system. The best that one can do is to try to see, as far as possible, that only competent people and people of integrity are appointed as election officers. If we have such people, it seems to me that the present system could be operated quite satisfactorily.

I have said on a previous occasion that it seems quite clear that people are not being appointed as election officers as they should be. The Constitution provides for the appointment of public officers by the Public Service Commission which is, or should be, an independent body. The chief electoral officer, returning officers and other election officers all the way down to poll clerks are, in law, public officers and should be appointed by the Public Service Commission. That Commission has power, under the Constitution, to delegate its powers and duties in the appointment of officers to

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heads of departments and other persons. The chief electoral officer has said that the power to appoint electoral officers has been delegated to him and I suppose he appoints presiding officers, poll clerks and so forth. Well, if one has a chief electoral officer and returning officers who are independent and who do not perform their duties with any bias to one party or the other, who make every effort to see that the people they appoint are people whose appointments are not influenced by politicians but, rather, are competent people, if all of that was done there would be no fault in the system as there presently is. As I have said, you could devise any system you like, if you do not have competent and honest people operating it, it cannot be operated properly. I think that efforts should be made in devising any new system to try to ensure that only that type of person is appointed as an election officer.

To illustrate the point I seek to make, part of the present system is that when a person is being enumerated, so as to prevent bias and false enumeration, scrutineers appointed by the various parties should accompany the enumeration officers. What do we find ? We find that enumeration officers go and do their enumeration and they are not accompanied by scrutineers. When I was enumerated, only one scrutineer was present, and that is common place. Further than that, in this case, the scrutineer who is supposed to have been the scrutineer in respect of Mr. Junor, in the constituency of St. Ann S.W., admitted in evidence that he signed the form which, administratively, he was required to sign in respect of Mr. Junor's application as evidence that he witnessed the enumeration when,

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in fact, he did not do so at all. So, it is not only the official election officers in respect of whom the system might break down. Even the agents for the candidates, or for the political parties, do not do their jobs properly. This scrutineer signed the form though he did not know who it was for and, certainly, he did not visit Mr. Junor at his residence to see him enumerated. He only signed it because this was a way of ensuring that he was paid travelling for performing the duties of a scrutineer, travelling which he did not do. Here is a system devised to ensure that there are no bogus registrations and here it is breaking down right there. I thought that I would make some comment on this aspect of the matter although it does not directly affect any issue in the case.

What followed on all of this is that a supplementary list was issued for the constituency of St. Ann S.W. on March 2, 1977, on which the name of Mr. Junor appeared in polling division No. 63. Any action taken by the returning officer on that same day would not have prevented the name of Mr. Junor from appearing on that supplementary list, but, as I have said, it could have resulted in his name being deleted before election day.

The fact that Mr. Junor's name appeared on the supplementary list on election day did not, of course, make him qualified to be elected, because if he was not qualified to be nominated he was not qualified to be elected. A concession has been made on his behalf that he was not validly elected, in view of the fact that his name was not properly on the list of electors for a constituency in St. Ann. It is conceded that his election was

void. The only question now is whether the petitioner is entitled to be declared duly elected or whether all that should be done is to declare the election of the respondent Junor void, thus creating a vacancy which will result in a bye-election to fill it.

Mr. Spaulding has submitted that the respondent Junor had himself nominated when he must have known that he was not qualified to be nominated and that, therefore, he should not be allowed to profit by his wrong doing; that the petitioner should not be made to suffer in this situation. It was submitted that the petitioner was the only legally, properly and duly nominated candidate and ought to be declared duly returned; that the entire election should not be declared null and void; in other words, there should not be a bye-election.

The facts in Hobbs v Morey, (1904) 1 K.B. 74, cited by Mr. Spaulding, are, in all respects, identical to the facts of the present case. The argument for the petitioner in that case is the identical argument put forward in this case for the petitioner. The head note reads as follows :

> " The petitioner and respondent were nominated in proper form for election to the office of councillor for a ward in a borough, and the respondent obtained the majority of votes and was declared elected. Both at the time of his nomination and of the election, however, he was disqualified by reason of his interest in a contract with the council. The petitioner claimed the seat on the ground that his being the only valid nomination he should be declared elected. The respondent admitted the disqualification :-
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> Held, that, the disqualification not being apparent on the face of the nomination paper, the nomination of the respondent was valid, and that as the

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> petitioner did not allege any notice to the electorate of the disqualification of the respondent, the votes given for him could not be treated as having been thrown away, and the petitioner was not entitled to claim the seat. "

Mr. Spaulding sought to distinguish that case from this on the ground that it is a basic pre-condition that a person is only qualified for nomination if his name appears on the electoral roll and he sought to distinguish that ground of disqualification, the absence of the name on the electoral roll, from that in the Hobbs case, where the candidate was disqualified by reason of interest in a contract with the council. But I think he eventually agreed, after I had pointed out other grounds of disqualification which appear in s. 7(1) of the Act, that all the disqualifications seem to be on the same footing and, in the section, disqualification on the ground of contract with the council is one of them.

The decision in Hobbs v Morey is, apparently, still the law and, if followed, would be authority for saying that the petitioner cannot claim the seat in this case unless he can show that the votes given in favour of the respondent Junor must be regarded as having been thrown away. There has been no authority cited which either criticizes the decision or over-rules it, and the principle stated by Kennedy, J. (at p. 78) was stated after reference to a statement in Pritchard v The Mayor, etc., of Bangor, (1888) 13 App. Cas. 241, in which Lord Watson stated what is a "valid nomination", words which appear in the particular statute which was under consideration in that case. Kennedy, J. having

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referred to the statement of Lord Watson, went on (at p. 78) to say :

> " The expression 'valid nomination', therefore, includes the case of a person who is disqualified in fact, but whose disqualification is not apparent on the nomination paper, and whose nomination has been sustained by the mayor. That being so, the election must proceed, and the question - as has been pointed out in some of the cases - becomes, not a question between the two candidates, but between the successful candidate and the electorate. The election of such an unqualified person can be objected to in only one way, namely, by election petition to the Court. The Court on the hearing of the petition cannot, I think, declare that a candidate who has a minority of votes is elected, unless it has first decided that the votes given to the candidate who is returned at the head of the poll are votes thrown away. I agree, however, that there are cases in which the Court has power so to decide. Alike in municipal and in parliamentary elections, if a person is a candidate who is manifestly disqualified, then in such a case the votes given for him may be treated as having been thrown away, since they were perversely and wilfully given to a candidate whom the electors knew to be disqualified. "

After referring to a statement by Wright, J. in Hartford v. Linskey, (1899) 1 Q.B. 852, Kennedy, J. continued (pp. 78, 79) :-

> " If the election proceeds, then in such a case, for instance, as that of Lady Sandhurst, where the disqualification of the candidate was apparent - and the fact that she was a woman must have been known to every one who voted for her - the votes given for her might be treated as nullities. But where the disqualification does not appear on the nomination paper and the election proceeds, and the disqualification is not known to the electors, then, unless on a scrutiny a sufficient number of the votes given for the candidate who has the majority can be struck off to give the petitioner a majority, I think he cannot successfully claim the seat, and the votes given to his opponent cannot be disregarded. That seems to me to be the true view and in accordance with both authority and principle; and as here the disqualification was not apparent and the petition does not allege that the voters

> " knew of the respondent's disqualification (the only notices being notices to the mayor and to the opposing candidate), and the petitioner had only a minority of votes, I do not think that he can successfully claim the seat. All that we can do, therefore, on this petition is to declare the election of the respondent void. "

Darling, J., who was the other judge of that court, was of the same opinion.

In this case, no objection having been taken to the nomination, the nomination had to be regarded as a "valid nomination", although those words do not appear in our statute. Between nomination day and polling day the only power that there may be to have the disqualification result in the election of the candidate who was not disqualified appears to be by mandamus proceedings - see Halsbury, (3rd edn.), Vol. 13 p. 80, where it is suggested that mandamus could issue to a returning officer in the circumstances of this case to declare the petitioner duly elected. But the returning officer in this case had no power on his own to make any such change and it seems doubtful, in view of the provisions of s. 17(6) of the Parish Councils Act to which Mr. Knight referred, whether even mandamus proceedings could be brought.

S. 17(6) states :

> " The returning officer shall not accept any deposit until after all the other steps necessary to complete the nomination of the candidate have been taken, and upon his accepting any deposit he shall give to the person by whom it is paid to him a receipt therefor <u>which shall be conclusive evidence that the candidate has been duly and regularly nominated.</u> "

It seems doubtful, in view of the words underlined, whether a nomination to which no objection was taken can be upset at all so as to prevent a poll being held on election day.

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The question of the powers of a returning officer on nomination day to deal with objections has been canvassed and perhaps it is not necessary for the purpose of this case to go into that matter. I venture the opinion that there should be a duty on the returning officer to at least check the qualifications of a candidate insofar as he is required to be an elector in the parish; a matter, as it seems to me, which could quite easily be checked since the evidence is that the returning officer checks the qualifications of the electors who nominate the candidate. But it is quite clear that there is no statutory duty on him to do this, and the weight of the authorities seem to suggest that he has no authority to decide on questions of disqualifications, except it be something appearing on the face of the nomination paper. (See Greenway-Stanley v Paterson, (1977) 2 All E.R. 663).

There was, on the face of it, a valid nomination and no step was taken, or, it appears, could be taken, to prevent the poll being held. The poll was held and Mr. Junor received the majority of votes. It appears from Hobbs v Morey, and from other authorities to which reference has been made, that the over-riding principle is this: that once an election is held, effect must be given to the will of the majority of the electorate and that a court should not lightly reject the will of the majority and impose upon an electorate a person whom the majority of them did not select to represent them. But the authorities are quite clear that if the electorate have due notice that a candidate is disqualified to be elected and with that knowledge they nevertheless vote for that candidate, then that will be tantamount to throwing their votes away and in that

event the candidate who received the minority of the votes is entitled to be declared duly elected.

The question now is, and this is a question of fact, whether the electors in the Boroughbridge division were given due notice that Mr. Junor was disqualified from being nominated or disqualified to be elected as a councillor. In the speech of Lord FitzGerald in Pritchard v. The Mayor, etc. of Bangor, there is this passage, at p. 254 :-

> " But the statute gave to the mayor the authority of determining in the first instance upon objections made to nominations. The mayor disallowed the objection, and accordingly Mr. Roberts was presented to the electors as a person eligible for election to the office which he sought. The appellant was bound to make out further, in order to bring himself into a majority, that the voters were not only aware of the fact on which the alleged ineligibility of Roberts arose, but also that they had notice that in consequence the votes given by them for Roberts would be absolutely lost and thrown away. "

This statement contradicts an earlier one by Brett, J., in Drinkwater v. Deakin, (1874) 9 C.P. 626 at p. 641, to which reference was made by Mr. Spaulding, that it was not necessary for the electors to be told that the candidate was disqualified if they were told the facts upon which the disqualification would rest. And in the passage cited by Mr. Spaulding in Halsbury (3rd edn.) Vol. 14, para. 549, at p. 305, there is the following statement:

> " For the votes given for a candidate to be thrown away, the voters must before voting either have had or be deemed to have had notice of the facts creating the candidates' disqualification. It is not necessary to show that the elector was aware of the legal result that such a fact entailed disqualification. Votes given without such notice are good. "

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The disqualification in this case can be regarded as a technical disqualification. Certainly it is not one that was notorious and of which the electors must be deemed to have had knowledge before they voted. It must, therefore, have been brought to their attention and the evidence, in my view, must be such as to enable a court to say that all the voters, or the majority, who voted for the candidate who obtained the majority of votes must have known that they would be throwing away their votes. This is the reason why in the authority which was cited, Parker's Election Agent and Returning Officer (6th edn., 1959), the suggestion has been made as to how notice should be given to electors. In re Bristol S.E. Parliamentary Election, (1961) 3 All E.R. 364, express notice was given to electors and every possible means was adopted to bring the fact of disqualification to their attention. Notices were served on individual electors and not only were they told the facts that would amount to disqualification but they were expressly told that if they voted for the candidate they would be throwing away their votes.

Mr. Knight made the point that in the petition in this case there is no allegation that electors were notified, as was done in other cases. There is Jones v Kelly (unreported) a case decided in our Supreme Court and the Bristol S.E. Parliamentary Election case. The petitions in those cases expressly made reference to the type of notice that was given to the electors. No such allegation or statement appears in the petition in this case and one has to refer to the evidence which was given to see whether that evidence was such as to cause the votes of the

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majority of the electors in the Boroughbridge division who voted for the respondent Junor to be regarded as having been thrown away.

It is quite clear that when the evidence was being given for the petitioner the point which I am now discussing was not appreciated by those who appeared for the petitioner or else the evidence might have been fuller. The only evidence on this point of notice to the electors was given, first of all, by the petitioner in his examination-in-chief, as follows :

"Q: Now, you campaigned in this election ?

A: Oh, yes.

Q: And did you use the fact that Mr. Junor's name was on two lists in your election campaign on the public platform ?

A: Oh, yes, sir.

Q: And when you made this accusation publicly, Mr. Junor held meetings too ?

A: Yes, sir.

Q: To your knowledge, do you know if Mr. Junor at any time denied that he was on two lists ?

A: He denied it.

Q: You heard that with your two ears ?

A: Yes, sir.

Q: Where

HIS LORDSHIP: He was at one of your meetings ?

A: We all up and down at each other meetings. "

That is the only reference made by the petitioner to publication of notice. In Dr. Gallimore's evidence, in answer to Mr. Dabdoub, he gave the following answers :

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"Q. Now, did you make any checks after nomination day ?

A. Yes, I then tried to ascertain if Mr. Junor was registered elsewhere for I know he was not registered down here, he was not on the voters' list.

Q. And you found out in which polling division he was registered ?

A. You asked me if I made any checks knowing that he was not registered in the parish and I heard that attempts were being made for a bogus registration to be done, then I proceeded to check. "

There are some questions asked by me, then Mr. Dabdoub:

"Q. You found him on the list in that constituency ?

A. Yes. I have not refreshed my memory recently, but if it serves me right, I repeated at several political meetings No. 19 at P.D. 60, because I repeated it at several political meetings out here in the campaign. That is my recollection.

Q. And, having discovered this, what did you do doctor ?

A. I wrote to the Chief Electoral Officer. "

Then further on Dr. Gallimore gave this evidence:

Q. Dr. Gallimore, did you ever issue a press release in respect of that letter to the Chief Electoral Officer ?

A. Yes.

Q. It was published in the media ?

A. Yes. "

That is the totality of the evidence.

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I will follow the authority which states that the electors must know the facts creating the disqualification but need not know, that, as a matter of law, those facts entailed disqualification. There are other authorities, apparently, which could have been cited and there is a great deal more research that could have been done in this case for my assistance. But I am willing to accept that the better opinion is that the electors need not know that facts told to them would entail disqualification, although it seems contrary to commonsense. It seems to me that what should be required is that the electors should be advised: "Look, you are throwing away your votes if you vote for that man because he is not qualified." If you tell a Jamaican elector that a man's name appears on two voters' lists he probably will ask you: "So what?" Because, perhaps, this is not uncommon. There should be a further requirement that he should know that if he votes for that man his vote can be thrown away because that amounts to a disqualification; but, as I have said, I am willing to accept that all that is required to be told to him is the fact that the name appears on two lists, which is what the petitioner said he campaigned about.

The majority for the candidate who was declared elected, that is to say, Mr. Junor, was not a marginal majority, where it could be said that at least 25 or 50 or 100 electors must have known the facts which disqualified him and so, where you have a narrow margin like that, those people must have known that they threw away their votes. This is a case where the majority

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is 399 votes. There have been winning margins far in excess of that, but how can I say with any confidence, how can I be sure, that 399 people or more knew the facts upon which the respondent Junor was disqualified and with that knowledge polled their votes? It seems to me an impossible finding to make. In Jones v Kelly, it was a clear case, as Mr. Spaulding showed, and in that case the petitioner succeeded. The petition was not challenged because the petition alleged that notices were served and delivered at the addresses of all the electors. In a situation like that they are deemed to have received them and to have read them and so to have known their contents. But in a situation where the over-riding principle must be that the electorate are not to have imposed upon them a person for whom the majority of them did not cast their votes, it is impossible for me to find with any confidence or even on a balance of probabilities, which I suppose is the standard required, that the majority must have known that Mr. Junor was not qualified, or knew the facts upon which his disqualification rested, and in spite of that wilfully voted for him knowing that they were throwing away their votes. I am very sorry, but it is impossible for me to make such a finding.

I can only declare that Mr. Junor was not validly elected. I am unable to accede to the prayer to declare Mr. Mathison, the petitioner, duly elected. The result is that a vacancy will be created, which steps may or may not be taken to fill in a bye-election.

The petitioner is entitled to his costs against the respondent Junor.