

J A M A I C A

Election Court

Held at the Spanish Town Court House, St. Catherine

Before: Smith, C.J.

BETWEEN MARJORIE VASSELL - PETITIONER  
AND CAROLE THE - RESPONDENT  
AND NEVILLE DAVIS - RESPONDENT  
(Returning Officer)

Norman Hill, Q.C., W. Spaulding, and A.J. Dabdoub  
for Petitioner

L.H. McLean for 1st Respondent

L. Ellis (Asst. Attorney General) for Returning Officer  
and E. Harris

- October 10 & 11, 1977 -

Smith C.J. :

This petition complains of the election of the respondent Carole The for the electoral division No. 20, Above Rocks, to serve on the Parish Council for the parish of St. Catherine. The nomination day for this particular election was February 21 this year and the election was held on March 8. The respondent, Mrs. The, was one of the candidates nominated on February 21, as was Mr. Louis Robinson. At the election Mrs. The was declared duly elected. All these are facts which are not in dispute and I assume, though there is no evidence to support it, that she was declared duly elected because she received the majority of votes at the election.

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The petition was brought by Marjorie Vassell, whose qualification for bringing it is that she is an elector for the electoral division for which the election was held, and it challenges the election of the respondent on the ground that she was not qualified to be nominated. This disqualification arose because on the day of nomination her name did not appear on the official list of electors for any constituency in the parish of St. Catherine. The only question at issue therefore is whether or not the prayer in the petition that Mr. Louis Robinson be declared duly elected should be refused or whether there should be a decision in his favour.

Section 7(1) of the Parish Councils Act provides that no person shall be capable of being elected or, having been so elected, of sitting or voting as a member of the Parish Council, who is not entitled to vote at the election of a member of the House of Representatives for some constituency comprised in the parish. S. 17 provides for the nomination of candidates and sub-s. (2) of that 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 a 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 subsection (1). "

Sub-s. (3) provides as follows :

"Every nomination paper shall specify -

- (a) such particulars of the name, address and occupation of the candidate as are sufficient to identify him; and

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- (b) his address for service of process and papers under this Act; and
- (c) the name, address and occupation of his official agent, (if any). "

It is submitted on behalf of the petitioner that the returning officer who presides at the nomination of candidates for a Parish Council election is under a duty to check the qualification of a person being nominated insofar as that person is required to be one who is entitled to vote at the election of a member of the House of Representatives for some constituency in the parish. In other words, it is contended that the qualification set out in s. 7(1)(b) should be checked by the returning officer before he accepts the nomination of a person being nominated for the election. Mr. Hill, who <sup>puts</sup> forward that argument for the petitioner, does not contend that the duty of the returning officer extends so far as to impose any duty on him to verify or check the other qualifications which a person is required by s. 7(1) to possess. For instance, he does not contend that the returning officer has any such duty as regards the age of the person to be nominated, or whether he is an undischarged bankrupt, or whether he is the holder of an office of emolument.

Mr. Hill seeks to make a distinction between a person who is qualified and one who is disqualified and says, as I understand the argument, that the reference in s. 7 to a person who is qualified is not necessarily a reference to a person who is <sup>dis</sup>qualified. These, he says, are two different concepts altogether insofar as the provisions of s. 7 are concerned. At any rate he identified s. 7(1)(b) on the basis that it is within the

competence of the returning officer and, indeed, of the chief electoral officer and his staff. He says it is one matter in s. 7 which comes within the clear jurisdiction of the electoral office, i.e. the chief electoral officer and the other election officers who are concerned with the election. In other words, what is on the official lists of electors are matters which are within the knowledge of the chief electoral officer and other election officers and are matters which they can check conclusively to discover whether or not a person is or is not on an electoral list. He says that because of this there is this duty on the returning officer.

The authorities show, and it is conceded, that the duties of a returning officer are statutory and if he is to be said to have any duty it must be shown by reference to the particular statute that he has such a duty. Mr. Hill refers to the provisions of para. (a) of sub-s. (3) of s. 17. He says that the only sensible construction to place on the provisions of that paragraph is that a reference is there being made to the particulars of the person being nominated who is referred to in s. 17(2). In other words, that the particulars which are required by s. 17(3)(a) to identify the candidate are to identify that candidate as being a person who is on the list of electors for a constituency in the parish.

I am afraid, with all due respect, I am unable to accept this interpretation of the provisions of s. 17(3)(a). If Mr. Hill is right, that it has reference at all to the qualification of a councillor, referred to in s. 17(2), then there is nothing in the section itself or elsewhere which would isolate the qualification of a person as being

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on the official list of electors for the parish as distinct from any other qualification which the person nominated is required to have under s. 7(1). There is no reason to identify that particular qualification as against any other.

It is interesting to observe that the provisions in the Representation of the People Act relating to the nomination of persons to serve in the House of Representatives have the identical provisions in s. 23(3) of that Act, and Mr. Hill concedes that the reference there is not a reference to the qualification of the candidate who is sought to be nominated. But, says Mr. Hill, the interpretation should be different in the Parish Councils Act as here one of the qualifications is that the person nominated must be a person on the official list of electors for a constituency in the parish. With all due respect, I think this is a non sequitur.

As I interpret the provisions of s. 17(3)(a), the identity to which reference is there made is the identity of a person so that the particular person as a person can be identified; so that the electors will know for whom they are being asked to vote on election day; because it is these particulars which are required to be placed on the ballots for the purposes of the election.

Apart from the provisions in s. 17. it is not contended that there is any other statutory duty on the returning officer, except the reference which was made to the provisions of s. 21, sub-s. (2).

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That sub-section provides as follows :

" The returning officer shall include in his return to the Chief Electoral Officer, a report of his proceedings and of any nomination proposed and rejected for non-compliance with the requirements of this Act. "

Mr. Hill submits that here is a clear statement of the powers of a returning officer in relation to nomination of candidates, that is to say, <sup>a</sup>clear statement that the returning officer has powers to reject nomination papers. But this is the only reference in the statute to any power to reject nomination papers and there is no provision in the Act about a returning officer deciding on objections similar to such provisions to which reference is made in some of the authorities. It seems to me, however, that if a person is required to have qualifications before he can be nominated, that any person who contends that that person is not qualified should have the right to object to the person being nominated. The question is: to what extent is the returning officer empowered to deal with any such objection?

The authorities suggest that he has no power to deal with any objection insofar as it is based on disqualification. So what do the provisions of sub-section (2) of s. 21 mean? It says: "..... rejected for non-compliance with the requirements of this Act." What requirements? It seems to me that this is a reference to what is required to be on the face of the nomination paper, or a reference to the provisions of s. 17(4) & (5), and certainly not a reference to the qualification of the person who is being nominated. Pritchard v. The Mayor, etc. of Bangor, (1888) 13 App. Cas. 241 was referred to, in particular the speeches of Lord Watson and Lord Herschell.

At p. 252 Lord Watson stated as follows :

" The function assigned to the mayor of the borough is to receive nominations and to determine which of these nominations shall be treated, for the purposes of municipal action, as "valid nominations", that is the statutory expression. I do not think that the legislature has empowered him to deal or intended that he should deal with every kind of objection which might be raised to a nomination paper. I do not think that jurisdiction is given him to dispose of such an objection as is alleged in the present case. The 3rd Schedule to the Act of 1882, which contains the rules, rather points to his disposing of formal objections arising upon the face of the nomination paper, and making inquiry as to whether the nominators have their names on the burgess roll and whether the paper is in statutory shape. If no objection is made, or if objections are stated and repelled by the mayor, then the nomination becomes a valid nomination. I do not mean to suggest that it is final and conclusive upon questions of disqualification or other similar objections which may be taken to it, but I think it was intended to be conclusive to this effect, that the nomination paper so sustained as valid should form the basis of the election and that the nominee in that paper should be treated as a person for whom votes could be given before the returning officer. "

Then at p. 257 Lord Herschell said :

" Several days before the election there are to be nomination papers, signed by two burgesses and assented to by eight others, delivered in to the mayor, and the mayor is to entertain an inquiry as to the validity of those nomination papers. Upon objection in writing he may either allow or disallow it. If he disallows the objection the nomination is to be valid, and cannot be questioned, as I understand the provisions of the 3rd Schedule of the Act, in any subsequent proceeding. If he allows the objection his determination is subject to review upon an election petition. Now those provisions appear to me to indicate that it could not have been intended that the mayor should entertain such a question as the qualification of a candidate; because it is impossible to suppose that the legislature provided that a question of that sort should on, it may be, very imperfect information and without legal assistance, be finally and conclusively determined by the mayor. I think that the objections to the nomination papers referred to in the Act do not include any such question as the qualification of a candidate. "

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These passages are relied on by counsel for the petitioner as well as by counsel for the respondent and for the returning officer. It is said, on the one hand, that the returning officer has no power to decide on any disqualification; Mr. Hill, on the other hand, relies on the statement by Lord Watson, which shows that there is a duty, at least, to check the burgess roll, and says that if there is a duty to check the burgess roll to see if the nominators are registered then there is no reason why there should not be a similar duty to check the roll to find out whether the person nominated is registered on the same roll. The first thing I would say about this authority is that it is clear that the statements to which I have referred are based on the particular provisions of a statute and I have not had the opportunity to consider what those particular provisions are. There has been no reference to the actual statute itself in these proceedings, and so I have to be guarded in accepting these statements as being statements of principle of general application which apply to any statute no matter what its provisions.

It seems that I am left to interpret the provisions of the particular Act which governs the election which has been challenged here. It is conceded, I suppose relying on what is said in the Pritchard case, that there is a duty on the returning officer to check to see whether the persons nominating the candidate are electors qualified to vote in the electoral division. This concession is made by Mr. Ellis for the returning officer and Mr. Ellis says, well, if there is that duty why is there not a similar duty to check whether the candidate is on the electoral list for a constituency in the parish. I accept the submission that

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the returning officer would have a duty to check the qualifications of the electors who are making the nomination because those electors are required to be on the list of electors qualified to vote in the particular electoral division and this would be something completely within the jurisdiction of the returning officer for that electoral division. However, there would not be a similar duty in respect of the qualification of the candidate because the candidate, as I have stated, to be qualified must be a person who is entitled to vote at the election of a member of the House of Representatives for some constituency comprised in the parish, and he may be qualified and yet be on another electoral list completely outside the jurisdiction of the particular returning officer. That seems to be a logical difference insofar as the duties of the returning officer are concerned.

In my view, there is no statutory duty on the returning officer to check or verify the qualifications of a person who is nominated in any respect unless objection is made and a disqualification is admitted or it is clear beyond any question of doubt that the person is disqualified, in which event it seems that in view of the provisions of s. 21(2) the returning officer would have power to reject the nomination for non-compliance. This I am not convinced about as it seems that the rejection relates really to what is required by sub-sections (2), (3), (4) and (5) of s. 17. But, as I have said, if it is made to appear to the returning officer that the person is otherwise disqualified and it is not disputed, I see no reason why he should not have the power to reject a nomination in those circumstances.

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Now, Mr. Hill embarked upon this argument because it is his contention that if the returning officer had a duty to verify the qualification of the candidate and he failed in his duty, then that person is not regularly nominated as provided in s. 17(6) and the consequence would be that there would be no authority for an election to be held where there was just one other candidate who was validly nominated. In other words, Mr. Hill's argument is that although an election was actually held, if it can be shown that the person elected was not regularly nominated, the court would have power to declare that the election was void, that the nomination was a void nomination and the other person nominated would be entitled to be declared duly elected.

As I have said, it is my opinion that there is no such statutory duty on the returning officer as is contended, but it seems to me that, whether or not there was such a duty, once the returning officer gives a receipt for the deposit, as is provided in s. 17(6), the validity of that nomination cannot any longer be questioned. S. 17(6) provides as follows :

" 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 which shall be conclusive evidence that the candidate has been duly and regularly nominated. "

It seems to me that what is intended here is that, once the deposit is accepted, there should no longer be any ground upon which the nomination can be challenged so as to prevent an election being held. As the authorities show, the fact

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that the person is not validly nominated can be challenged on an election petition after an election has been held but apparently there is no means, except perhaps by mandamus (see Hals. (3rd edn.) Vol. 13 p. 80), whereby a nomination can be challenged before an election is held.

I hold that the returning officer having accepted the deposit, as I assume in this case he did, the question of the validity of the nomination could not be challenged except on an election petition after an election was held. It is, therefore, not open to the petitioner to contend that Mr. Robinson, who was the other person nominated, should have been returned before election day and, therefore, is now entitled to be returned.

The principle applying to these cases applies in this case, and that is that once the electorate have voted and have elected a candidate, the question then is between the person who is elected by a majority of votes and the electorate; so that a person who has obtained a minority of votes is not able to claim to be returned unless it can be shown that the electorate who voted for the candidate with the majority of votes can be said to have thrown away their votes. It is not suggested that that has occurred in this case and therefore the contention that Mr. Robinson should be declared duly elected cannot be accepted.

The order I, therefore, make is that it is determined that the election of the respondent Mrs. Carole The is void, the prayer of the petitioner to declare Louis Robinson duly elected is refused and the petitioner is awarded costs against the respondent Carole The to be taxed or agreed.