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In the Supreme Court
Election Petition
Tried at the Mandeville Court House
In the Parish of Manchester.
Suit No.C.L. 370 of 1972

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BETWEEN ARTHUR HENRY WINNINGTON WILLIAMS - PETITIONER
AND DOUGLAS MANLEY - RESPONDENT
AND HERBERT A. YOUNG - RETURNING OFFICER

Frank Phipps, Q.C., Wilton Hill, Q.C., Owen Crosbie
and A. J. Dabdoub for Petitioner
Lloyd Barnett and Hugh Small for Respondent
A. L. Davis and Shirley Playfair for Returning Officer.

Tried 1973: September 17,18,19,20,21,24,25,26,27 and 28.
October 1,2,3,4 and 5
November 5,6,7,8,12,13,14,15,16,22 and 23.
1974: February

This election petition arises out of the general elections held on February 29, 1972 for the election and return of members to the House of Representatives. The petitioner and the respondent were the candidates at the elections for the constituency of Southern Manchester. The final count of votes by the returning officer for that constituency took place on March 1 and 2 at the Cross Keys court house, when the respondent was declared duly elected by a majority of 115 votes. An application was made for a recount of the votes by the Resident Magistrate for Manchester. This was done at the Mandeville court house on March 10 and 11, when the respondent was delcared to have obtained a majority of 94 votes over the petitioner.

On March 23, 1972 this petition was filed, in which the petitioner prays that it may be determined that the respondent was not duly elected or returned and that he, the petitioner, was duly elected and ought to have been returned as the member for the constituency. In the alternative, he prays that the election of the respondent be declared wholly null and void. The ground on which the petitioner claims to have been duly elected is that 214 ballots, as detailed in paragraph 8 of the petition, which were

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rejected by the returning officer at the final count of votes, were proper ballots for the petitioner when cast and when counted by the presiding officers at the preliminary count of votes but thereafter and by the time of the final count of votes they were tampered with by a person or persons unknown to the petitioner and were thus "deliberately and fraudulently spoilt". The petitioner claims in paragraph 9 of the petition, that the 214 ballots "were wrongly rejected by the returning officer and ought properly to have been accepted by him as good and valid votes cast for (the) petitioner thereby allowing (the) petitioner 120 votes over his opponent (the respondent)." In particulars supplied by the petitioner at the request of the respondent it is alleged that the ballots "were tampered with by the placing of marks in pencil ~~resembling~~ the marks for a proper vote elsewhere on the ballot ~~thus making it~~ to appear that the elector had voted for each ~~candidate~~ and the vote thereby becoming a double vote."

The petition does not complain of the conduct of the respondent. In his opening speech ~~for~~ the petitioner Mr. Phipps said that the petitioner makes no allegation against the respondent himself and that the court will not be asked to make any pronouncement on his conduct. The petitioner did not receive similar treatment from the respondent ~~and~~ the returning officer. During the trial they made ~~serious~~ allegations against his character and his conduct before, at and after the elections. I am, however, not required to decide who is the more worthy or suitable of the two, the petitioner and the respondent, to represent the constituency. Both were nominated as candidates and the simple issue for me to decide is whether the will of the majority of the electorate in the constituency ^{who voted} ~~was~~ that the petitioner and not the respondent should be the representative for the constituency. If I am unable ^{so} ~~to~~ decide I am asked nevertheless to declare that the election of the respondent was void.

There were 91 polling stations in the constituency. The allegations made by the petitioner involved 38 of them. The method adopted by the petitioner in proof of his case was to call the

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presiding officer and/or poll clerk and/or the agent for the petitioner from each of the 38 polling stations to say what occurred at the station on election day. In particular they were asked about the condition of the ballot papers, if any, which were rejected at the preliminary count of votes at the stations and whether the ballot papers which it is alleged were tampered with were at the preliminary count in the same condition as they were at the trial. Election documents, where available, were put in evidence in support of the oral testimony.

The respondent, no doubt because of the lack of any allegation against him personally, contented himself with testing the credit of the witnesses called by the petitioner, endeavouring to show bias in most, if not all, of them and incompetence in the election officers in the performance of their duties. As I have already said, he also attacked the conduct and character of the petitioner. The respondent gave evidence himself but this was mainly to refute allegations made by witnesses for the petitioner in relation to occurrences on election night and during the final count of votes.

Apart from the attack which was made by the returning officer against the petitioner during his evidence, his case was to give an account of his actions during and after the elections and the steps which were taken for the security of the Ballot boxes after they were delivered into his custody.

One of the allegations made against the petitioner was that he influenced, and interfered with, the appointment of election officers. There is abundant uncontradicted evidence that he did. Letters written by him to the returning officer recommending the appointment of named persons were put in evidence. In a letter dated January 10, 1972 (part of exhibit 7) the petitioner recommended the appointment of a number of persons to particular polling stations. This in spite of the fact that other persons had already been appointed to those stations. The returning officer replaced some

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of those already appointed with persons recommended by the petitioner. This he did, he said, as a personal favour to the petitioner. This is, of course, not surprising because the returning officer admitted owing his own appointment to the petitioner. He however, complained to the Chief Electoral Officer by letter dated February 23, 1972, that the petitioner tried to upset appointments made by him by objecting to most officers that had been trained and recommending untrained persons. He and the petitioner are school teachers, were in college together and since then for over thirty years, according to his evidence, they had been very close friends. That friendship has now obviously turned sour. The returning officer admitted that while holding office as returning officer he actively assisted the petitioner in his election campaign leading up to the 1972 general elections. In particular he was treasurer of a fund established in the constituency for the promotion of the petitioner's campaign and assisted in the work of a finance committee for the same purpose. He made payments from the fund from time to time on the petitioner's instructions to persons who worked in his campaign. He admitted appointing at least two of these persons as election officers. Complaint was made to the returning officer by the respondent that a number of persons appointed as election officers were active supporters of the petitioner. The returning officer said that after investigation he revoked the appointment of three of them, Messrs. Walter Cockett, Roy Reid and Mrs. Allison, on the ground that they were unfit for the positions they held, presumably because of their involvement in the petitioner's campaign.

Many of the election officers who gave evidence before me were of poor quality and, in my opinion, should never have been appointed. I had the distinct impression that the petitioner was responsible for these persons being appointed. The result of these appointments was that many of the election documents were either not written up at all or were incomplete or improperly prepared.

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The returning officer said that it was his experience that in elections all candidates recommend people to be employed as election officers. I have no doubt that this is so but, for obvious reasons, I am of opinion that this practice should cease. Election officers are public officers under the Constitution and the safeguards written into the Constitution against political influence of the appointment of public officers apply to their appointment as to that of any other public officer.

In spite of the denial by Walter Cockett, I believe the evidence of the returning officer that two or three days before the election he went to the petitioner's house, the result of a report he received, and found there two ballot boxes which had been issued to Mr. Cockett and to Mrs. Gwen Bowen, a presiding officer. He said he ordered them to remove the boxes from petitioner's premises. I am also satisfied that attempts were made by the petitioner, and on his behalf, to obtain blank ballot papers on election day, obviously for them to be put to some improper use. A letter written by the petitioner was produced (exhibit 8) in which he asked that additional ballot papers be supplied to presiding officer Mrs. Gwen Bowen, who already had an adequate supply of ballot papers. A letter was also produced (exhibit E.30^BF), written on election day by Phyllis Griffiths, poll clerk at polling station No.30B, on the instructions of her presiding officer Louise Bagaloo, in which Miss Bagaloo asked to be sent 100 ballot papers as she was short of ballots. I believe that these ballot papers were supplied and that the returning officer went and retrieved them from Miss Bagaloo on election day, as he said, as she was not in need of them at the station. Miss Bagaloo was one of the persons about whom the respondent complained to the returning officer that they had been appointed election officers and he had information that they were active supporters of the petitioner. There is also the evidence given by two of the petitioner's witnesses, Wilburn Myers and Itsman Campbell, that Roy Reid went to polling station No.44 and asked to be given unused ballot papers to take to a polling station at Pratville which, he said, .../was short

was short of ballot papers. The presiding officer, Mr. Myers, refused to give them to him without a note from the returning officer. There can be no doubt that Roy Reid was one of the petitioner's supporters.

Finally, there are the improper suggestions which the returning officer swore that the petitioner made to him at his (the returning officer's) home on the night of March 2, the day the final count was completed and the respondent was declared the successful candidate. The evidence given is that the petitioner, accompanied by Roy Reid, went to the returning officer's home at 7 o'clock at night and made two suggestions to him. The first was that the returning officer should say, falsely, that the respondent took cases of rum to the court house at Cross Keys, that the people got drunk, there was a riot and he (the returning officer) had to escape from the table, during which time the people seized the ballots and marked them up. The returning officer said that he told the petitioner that he could not do as he asked as there was a crowd at the court house and the police were there. The returning officer's evidence continued that the petitioner then said that he (petitioner) was still depending on the returning officer to help him regain his seat so, and this is the second suggestion, the returning officer should go with petitioner to Cross Keys, since the former was the only person with authority to go where the ballot boxes were, and that the returning officer should remove even two of the boxes and that would nullify the election. The returning officer said he did not agree with this suggestion. He told the petitioner that both were stupid suggestions. When the petitioner left, he said, he telephoned the Chief Electoral Officer telling him the suggestions which were made to him as well as to Deputy Superintendent of Police Mr. Arthur Williams, with whom he spoke about the security of the boxes in view of the second suggestion made to him by the petitioner. The Chief Electoral Officer gave evidence for the petitioner but was

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not cross-examined about the telephone conversation the ~~petitioner~~ ^{returning officer} said he had with him. Deputy Superintendent Williams, who was called for the returning officer, however confirmed his evidence that he was called on the night of March 2 and as a result took action in relation to the security of the boxes. The returning officer's evidence was, of course, given after the petitioner's case had been closed so this part of his evidence remains uncontradicted. He was cross-examined at some length in relation to it to suggest that he was not speaking the truth but I believe the returning officer that the petitioner visited him as he said and made the suggestions.

The allegations made against the conduct of the petitioner though affecting his character have not been shown to affect the central issue in this case, namely, whether validly cast ballots for the petitioner were subsequently tampered with. It was not suggested that the petitioner may himself have been responsible for any tampering with the ballots that took place because of the nature of the first suggestion he made to the returning officer on the night of March 2. Such a suggestion could hardly have been made in view of the amount by which the ballots claimed to have been tampered with exceeds the respondent's majority. Nor, on the whole, has the proved incompetence of some of the election officers who gave evidence affected the central issue. Such bias in the petitioner's witnesses as was established went only to credit and will be taken into account when the evidence relating to each polling station is being examined hereafter.

As stated above, the allegation in the particulars supplied by the petitioner is that the ballots were tampered with by a person or persons unknown. There is no obligation on him to identify the person or persons who tampered with them if he can show by circumstantial evidence that they were in fact tampered with. The petitioner, however, introduced evidence which could only have been adduced for the purpose of attempting to identify the person who might

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have tampered with the ballots. There was the unknown young man whom Walter Cockett spoke of in his evidence. Mr. Cockett said that on the petitioner's instructions he attended the final count of votes at Cross Keys on March 1. Roy Reid and Eric Mitchell were with him. They arrived at about 11:30 a.m. and he was offered a seat around the table where the votes were being counted. He sat beside a Mr. Barrett, one of the respondent's supporters, but left after 20 to 30 minutes as he was threatened by Mr. Barrett, who searched him. He left and made a report to Deputy Superintendent Williams and Corporal Henry. He said that while he was at the table he saw rejected ballots being passed to the persons around the table including the returning officer's wife and a young man. This young man had a lead pencil and when the ballots were being passed back to the returning officer and reached the young man he, the witness, could not see them. I am being asked, I suppose, to infer from this that this young man either tampered with the ballots or had the opportunity of doing so. Even if I were satisfied that the young man was there, and I am not, I doubt that anyone would be brazen enough to tamper with the ballots openly in a room in which, according to Mr. Cockett, there were 150 to 200 people. There is no evidence that the young man was present on the second day of the final count so someone else would have had to do the tampering on that day.

The only other person who it was sought to identify as having tampered with the ballots was the returning officer himself. Indeed, it was put directly to him in cross-examination that he had done so. He, of course, denied that suggestion and there is not sufficient evidence to justify such^a finding. There were, however, a number of suspicious circumstances affecting the returning officer which emerged during the trial and these no doubt emboldened the petitioner's attorney to make the damaging suggestion.

There were the events of election night when the returning officer was announcing the results of the preliminary count of votes at the Cross Keys court house. It is common ground that at

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one stage, with two boxes to come, he made an announcement that the petitioner was leading by 92 votes. Since it turned out that by a strange coincidence the two outstanding boxes each had equal votes for each candidate, this would raise a huge question mark over the majority by which the respondent was declared winner at the final count. This is so because the announcements were being made from the preliminary statements of the poll prepared by the presiding officers and unless it could be shown that several of these officers were thoroughly dishonest and deliberately counted ballots for the petitioner which should have been rejected, the respondent could hardly have received the majority he did at the final count. This in fact is one of the arguments put forward on behalf of the petitioner. The respondent and the returning officer, however, gave evidence that subsequent to the announcement about the majority of 92 votes by which the petitioner was leading an error in the recording of the votes as announced was brought to the returning officer's attention which reversed the standing of the candidates. The returning officer said that an agent of the respondent's party, Ruby Reid, pointed out an error in respect of the result from polling station No.12. It was said that it was recorded that 102 votes were counted at that station for the petitioner and 31 for the respondent whereas the figures should have been reversed. The returning officer could not explain how this error came about, though he seems to think it was because the petitioner's name was written first on the statement of poll instead of alphabetically as he had instructed.

There are three matters which cast doubt on the veracity of the evidence relating to this error which it is said was discovered. The first is that neither the respondent nor the returning officer was able to say by what majority the respondent led the petitioner after the error was discovered and the correction made. This figure would have been the final figure of the majority of votes in the preliminary count of votes in view of the equality of votes in the two missing boxes, yet no one has given evidence of it and no record was produced to show what it was. The respondent said the correction

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would put him ahead by about 50 votes if his memory served him right but later he admitted that it was quite possible that the error could ^{have} not/achieved the result of a majority of 50 votes. He said he did not make the computation himself, he was told the result was 50 votes by the returning officer and it may be that the computation that was made was inaccurate. On his part, the returning officer did not know what the majority was and though he said he made a correcting announcement he did not mention any figure in that announcement. This in the face of evidence previously given by him that he and his clerk made announcements from time to time that night which candidate was leading at a particular time as the ballot boxes came in and by how many votes. This is how the announcement of the majority of 92 in favour of the petitioner came to be made when there were two boxes to come. He was unaware of the majority after the correction in spite of the fact that he had assigned three persons, including the election clerk, the duty of recording the result of the preliminary count on tally sheets which, he said, would show what the final figures were when he ceased the count with two boxes to come. He said he heard figures of 50 and of 71 being mentioned as the respondent's majority but he never tried to ascertain the correct figure though it was, apparently, available from the tally sheets. This evidence is to be contrasted with that of the respondent, who said the figure 50 was ^{to him} told/by the returning officer.

The second matter which cast doubt on this aspect of the evidence is the correcting announcement which it is said was made. It is clear that the announcements made from time to time of the state of the count was for all the persons in the court room, at least, to hear. Carlton Lewis and George Higgins, who gave evidence for the petitioner, said they were present and that up to the time when they left the court room at about 1 o'clock during election night the last announcement made was that the petitioner was leading by 92 votes with two boxes to come. The returning officer said he made that announcement but that when the error was discovered and corrected he
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announced that the respondent was in the lead, without stating the majority. He, however, said in cross-examination that the last official announcement made on election night was that the petitioner was leading by 92 votes. Later he said that the correcting announcement was, to him, an official announcement and that in making it he stood up in the court room and made it in the same manner as he had made the other official announcements. One would naturally expect the correcting announcement to be made for all to hear if it was intended to correct the previous official announcement made in that way. The respondent in his evidence, however, does not support the returning officer's account of how the correcting announcement was made. He said he heard a statement made by the returning officer or his clerk after the complaint of the error was made "but it was not a formal statement - it was simply stated that the position was 'so and so' without getting up from the table or anything". He said that "having given the position after 89 boxes, after the correction was made there was no formal announcement. He (the returning officer) was just speaking to us around the table saying the position was 'so and so' ". The respondent said further that he was not aware of any public announcement that an error had been discovered. The court room was packed at the time, he said, and others who were not around the table might have heard. In the light of this evidence one can readily believe Messrs Lewis and Higgins that they heard no announcement after the one giving the petitioner the 92 majority and anyone could be forgiven for asking why, if an error was in fact discovered, was not a public announcement made for all in the court room, and consequently, all Jamaica, to hear and know.

But the matter does not end there. There is the behaviour of the returning officer in relation to the missing boxes when they turned up at the police station at Cross Keys. He said that he closed down the preliminary count shortly after midnight as the two outstanding boxes had not yet arrived. This was said in examination-in-chief.

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When he was cross-examined by Dr. Barnett, for the respondent, he said that he was upstairs(in the court house) when the two boxes arrived; he said that people (upstairs) rushed downstairs on their arrival and he thinks he also rushed downstairs. He said that when he went downstairs he saw by what means the missing boxes arrived. One was brought by the presiding officer (Owen Williamson) of the polling station at which that box was used. To Mr. Phipps, for the petitioner, he said that when he left upstairs on election night anybody could have won. He admitted being a little curious to know how the outstanding boxes would affect the situation, but he said he did not look to see what was the vote on the two boxes as he was suspicious of them and handed them to the police to be kept until next morning. In the very next answer, however, he said he concluded that the boxes were in order before they were handed to the police. Next morning he received them in the same condition as he had left them with the police and placed them with the other boxes upstairs for the final count. When he received them in the morning he saw that they were from polling stations Nos. 54A and 54C and contained 16 and 12 votes respectively for each candidate. He said that before he left the court house premises for home on election night he could have had all the available information if he wanted to enable him to make an announcement of the final results of the preliminary count but did not use it. The figures of the preliminary count of votes were taken from the preliminary statements of poll which were required to be pasted or affixed to the outside of the ballot boxes. In the light of the custom for the results of the preliminary count of votes to be given for each constituency as soon as all the ballot boxes are in, it is more than passing strange that this returning officer had all the available information but chose to keep the hundreds of persons who he said were present and the rest of the Country in suspense. The suggestion is that he had some sinister reason for not wishing to give the result at that stage. The final result of the preliminary count was, in fact, never given.

The third, and perhaps the most compelling, matter which cast

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doubt on the veracity of the evidence that an error was discovered in the counting of the votes on election night which gave the respondent the lead is this: As I have said, the votes were being counted then from the statements of poll prepared by the presiding officers. Both the respondent and the returning officer admitted that a large quantity of ballots with double votes, which were eventually rejected, came from the envelopes with the petitioner's ballots. The returning officer said they numbered over 200. This means that they were originally counted for the petitioner by the presiding officers, whether they then had double votes or not. At the final count the respondent's majority was 115. It is the double votes which came from the petitioner's envelopes and were rejected which enabled the respondent to obtain this majority. In his evidence the returning officer said: "At final count I took a lot of double votes from Williams' envelopes and I rejected them..... As a result of this Williams' votes went down from position at the preliminary count. I found over 200 double votes. Those taken from Williams' envelopes were well over 200." If the petitioner's votes at the preliminary count were reduced by over 200 the respondent could not in the circumstances have had a majority at the preliminary count on election night.

I have already said that no record was produced, or apparently exists, from which accurate figures for the preliminary count as it was compiled on the night of election day can be ascertained. None was produced either for the final count. Although the returning officer gave evidence that at the end of the final count the respondent led by 115 votes, no record was produced to substantiate it. He said that a return showing the result of his final count station by station was prepared and sent to the office of the Chief Electoral Officer. This return was the recapitulation sheet which he was required by law to prepare. He said he prepared two such sheets on the day after the final count was concluded. None was produced at the trial. The Chief Electoral Officer said that he received no document to show the result of the returning officer's final count as distinct from the magisterial recount. The recapitulation sheet which the returning officer said

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he prepared showing the result of the recount by the Resident Magistrate was produced in evidence (exhibit 3) from the custody of the Chief Electoral Officer. During the trial, where any information was required about the result of the final count for any polling station this had to be ascertained by deduction from the recapitulation sheet (exhibit 3) or from the figures on the envelopes containing the ballots. I do not believe that any recapitulation sheet was prepared in respect of the final count. I formed the clear impression that the sheet (exhibit 3) in respect of the magisterial recount was the only one prepared. The absence of records showing the results of the preliminary and final counts was suggested as another suspicious circumstance.

The final suspicious circumstance affecting the returning officer was a visit which he paid on March 6 to the Porus court house where the ballot boxes were then stored. He had had the boxes removed from Cross Keys to Porus on March 5 for better protection and security, he said, in view of the suggestions the petitioner had made to him and the fact that he was told that the additional security provided by the police at Cross Keys was being withdrawn. He did not however discuss the question of why he was removing the boxes with the police. The ballot boxes were stored in the judge's chambers upstairs the Porus court house and he kept the keys. The situation at the Porus court house was the same as at Cross Keys with the court room and chambers upstairs and the police station downstairs. Whereas at Cross Keys the keys to the room in which the boxes were stored upstairs were given by the returning officer to the sub-officer in charge of the police station after the final count, when they were removed to Porus he kept the keys. He said he cannot give a definite explanation for this. The returning officer's wife, is, he said, the postmaster in charge of the Porus post office, which is situated on premises adjoining the court house. He occupied a room on the post office premises as his official constituency office. The returning officer's wife, though, as her husband said, she had no official election duties, appears to have had a special interest in the outcome of the election. She was present
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during the preliminary count at the Cross Keys court house on election night. Carlton Lewis' evidence that she was there seated around the table keeping a tally of the votes was not challenged. The respondent said she was present during the final count, but he is not positive that she was keepingscore of the final count. Walter Cockett, however, said she was present on the first day of the final count and she was among the persons around the table in the court room to whom ballots were passed. There was evidence given that she was present in the court room from time to time during this trial.

Police corporal Flavius Alphonso Henry who was stationed at the Porus police station in March, 1972, was called as a witness for the petitioner. He said that on the night of March 5 he was the sub-officer in charge of guard duties at the police station and was responsible for providing protection for the ballot boxes stored upstairs in the Judge's chambers. He went off duty at 6 o'clock on the morning of March 6. He said that at about 6:30 a.m. he heard footsteps upstairs in the hall of the court. He went upstairs to the hall and saw the returning officer and his wife inside the room where the ballot boxes were stored. A door to the room which was locked the night before was now open and it was through this door that he saw them. Both were standing at a table in the room and there was a box on the table. The witness was not able to say what kind of box and what they were doing with it. He did not speak to them nor they to him. It does not appear from the evidence he gave that they were aware of his presence. He remained upstairs for about three minutes and then went downstairs to the police station leaving them upstairs and made "the appropriate entry" in the police station diary. This diary was present in court at the time when this witness gave his evidence and he refreshed his memory from it. The entry, he said, was made in the diary at 6:32 a.m. It was suggested to corporal Henry in cross-examination, by Mr. Davis for the returning officer, that he did not see the returning officer and his wife in the judge's chambers as he said. The witness insisted that he saw them. In the light of this suggestion I assumed that the corporal's allegations were being completely denied, but the returning officer admitted when he gave evidence that

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he had gone to the room on the occasion but that his wife was not with him. He had driven down with her from their home in Mandeville, had driven to the post office adjoining, left his wife and his car there and went alone upstairs the court house into the room with the boxes at about 6:30 a.m. He went, he said, "to check on them"; he counted them, found them all there and then left. He said he did not see corporal Henry that morning. He called district constable John Kelly, who was on station guard duty at the police station at the time, to support his evidence that his wife was not with him. The district constable said he saw the returning officer and his wife drive to the post office premises. He was in the guard room at about 6:30 a.m. when he heard footsteps upstairs the court room. He went upstairs and saw the returning officer, who was alone, pushing open the door to the judge's chambers and entering. He saw him start to move around the "election" boxes and pointing at them. The returning officer told him upstairs that he was going out and he was only looking to see if the boxes were all right. The witness said that the returning officer remained upstairs for three or four minutes from the time he (witness) went up and saw him until he (the returning officer) went back down. The district constable said that when the returning officer arrived that morning and when he was upstairs corporal Henry was not on the station compound. He had seen the corporal leave the compound earlier and he returned about ten minutes after the returning officer had left. He told corporal Henry, he said, about the returning officer's visit but he did not see the corporal make an entry in the diary.

There were discrepancies between the evidence given by the returning officer and that by the district constable. The most serious is in the evidence of the returning officer that he saw the district constable outside downstairs before he went upstairs, told him that he was going upstairs to check the boxes and the district constable followed him upstairs. The district constable said he did not see the returning officer when the latter was going upstairs and was not spoken to as the returning officer said. He was in the guard room when he heard

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footsteps on the staircase and upstairs in the court room and it was not until he went upstairs that he knew the returning officer was up there. On balance I preferred the evidence of corporal Henry to that of the returning officer and the district constable. I believed his evidence that the wife of the returning officer was upstairs with him in the room with the ballot boxes. No reason was suggested why the corporal should fabricate this evidence so soon after the visit which the returning officer admittedly paid. As I have already said, the station diary in which he recorded the fact of the visit was in court and was examined by the attorneys for the respondent and the returning officer. There was no suggestion put to him that the entry was made at any time other than that stated by the corporal, that is, at 6:32 a.m., two minutes after the time he said that he saw the couple upstairs. If he did not see them himself he could only have made the entry from information given ~~him~~ by the district constable. If that was the source of his information why should he have included the wife?

It seemed a bit strange that the returning officer should want to check the boxes so soon. They had been removed to Porus only the previous day for better police protection. He had counted them then and found 91 boxes. He had ^{not} gone to Cross Keys to check on them between the end of the final count, when he said the petitioner made the improper suggestions to him, and the time of their removal to Porus. He said when he went on the morning of March 6 he had only gone to count the boxes to see that they were all there, not to see if they were interfered with as he had no such suspicion. His explanation for going to count them then was that he was still responsible for them and he was going off to Hanover for two or three days to see his sick mother. Not a convincing explanation, especially when one remembers his reason for removing the boxes from Cross Keys. On the face of it, there would have been nothing really wrong or suspicious in the returning officer going to check on the boxes, if that was his sole purpose, even if this was superfluous. Nor would the mere presence of his wife make any difference. After all she was his wife and worked next door. The final count was already concluded and, as will be seen later, the ballots with the double
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votes had already appeared. Corporal Henry had not said he saw them with an open ballot box on the table - his evidence did not go that far. In these circumstances, if his visit was a purely innocent one, why deny that his wife was there? This is what makes the incident suspicious.

There is no evidence to support a finding that any ballots cast for the petitioner were tampered with while the final count of the ballots was actually taking place, as the petitioner tried to prove. Apart from the respondent and the returning officer, there was evidence from Lennox Martin, present on the first day of the final count, and the Rev. James Murray, present on the second day, that there were ballots with double votes on them when the envelopes were opened by the returning officer during the count. It is admitted by all these witnesses that ballots from the envelopes were passed from hand to hand of the persons seated at the table where the votes were being counted but I am bound to accept their evidence that only those ballots to which objection were taken or which were of doubtful validity were passed around as there is no evidence to the contrary. As I said before, it would take a very bold and brazen person to tamper with the ballots so openly in the wholesale manner suggested. If the ballots were tampered with as alleged this must have taken place some time between the preliminary count by the presiding officers and the opening of the respective envelopes at the final count.

I also do not accept the picture Mr. Cockett sought to paint of the scene in the room where the final count was being conducted while he was there on the first day. He described it as noisy with people in the crowd drinking from rum bottles. He also gave the impression that the supporters of the respondent were in charge of the proceedings and that there was hostility towards himself and the two others who went to represent the petitioner's interests, which caused them to leave. While I have no doubt that the respondent's supporters dominated the scene (they were obviously superior in numbers) and that some members of the crowd may have been drinking rum from bottles

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(typical of many Jamaicans on a festive occasion), I prefer the evidence of deputy superintendent Williams that the behaviour of the people was orderly, with some people happy and some sad, on both days and that of the Rev. Mr. Murray that while he was there on the second day "the atmosphere was relatively calm until the end there was jubilation and excitement at the announcement."

In order to claim the ballots allegedly tampered with as valid votes cast for him, the petitioner had to prove beyond a reasonable doubt that they were originally so cast and counted for him. This he sought to do mainly by inference. Witnesses present at the preliminary count at the polling stations were called to give evidence of the total ballots rejected. Election documents were put in where available to support the oral evidence. These figures were compared with the totals arrived at by physical count of the ballots from the several envelopes produced from the custody of the Chief Electoral Officer. These latter figures represented the votes and rejected ballots after the magisterial recount. Comparison of the respective figures generally showed reductions in the total votes awarded the petitioner at the preliminary count at the polling stations with corresponding increases in the number of rejected ballots. This apart from any inference to be drawn from the marks on the ballots themselves. That the ballots with double or multiple votes came from among the ballots counted for the petitioner at the polling stations is not really in dispute. The respondent admits that at the final count the majority of them were from the petitioner's envelopes and the returning officer, as already stated, admitted that he rejected over 200 of them from ballots in petitioner's envelopes. He said he regarded the finding of most of these ballots in the envelopes with the petitioner's votes as a most serious irregularity, which he reported to the Chief Electoral Officer.

Proof of the allegation that the ballots were tampered with was provided in the direct evidence of witnesses that there were no ballots with marks for both candidates which were not rejected at the polling stations. It was submitted that evidence of tampering was also

..../provided

provided by inferences to be drawn from the marks on the ballots themselves and from the fact that not one ballot with a mark of doubtful validity was found among votes counted for the respondent.

As I have said, the returning officer sought to rebut the allegation of tampering by proof that adequate provisions were made for the security of the ballot boxes after they were received by him and that no unauthorised person gained access to them between that time and the opening of the boxes at the final count. On his part the respondent sought to show that the incidence of illiteracy in the constituency may have been partly responsible for the admittedly high percentage of rejected ballots, which included the questioned ballots. It was also suggested that instructions given to the electorate by the petitioner may have accounted for the double votes.

The combined effect of the cases and contentions put forward by the respondent and the returning officer is that the questioned ballots were, at the preliminary count, in the condition in which they appeared at the trial but were wrongly counted for the petitioner by the election officers either because they were biased, incompetent or plainly dishonest. It was not contended that the questioned ballots were originally good votes for the respondent but were tampered with by those election officers in order to enable them to be counted as good votes for the petitioner. Nor could it be suggested that though they were good votes for the petitioner the election officers tampered with them and nevertheless counted them for him. So the contention can only be that the electors marked the ballot papers as they appeared at the trial but they were wrongly counted for the petitioner. I will now examine the implications of this contention.

The 38 polling stations from which the questioned ballots came were said by the returning officer to be scattered throughout the constituency. They were not confined to any one area. All the election officers from the polling stations who gave evidence said that had they seen ballots with double votes like those shown them

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at the trial they would have rejected them. Even if it could be said that some of the presiding officers were so ignorant and dishonest that they believed that some purpose favourable to the petitioner would be served by deliberately counting invalid votes for him, there were several who were, clearly, neither ignorant nor dishonest who would have realised the futility of such a course. Equally, if there were some who, again because of ignorance or incompetence, honestly believed that the crosses in the space for the respondent were intended to "cross out" the name of the respondent and so did not invalidate the vote for the petitioner, there were as many who were intelligent enough to realise that this could not be so. But what gives the quietus to the contention that the presiding officers saw the double votes and wrongly counted them for the petitioner is the fact that there was an agent for the respondent at each of the polling stations from which the questioned ballots came and not one was called to prove that the ballots were in the same condition at the preliminary count at the polling stations^{as} at the trial. If the condition of the ballots escaped the notice of some it could not have escaped all. Unless they were all as ignorant as the presiding officers would have had to be or secretly favoured the petitioner, surely they would have objected to those ballots being counted for the petitioner. And if the presiding officers persisted in so counting them would there not have been an outcry in view of the large numbers and wide area involved and would this not have reached the respondent's ears? Yet there was no evidence of any such objection by any of the respondent's agents and the returning officer said he received no complaint from anyone that votes were awarded to any candidate which should have been rejected. Far from there being any such evidence from the respondent's agents, there was indirect evidence from some of them which confirmed the evidence given by some of the witnesses at the trial on the state of the count at the polling stations. At the elections a form called a "certificate of the preliminary count of the poll" was introduced for the first time. It was not a statutory form. It did what its name implies. The election officers were required to fill in the amount of votes found for each candidate at the preliminary count at the polling station as well as the

...../number

number of ballots rejected. The form was in quadruplicate and was required to be signed by the presiding officer, the poll clerk and the agents for the candidates. Each of those persons was required to keep a copy of the completed form. Several of these forms with signatures said to be those of the respondent's agents were produced at the trial. None of these agents came forward to deny signing the certificates.

But assuming that the presiding officers counted the questioned ballots for the petitioner and that they did not tamper with them themselves, the obvious inference would be that it was the electors who placed the questioned marks on the ballot papers. This is what I am really being asked to believe and to find. How could this come about and what is involved in the contention?

The respondent, who is a sociologist, said that the constituency had a lot of illiterate people in it. Southern Manchester is a remote mountain area, he said, and illiteracy tends to be high in such areas. He said the incidence of illiteracy is probably higher in that constituency than in most others. In view of this last statement it might be of interest to refer to the report of the Chief Electoral Officer on the general elections of 1972 (exhibit 5). The average percentage of rejected ballots throughout the Country was .86. In all but five constituencies the rejected ballots were less than 1%. In two constituencies they were less than 2% but more than 1%, viz: Kingston Central and St. Mary Northern. In St. Thomas Central it was 2.70%, St. Ann South Eastern 4.20% and Manchester Southern 5.19%. If the petitioner's claim that 214 ballots were tampered with is right then the percentage of rejected ballots in that constituency would be reduced to approximately 2.58.

As an example of what illiterate voters will do, the respondent gave evidence that during the election campaign he gave instructions to the voters how they should mark the ballot papers. His name was the first on the ballot papers and as, he said, some of the voters could not read he gave them instructions to vote for the name at the top. He

.../said

said that at the final count there were a number of ballots (some were seen at the trial) on which the cross was placed against the box at the top of the ballot paper where the presiding officer's initials appeared. It is contended that these ballots were so marked because of the respondent's instructions. It is said that, in the same way, instructions given by the petitioner may have caused genuine double votes. There was evidence given by Lennox Martin and not denied, as well as by one of the petitioner's own witnesses, that prior to election day the petitioner told his supporters to "plus out Manley and vote for the bell." Mr. Martin said he heard the petitioner say this on February 25 at a meeting at Plowden. The petitioner's symbol was the bell while that of the respondent was the head. It was said that these instructions were, undeniably, fraught with danger and liable to lead to confusion. The contention is that the questioned marks, or some of them, in the respondent's section of the ballot papers may have been the result of illiterate electors taking the petitioner's instructions literally and "plusing" or "crossing" out the respondent's name. In this connection, it was said that on an inspection of the ballots exhibited in court more than 95% of the cases of double votes had the cross in the respondent's space either over the symbol or to the left of the symbol and that this was significant because the normal instructions given to the voters indicate that the cross should be placed to the right of the symbol.

It was submitted for the respondent that it followed from what has been said in the immediately preceding paragraph that it is not an inescapable inference that the double votes are the result of illegal tampering with the ballot papers; that in a considerable number of cases double votes might have occurred quite genuinely in the constituency. In support of this it was pointed out that there is evidence from electoral officers at polling stations Nos. 30A, 34, 51B and 53, as well as at Nos. 31B (sic) and 42C, that there were double votes at their stations during the preliminary count of votes. These will be dealt with later. It was submitted, further, that on the basis of the

....credibility

credibility of the witnesses, the unreliability of the records and all the evidence in relation to double voting in the constituency, the petitioner has not discharged the burden of proving that he and not the respondent had the lawful majority.

As I have said, from the above contentions and submissions I am being asked to believe and to find that the electors were themselves responsible for placing all the marks on the questioned ballots, which caused them to be rejected as double votes. This would mean that the marks on each ballot paper are genuine marks, made by the same hand at the same time. No impartial person looking at the questioned ballots could believe that the questioned marks on all, or the majority, of them are genuine. I have scrutinized them and there is not the slightest doubt in my mind that ballots validly cast for the petitioner were illegally tampered with, with the purpose of causing them to be rejected as double votes, and I so find.

One examining a questioned ballot would naturally compare the mark claimed to be genuine with the mark or marks claimed to be false. In many cases it required a mere glance to see which ^{was false and which} was genuine. These were usually cases in which the cross made against the petitioner's symbol was made by an obviously unskilled or unsteady hand whereas the cross or other mark in the respondent's section of the ballot paper was made with fluent and clear strokes. I hold that the questioned ballots from one polling station can legitimately be compared among themselves and with questioned ballots from other polling stations in order to determine whether or not they were tampered with. When this was done the result was revealing. Ballots from the same polling station had the crosses against the symbol of the petitioner obviously differing from ballot to ballot, indicating that they were made by different hands. The marks in the respondent's section were either identical in character or so strikingly similar as to leave no room for doubt that they were made by the same hand. When ballots from some polling stations were compared with those from others there was no doubt that the same hand made the questioned crosses or marks from station to station.

.../(Compare

(Compare e.g. polling station 24 with 38; 30B with 42B and 72; 23 with 35 and 30B.). It is, perhaps, unnecessary to say that the similarity of the questioned marks on ballots from one polling station and from station to station is cogent evidence that they are false. Dr. Barnett was constrained to admit in his closing address that "there are some polling stations in respect of which the witnesses and the records were such that one may well be inclined to the view that there were votes which were good votes and which later appeared as double votes or in some altered form." In fact, the evidence of tampering is overwhelming. After a time the questioned marks became so familiar in appearance as to prove themselves false. In some cases the oral evidence was hardly necessary and was almost formal, for the purpose only of authenticating the ballots as having been among those counted by the presiding officers. The person or persons responsible for tampering with the ballots must have been naïve indeed to think that such an obvious fraud could go undetected.

As an argument against a finding that there was tampering and in favour of the contention that the questioned marks were made by the electors, it was said that there is no uniformity of style from polling station to polling station insofar as the marks in the respondent's spaces on the ballots are concerned. It was said, further, that there is not even uniformity as to the number of such marks, there being many cases of three or more crosses on the ballot papers. I have already said that there were many instances, in my opinion, of uniformity of style in the questioned marks from station to station. As for ballots with three or more crosses, the distinct impression was created that these were marks made at random and in a hurry and more consistent, in my view, with false marks than with electors seeking to "plus out" the respondent. In fact these multiple marks disclose a factor which is clearly against the contention that the electors made the questioned marks to "plus out Manley." There were several ballots with three crosses in which one questioned cross was in the respondent's section and the other questioned cross in the petitioner's, the third cross

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being the one regarded as being validly made by the elector against the petitioner's symbol to record his vote for the petitioner. An elector who was intent on "plusing out" the respondent would hardly mark one of the "plusing out" crosses in the petitioner's section. This was one of the indications of random marks made with a view to invalidating votes that had been validly cast. Examples of ballots with questioned crosses in the petitioner's section as well as in the respondent's may be seen among the questioned ballots from polling stations Nos. 23, 29B, 29C, 38 and 41. In any event, the lack of uniformity of style of the marks from station to station and in the number of such marks can, in the circumstances, be regarded more as an indication that more than one person was involved in the tampering, as is more than likely, than that there was no tampering at all.

To counter the allegation that there was tampering with the ballots claimed by the petitioner, instances of ballots from other polling stations, which were rejected because of double votes and yet not claimed by the petitioner, were introduced into evidence on behalf of the respondent. This was done, presumably, to found an argument that these others must be regarded as genuine double votes otherwise the petitioner would have claimed them; and if they are genuine so are those claimed by the petitioner. This argument was, however, not eventually put forward because evidence was called on behalf of the petitioner in respect of some of these other polling stations similar to the evidence called for those he claimed to show that those he did not claim were also tampered with and could have been claimed by him. The ballots with double votes from these other polling stations which were examined bore similar characteristics to those claimed by the petitioner and he could well have claimed them also as valid votes for him which had been tampered with.

The couriers conveying the ballot boxes from the polling stations to the head station at Cross Keys gave evidence of having received the boxes properly locked and sealed and delivering them in the

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same condition to the returning officer. The returning officer said, in respect of all the 91 boxes, that when he received them he saw nothing to indicate that they had been tampered with after they had left the presiding officers. In his report of proceedings to the Chief Electoral Officer (exhibit 2), however, he said in his special report at paragraph 14: "All ballot boxes were returned, although a number of them were not properly sealed, and some keys were not returned in the proper envelope." Evidence was also given by the policemen who guarded the boxes around the clock from election night until completion of the final count, while they were stored at the Cross Keys court house. Each said he saw no one interfere with the boxes while he was on duty. It is on this evidence that the returning officer relies for the submission that every precaution was taken for security of the boxes. It is also from this evidence that I am asked to infer that the questioned marks must have been made by the electors, since no one interfered with the boxes during the period from the preliminary count at the polling stations until they were opened at the final count. The evidence of tampering is, however, so cogent, so obvious, as I have endeavoured to show, that it completely outweighs the evidence of the couriers and the guards. Somehow, at some time between the ballot boxes leaving the polling stations and the end of the final count, some person or persons had the opportunity and tampered with ballots which had been validly cast for the petitioner to frustrate the will of the electorate.

I must now examine the ballots claimed by the petitioner and the evidence relating to them. I shall deal with the ballots from each polling station in turn. This is necessary because the primary claim by the petitioner is that when the votes he has claimed are taken into account the result will show that he obtained a majority of the votes cast at the election and is now entitled to be declared as the candidate who was duly elected. Before he can be awarded any of the votes he claims he has to prove beyond reasonable doubt that that vote was validly cast for him and that the ballot was subsequently tampered

..../with

with causing him to be denied that vote at the final count. So each ballot must be examined and a decision made whether the burden of proof has been discharged in respect of it. One of the matters which it is necessary for the petitioner to prove in each case is that the ballot-paper on which the vote he claims is recorded was among those cast and counted for him at the polling station. In other words, each ballot-paper on which a vote he claims is recorded must be identified to have been among the ballot-papers found in the ballot-box at the close of the poll. This is specially so as evidence of tampering is evidence that there was unauthorised interference with the ballots, with the possibility of the introduction of false ballot-papers.

Polling Station No. 11 - Plowden.

The petitioner claimed 5 votes from this station in his petition. In the respective envelopes produced at the trial there were 49 votes for respondent, 53 for petitioner and 5 rejected ballots. The presiding officer, Noesiah Holness, a dressmaker, and the poll clerk, Norman Reid, a farmer, gave evidence. They said that at the preliminary count made by the former there were 49 votes for the ~~petitioner~~^{respondent}, 57 for the ~~respondent~~^{petitioner} and one rejected ballot. From the 5 rejected ballots produced at the trial they identified one (on which there was no cross but the name "George" written on the face of the ballot-paper) as the ballot rejected by the presiding officer. Each of the remaining four had a cross in the section of each candidate. Both witnesses said that at the preliminary count there was no ballot marked with double crosses and the presiding officer said she would have rejected any such ballot had she seen one. The poll book, with the statement of poll properly completed, was produced and supported the oral evidence on the number of votes found for each candidate and the fact that there was one rejected ballot. A copy of the certificate of the preliminary count of the poll bearing signatures identified as being those of the two election officers and the agent for each candidate was also produced and also agreed with the oral evidence.

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The presiding officer identified her initials on 4 of the 5 rejected ballots. The identity of 3 of them was challenged because on these 3 the initials were in script whereas on all the ballots from the envelopes of the candidates the letter "N" of the initials were in cursive writing and the letter "H" in script, except for one ballot from the respondent's envelope, which also had both letters of the initials in script. Though it seemed a bit peculiar that out of 105 ballots initialled only 4 were initialled in this way, I had no reason to doubt Miss Holness' evidence that the initials were hers. She admitted during cross-examination that she had the figures for the preliminary count written in the palm of her left hand while she gave evidence but this did not affect her general credibility. One of the questioned ballots and one from the respondent's envelope were not initialled by the presiding officer. The endorsement on this questioned ballot by the returning officer was that it was rejected by him because of the double vote as well as for the absence of initials. The latter was not a valid ground for rejecting it (see s. 55(3) of the Representation of the People Law, Cap. 342).

Looking at the 4 questioned ballots themselves, the inference is clear that they were tampered with. The cross in the respondent's section on each when compared with each other appear identical in character, indicating they were made by the same hand. In each case the cross in the respondent's section is different in character from that in the petitioner's section, indicating they were not made by the same hand. In one case the cross in the petitioner's section did not have two clearly defined lines making the cross; it was with obvious difficulty that the cross was made. The cross in the respondent's section, however, was clearly and crisply marked. I believe the presiding officer that the 3 questioned ballots with her initials were among those she counted. I am satisfied that the ballot without her initials was also among them. I believe her evidence and that of the poll clerk that the questioned ballots did not have double votes when counted. On their evidence and on the clear inference to be drawn from the marks on the

....ballots

ballots I find that the ballots were tampered with. The numbers stated above indicate clearly that the questioned ballots were from among those originally counted for the petitioner. The returning officer confirmed this fact in his evidence. I find that the 4 questioned ballots were validly cast for the petitioner and I award them to him.

The questioned ballots from this station were the source of further suggested suspicious conduct on the part of the returning officer. This was, perhaps, directly responsible for the suggestion that the tampering with the ballots took place at the final count after the envelopes had been opened. The returning officer endorsed each of the 4 questioned ballot papers with his reasons for rejecting them. On that without initials he wrote originally that it was rejected on the ground "that initials should not be written in script writing." On another he wrote "Objected to by P.N.P. candidate re initials. Objection not accepted by J.L.P. agent. Rejected by R.O." This was clearly rejected because of the initials being in script writing. The returning officer admitted altering the endorsement on the first by changing the ground of rejection to the grounds that "there are no initials and marked for two." The other three were altered by adding the words "marked for two" on each after "Rejected by R.O." There are two matters which justifiably aroused suspicion in this connection. The first was that the double votes were clearly to be seen on all 4 ballot papers yet this was not an original ground of rejection. The explanation given by the returning officer was that he rejected all 4 and revised his decision and it was then he made the alterations. He said that at first he rejected all 4 (should be 3) on the sole ground that they had script writing and it was after he changed his decision to reject them on that ground that he rejected them on the ground that they were "marked for two." In re-examination he explained that he counted the respondent's votes first and at that stage there was controversy over the script initials. He said he found such votes in respondent's envelope; he looked through all in respondent's envelope first to see how the initials were, whether

.... /script

script or cursive; he then did the same for petitioner's ballots; in looking through them he was looking only at the initials. As I have indicated, there was only one ballot besides the questioned ballots with script writing and it was in the respondent's envelope (and marked "Q" in evidence). That there was debate at the final count about the presiding officer's initials when the ballots from this polling station were being counted there is no doubt, but in spite of the explanation it is difficult to understand how the ballots were rejected for the initials without the double votes being seen. If the controversy arose during the counting of the respondent's votes, as was said, why was the ballot marked "Q" not rejected? There is no endorsement on it, yet it should have been the first one discovered with the initials in script writing and rejected. The other matter which created suspicion was the fact that the alterations made on the 4 ballot papers were with ink of a different colour from the ink with which the original endorsements were made. Yet the returning officer insisted that the alterations were done at the same time as the original endorsements. However, when this evidence is put with the rest of the evidence already referred to which was adduced to prove that the tampering was done at the final count, there is still not sufficient evidence to justify a finding to that effect.

Polling Station No. 13 - Alligator Pond

3 votes are claimed

Evidence was given by the presiding officer - Enchrist Williams, dressmaker - and the poll clerk - Betsy Martin, higgler - that 103 votes were counted at this station for the respondent, 64 for the petitioner, with 4 rejected ballots. The ballots produced at the trial show that the figures were the same after the magisterial recount. Only 2 of the 4 rejected ballots produced have double votes. A third has a mark, not a cross, in the respondent's section in addition to the cross against the petitioner's symbol. Apparently the 2 without double votes were awarded to the respondent at the final count from among the rejects at the presiding officer's count but ^{were} subsequently rejected at the recount.

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The returning officer in his evidence, under corss-examination, said that the respondent's votes went up from 103 to 105 at the final count.

The presiding officer identifies one out of the 4 rejects as among those she rejected. She could not remember why the other 3 were rejected by her but she said that none of those she rejected had double votes.

The poll clerk confirmed the impression which I formed, from the evidence of the presiding officer and from scrutiny of the ballot papers, that the 4 rejected ballots produced at the trial were the 4 rejected by the presiding officer. The poll clerk identified 2 of them (those without the double crosses) as having been rejected by the presiding officer in their present condition. She said that the other 2 were the other 2 rejected by the presiding officer though without the questioned marks now on them.

The questioned marks on the 2 ballots with double votes are: on one there is a cross in the section for the respondent in addition to the cross against the petitioner's symbol which it is contended is genuine; on the other there are two questioned crosses, one in the respondent's section and one in the petitioner's - these are in addition to the suggested valid cross against the petitioner's symbol. The contention during the evidence was that 3 missing rejected ballots from the presiding officer's count (based on the presiding officer's evidence, which was the first called) may have been counted at the final count for one or other of the candidates and that the 3 in evidence, which were originally valid votes for the petitioner, were illegally tampered with. Unless the 3 original ballots rejected were awarded to the petitioner at the final count, the figures from both counts would not be equal as they are now. This is assuming that the contention is sound.

As I have already indicated, I do not think it is. As for the questioned crosses on the two ballot papers, they are typical. While being consistent with themselves in character, they are outstandingly different from the crosses claimed to be validly made for the petitioner. The probabilities are that the 4 ballots produced were those in fact rejected by the presiding officer. Though I am satisfied that the questioned crosses were illegally placed on the 2 ballots, the petitioner cannot benefit from his claim at this polling station as he has not shown that he has been

....deprived

deprived, by the tampering, of votes validly counted for him by the presiding officer. This was conceded by Mr. Phipps in his closing speech.

Polling Station No. 14 - Port Mahone

4 votes claimed.

The poll clerk, Annabelle Clarke, a student, was the only witness. She said that at her station the presiding officer, Nicanor Forbes, counted 57 votes for the respondent and 58 for the petitioner. There was no rejected ballot. At the trial 57 votes were found for the respondent, 53 for the petitioner and 4 rejected ballots, rejected because of double votes on each. The 4 ballots claimed were not identified by the poll clerk as ballots counted for the petitioner at the preliminary count at the polling station, though the returning officer said that they came from the petitioner's envelope at the final count. In fact, in respect of two of the rejected ballots, Miss Clarke said that she cannot say whether the signatures on the face of the ballot papers were those of the presiding officer. Further, on the back of one of these two ballot papers "N. Forbes" and the number "52" are written; on the back of the other the number "46" is written. Miss Clarke said that nothing was written on the backs of the ballot papers when they were being counted and that if, in the case of the first of these two, this ballot came from the ballot box at her station the writing on the back "must have got on it after the votes were counted."

Apart from the lack of authenticity, there are serious discrepancies in the number of ballots cast at this polling station. It will be seen that the total votes counted at the station, according to the poll clerk's evidence, was 115 while the total ballots found in the envelopes at the trial was 114. The poll book, which is in evidence, certifies 113 votes polled and lists 113 names. The certificate of the preliminary count of the poll which was tendered in evidence records 58 votes for each candidate - a total of 116. Besides, there is an obvious erasure at the place on the statement of the poll in the poll book where the number of rejected ballots should be written. The word "none" is written

....over

over the erasure. Though the erasure is obvious and is similar to another erasure, also obvious, on the statement of poll, the poll clerk, while admitting there is the latter erasure, said she did not see the former. She said at first that "none" was written by the presiding officer and then, in answer to me, said she had written it.

On the ballots themselves, there are crosses on each for the petitioner which appear to be genuine. In 3 of the ballots the questioned crosses were inconsistent with the crosses regarded as valid; in one especially the point of the pencil marking the questioned cross was much broader than that making the cross for the petitioner which is regarded as valid. In the case of the 4th ballot, both the questioned and the valid crosses could well have been made by the same hand.

In all the above circumstances it cannot be said beyond reasonable doubt that there were no rejected ballots at the preliminary count. If there were it cannot be said how many. For this reason and the lack in the identity of the rejected ballot papers I hold that the petitioner has not discharged the burden of proof in respect of his claim for 4 votes from this polling station. None is, therefore, awarded. These ballots, however, qualify to be taken into account if the petitioner's alternative claim is being considered.

Polling Station No. 17 - Marlie Hill

15 votes claimed

The ballots produced at the trial showed 27 votes for the respondent, 52 for the petitioner and 16 rejected ballots. Caswell Christian gave evidence for the petitioner. He is a student 20 years old at the Marlie Hill All-age school and was the poll clerk at this station. He said that at the close of the poll 21 votes were counted for the respondent, 53 for the petitioner and 21 ballots were rejected. The documents in the poll book were all properly completed. He said that during the count at the station he saw no ballot paper with a cross for each candidate and that if he had seen any he would have rejected them. He identified the initials on the 16 rejected ballots produced to be those

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of the presiding officer, Mrs. Winnifred Rennals. One of these ballots has one cross only and is not in issue. The witness said that the other 15 shown to him had a cross each for the petitioner and the respondent and that he saw no ballots like those when the preliminary count was being conducted. The returning officer in his evidence said that these 15 ballots came from the petitioner's envelope and the only reason for rejecting them was that they had double votes.

When the figures from the preliminary count are compared with those established at the trial, it is clear that ballots rejected at the preliminary count were awarded to both candidates at the final count and/or the magisterial recount. The increase in the respondent's votes occurred at the final count, according to the returning officer's evidence. The poll clerk, Mr. Christian, accounted to my satisfaction for the ballots rejected at the preliminary count from among the ballots awarded the two candidates and 2 from among the rejected ballots. I was impressed by the evidence of this young man, who I believe spoke the truth.

The crosses in the petitioner's section on the 15 ballots in issue are different in character and were, clearly, not made by the same hand. This was put to the returning officer during cross-examination by Mr. Phipps and he agreed. I find that these crosses are genuine. On 13 of the 15 ballots the questioned crosses are made in similar fine pencil point with light strokes or impressions - these were all crisply made. I am in no doubt that they were all made by the same hand. All the questioned crosses are inconsistent in character with the genuine crosses for the petitioner. The questioned cross on one of the ballots is made through the respondent's symbol to indicate, presumably, a crossing out of the symbol. This cross is, however, clearly not made by the same hand as that which made the cross in the petitioner's section. On the remaining 2 ballots the questioned crosses differ from those on the first 13 in the form of the cross but in each case the genuine cross is different from the questioned cross. One of these latter 2 ballots is without the initials of the presiding officer and the poll clerk said in cross-examination that he can't say it came out of the ballot box. In all the circumstances, I find that it was among those counted for the

....petitioner

petitioner at the preliminary count.

On the evidence outlined above I am satisfied that the 15 ballots claimed were validly cast for the petitioner, were counted for him at the preliminary count and were subsequently tampered with. I so find and award them to the petitioner.

Polling Station No. 23 - Salmon Town

14 votes claimed

At the trial 28 votes were produced for the respondent, 82 for the petitioner and 15 rejected ballots. They were all rejected because of double votes, according to the evidence of the returning officer. The presiding officer, Horace Barnes - a mason, gave evidence that at the preliminary count he found 28 votes for the respondent and 97 for the petitioner; there was no rejected ballot. He said that at the preliminary count he did not see any ballot marked with crosses for both candidates. When shown the 15 rejected ballots in evidence at the trial he said he saw none in the condition in which those were (with double votes) at the count conducted by him. Mr. Barnes went on to disclaim the signature "H. Barnes" appearing on each of the 15 ballot papers. He said he did not write any of them. This is fatal to the petitioner's claim for these votes. Mr. Phipps submitted that though this disclaimer might weaken the inference based on continuity that the 15 ballots were at all stages counted for the petitioner, the position of strength in the inference is restored again by the evidence of the returning officer. The returning officer said the 15 ballots rejected came from the petitioner's envelope. I do not agree with this submission. It is absolutely essential that the questioned ballots should be identified as being among those counted at the preliminary count. Their presence in the envelope with the petitioner's ballots is not sufficient proof of identity. The claim is disallowed. But for the absence of evidence of identity I would have allowed all 14 votes. The questioned crosses on the ballot papers have all the characteristics of tampering, to the detriment of the petitioner. The evidence of tampering

Polling Station No. 24 - Salmon Town

9 votes claimed.

From the ballots produced at the trial, there were 23 votes for respondent, 75 for petitioner and 9 rejected ballots. The only witness called was Torfreda Mc Carthy, who was the indoor agent for the petitioner at this polling station. She could not identify the signature of the presiding officer on the 9 rejected ballot papers. The submissions made in respect of polling station No. 23 were repeated for this station, because of the absence of evidence of identity. The reasons that I gave in respect of station No. 23, apply here. The claim is, accordingly, disallowed. Because of the clear evidence of tampering, the ballots should be taken into account on the alternative claim.

Polling Station No. 29B - Smithfield

5 votes claimed

The presiding officer, Oliver Clarke, and the poll clerk, Yvonne Brown, both teachers, gave evidence. The result of the preliminary count as given in evidence by them was: 13 votes for the respondent and 21 for the petitioner; there were no rejects. The certificate of the preliminary count of the poll signed by the two witnesses and by the agent for each candidate was tendered in evidence. This and the completed statement of poll in the poll book supported the oral evidence. The returning officer's evidence is that at the final count the votes for the respondent were 13, for petitioner 16 and there were 5 rejected ballot papers. At the recount, he said, the rejects were increased to 6 and the petitioner's votes reduced to 15. Both Mr. Clarke and Miss Brown said they saw no ballot paper at the preliminary count with a cross for each candidate. Mr. Clarke identified his initials on the 6 rejected ballot papers. There was one with one cross only and not in issue. Both witnesses identified this ballot as having been counted for the petitioner at the preliminary count. Of the remaining 5, in 3 the crosses in the petitioner's section to the right of his symbol were different in form to the other crosses on the ballot papers. In 2 of these, an obviously shaking or
...../unsteady

unsteady hand made the crosses to the right of the petitioner's symbol while an obviously steady hand made those in the respondent's section. In the 3rd, in addition to the cross to the right of petitioner's symbol, there is a questioned cross in the respondent's section and 2 in the petitioner's. The 3 questioned crosses are different in character from the cross which, I believe, was validly made for the petitioner against his symbol. The point of the pencil making the questioned crosses was broader than that making the valid cross. The latter was with a pencil of fine point. On the 4th ballot, the only perceptible difference between the questioned cross in the respondent's section and the cross against the petitioner's symbol is the variation in the length of the arms of the cross (those of the questioned cross being longer) and the point of the pencil making them (the questioned cross made with broader point). The 5th ballot was the top of 2 marked "O.C.1" in evidence. Both election officers said that they saw no ballot taken from the ballot box marked like this one. Mr. Clarke said, however, that had he seen one like it he would have allowed it as a vote for the petitioner as the mark in the respondent's section is not a complete cross. The questioned mark on this ballot bore no specially striking similarity to the questioned crosses on the other ballots from this station. The returning officer said that all 5 ballots he rejected at the final count were from among the petitioner's ballots and he rejected them on the ground that they were double votes and for no other reason.

I believe both the election officers that no ballots were counted at the polling station in the condition in which the 5 questioned ballots appeared at the trial. I was particularly impressed by Miss Brown's evidence. I find that these ballots were originally counted as valid votes for the petitioner. On the oral evidence and scrutiny of the ballots I am satisfied, and find, that they were subsequently tampered with. I award them to him.

.../Polling

Polling Station No. 29C • Woodlands

5 votes claimed.

Evidence was given by the poll clerk, Justin Smith - a shopkeeper, that at the preliminary count there were 9 votes for the respondent and 33 for the petitioner; there were no rejected ballots. At the trial the ballots produced showed 9 votes for the respondent, 28 for the petitioner and 5 rejected. The returning officer said that those were the figures at the final count and that the 5 rejected were from the petitioner's envelope, whose votes were reduced from 33 to 28 as a consequence. The sole reason for rejecting them, he said, was the double votes. Mr. Smith said that he saw no ballot with more than one cross at the preliminary count and that the rejected ballots shown him at the trial were not in that condition then. He satisfactorily identified the initials of the presiding officer on the 5 rejected ballots. His evidence as to the figures at the preliminary count was supported by the production of a copy of the certificate of the preliminary count of the poll signed by himself, the presiding officer and the agents for both candidates. The official statement of the poll properly completed and signed by the presiding officer was also produced.

There was a blemish on Mr. Smith's evidence. He did not arrive at this polling station on time. He explained that he was assigned to work at station No. 24B but when he arrived there before 7 a.m. he found a poll clerk already there. He went in search of the returning officer and by the time he found him and was rushed to No. 29C it was 9:30 a.m. His evidence of the time of arrival is in conflict with that of Yvonne Brown, the poll clerk at polling station No. 29B. There was also confusion as to where she should work - as between 29B and 29C. She said she went to 29C and saw Justin Smith there and this was before 8 a.m. Times recorded in the poll book kept at 29C showed that Mr. Smith arrived there between 8 and 9 o'clock. He obviously was mistaken as to the time of his arrival at the station. The blemish referred to is his evidence that no one but himself wrote the names of the electors in the poll book. When the book was shown to him he had to admit that the first eleven names were not written by him. He explained that he forgot that he had seen these names written in the book before he took over. In spite of this blemish,
.../which

which in any event I did not regard as serious, I believed Mr. Smith's evidence as to the votes awarded the candidates and that there were no double votes on them at the preliminary count.

I am in no doubt that the 5 rejected ballots were tampered with. On 2 of them the questioned crosses in the respondent's section are clearly inconsistent in character with the crosses in the petitioner's section; while the crosses for the petitioner were obviously made by an unsteady hand the questioned crosses were not. In 4 of them the questioned crosses were made with a thicker pencil point than the crosses for the petitioner. The questioned crosses on all 5 are consistent in character. On one ballot there are 2 crosses in addition to a well made cross in the right position for the petitioner. The 2 crosses are in both candidates' sections - one in each. These 2 are alike and are in contrast with the cross in the right position for the petitioner. The 3 crosses on the ballot paper were clearly not made by the same hand. I find that each of the 5 rejected ballots was originally validly cast for the petitioner, was counted for him at the preliminary count and was subsequently tampered with. He is entitled to have them awarded to him and I so award them.

Polling Station No. 30A - Cocoa Walk

7 votes claimed.

The poll clerk, Lamatha Gregory - a student, gave evidence that at the preliminary count at the polling station the respondent received 58 votes, the petitioner 35 and there were 3 rejected ballot papers. At the trial 58 ballot papers were produced with votes for the respondent, 30 for the petitioner and 8 rejected. The returning officer said that the excess of 5 rejected ballot papers were from among the petitioner's ballots and were rejected because of double votes on each.

Miss Gregory seemed an honest and truthful witness but she was somewhat uncertain in her recollections. She described the 3 ballot papers rejected at her station but when she was shown the 8 rejected ballot papers at the trial she said she did not see among them those rejected at her station. Yet, following the description she gave, the 3 were easily identifiable. She picked out 2 which answered her description but said

.../she

she could not say they were the specific ones rejected. She was probably being cautious. She also could not say if any of the other 6 were rejected at the polling station. She, however, said if she had seen any marked like these she would have rejected them. She said that no ballot marked with two lines and intersected by another was checked at the polling station for either candidate, but she was shown the ballots for the two candidates and admitted that 3 ballots each thus marked were among them. The returning officer's evidence confirmed that the 3 ballot papers rejected at the station must have been those marked at the trial "L.G.1", "L.G.2" and "L.G.3".

Miss Gregory said that she saw one ballot paper at the preliminary count marked with more than one cross on the face of it and it was rejected. It seems quite clear that that ballot is the one marked "L.G.3". It has a properly made cross in the respondent's section and an incomplete one in petitioner's. Both marks are consistent and appear to have been made by the same hand. I take this to be a case where the elector started marking for the petitioner, discovered he had made a mistake and then marked a complete cross for the respondent. Of the 5 remaining after the original rejects are removed, the questioned cross on each is consistent in character the one with the other and different from those regarded as the genuine crosses for petitioner; on 4 of them the difference is marked. I have no doubt that if these 5 ballot papers were among those counted for the petitioner at the preliminary count that they were subsequently tampered with. I am, however, unable to award them to the petitioner as their authenticity were not established. Miss Gregory said that though she sees the name E. Lyle written on the face of each ballot paper she cannot recognize the handwriting. Emma Lyle was the presiding officer. The petitioner's agent at that station, Mrs. Myrtle Shaw, also gave evidence but added nothing. These 5 ballots will be placed towards the alternative claim.

.../Polling

Polling Station No. 30B - Cross Keys

3 votes claimed.

The witnesses from this polling station were the poll clerk, Phyllis Griffiths - a teacher, and Isabella Wint, the petitioner's agent. Their evidence was that at the preliminary count 40 votes were counted for the respondent, 54 for the petitioner and there were 2 rejected ballot papers. The statement of poll in the poll book and a copy of the certificate of the preliminary count of the poll bearing the signatures of the election officers and the two agents bear out the oral evidence on the number of votes and rejects. At the final count, the returning officer said, 4 of the ballot papers from the petitioner's envelope were rejected because of double votes, leaving the petitioner with 50 votes while the respondent's votes remained at 40. The poll clerk said that during the preliminary count she saw no ballot in the condition in which 4 of the rejected ballot papers, with double votes, now appeared. She satisfactorily identified the presiding officer's initials on the 6 rejected ballot papers. She said that the 2 ballot papers were rejected at the preliminary count because one had no mark at all while the other was marked with a "Y" and not a cross. She identified one ballot paper among the 6 rejects that had no mark but said she did not see any among them marked with a "Y" in the way she saw it at the preliminary count. In fact, one of the rejected ballot papers among the 6 was marked with a "Y" but there were pencil scratches beside this mark which, in my view, accounted for the failure to identify it. I am satisfied that this and the other without a mark were the 2 rejected at the preliminary count.

On the 4 rejected ballot papers with double votes, the crosses in the petitioner's section are entirely different in character from those in the respondent's section, which are the questioned marks. All the questioned marks are consistent with each other. They do not appear as clear crosses. Each one has two ends of the cross joined so that they appear as loops rather than crosses. The impression created is that each was made in a hurry. They are so completely different from the crosses in the petitioner's section and so much alike as to

..../leave

leave no room for doubt that the crosses in the petitioner's section were not made by the same hand whereas all the questioned marks were so made.

This is the polling station at which Louise Bagaloo worked as presiding officer. I am satisfied that Miss Bagaloo was an active supporter of the petitioner. As I said earlier, she succeeded in obtaining 100 blank ballot papers on election day which she did not need and these were later recovered by the returning officer. Miss Griffiths was asked about this incident but took refuge in saying she did not remember most of the questions she was asked. She admitted writing the letter (produced as exhibit E.30B.F) to the returning officer which resulted in the additional ballot papers being delivered at the station. She said that she wrote the letter, signing the presiding officer's name to it, on the latter's instructions. This I have no **hesitation** in believing. She admitted that the returning officer visited the station but did not remember the purpose of his visit. I am satisfied that she took refuge in not remembering because of a feeling of guilt in being involved in the procuring of the additional ballot papers obviously for some unlawful purpose. To this extent I am prepared to treat her evidence as biased in favour of the petitioner. So was, of course, the evidence of the petitioner's agent, who said she did not **see the letter** which was written by the poll clerk for the additional ballot papers and denied that the returning officer took them away when he visited the station. In spite of this bias in each, I believed their evidence as to the figures at the preliminary count and Miss Griffiths' evidence that there were no double votes during the preliminary count. The evidence which the 4 ballot papers with double votes present on scrutiny is so overwhelming as proof of tampering as to make the oral evidence only necessary to prove the authenticity of the ballot papers. I find that the 4 rejected ballot papers were validly cast and counted for the petitioner on election day and were subsequently tampered with. He has claimed only 3 of them and I award them to him. The fourth, to which he would be entitled had he claimed 4, is put towards the alternative claim.

... /Polling

Polling Station No. 31 - Smithfield

2 votes claimed.

Mr. Phipps concedes that he has not satisfactorily established his claim for these votes. I did not regard the presiding officer, Vincent Allen - a farmer, as a reliable witness. He was not frank in his answers and his evidence regarding the ballot papers he rejected at the preliminary count was confused. 3 ballot papers were supposed to have been rejected at the preliminary count while 11 ballot papers were put in a separate envelope as "doubtful" as the respondent's agent objected to them on the ground that the crosses made for the petitioner were to the left of the symbol. At the final count the same number, 3, were rejected, but a fourth was rejected at the recount. This evidence was given by the returning officer. 2 of the rejected ballot papers had double votes. If the reasons given by the presiding officer for rejecting 3 ballots at the preliminary count are true then, with the 2 ballot papers with double votes, the rejected ballot papers at the final count should have been at least 5. The poll clerk, Madge Gibbons - a shopkeeper, did not help to resolve the uncertainties about the rejected ballot papers. She betrayed bias by referring in her evidence to the respondent's indoor agent as "the candidate for the other side." I find that the claim at this station is not proved.

Polling Station No. 32 - Smithfield

2 votes claimed.

At the trial, from the ballot papers produced, it was established that after the magisterial recount there were 53 votes for respondent, 111 for petitioner and 6 rejected. The returning officer said that, of the 6, he rejected 4 for double votes. He wrote on the back of 3 of them and could say that those were rejected from among the petitioner's ballots. The witnesses called for the petitioner were the presiding officer, Samuel Porter, and the petitioner's agent, Nathaniel Cockett. Mr. Porter, 54 years old, is a temporary clerk in the office of the Ministry of Labour in Manchester. He was recommended for his job as a temporary clerk by the petitioner. He was a dull witness and it is clear that he was an equally dull presiding officer. At first he said he counted 169 ballot papers at the preliminary count - 53 for the
..../respondent

respondent, 114 for petitioner and 2 rejected. In addition, he said, there was one spoilt ballot. When a copy of the certificate of the preliminary count of the poll was produced and identified by him signed by the poll clerk, the two agents and himself, he said the votes counted were 52 for the respondent and 115 for petitioner. These are the figures on the certificate. The total written by him on the certificate was, however, 170. He admitted that on the certificate the number of votes for the respondent was really 53, the "3" being written over the "2" which was first written. This would make the total on the certificate right. The statement of poll in the poll book did not help as it was not completed. Mr. Cockett said the figures were 53, 115 and 2 respectively, with one spoilt ballot. This total of 170 ballot papers counted at the preliminary count agrees with the total number of ballot papers found at the trial. The poll book, however, showed that only 169 electors voted - there were only 169 names written in it. No spoilt ballot paper was produced at the trial. It seems that the spoilt ballot paper somehow became mixed up with the rejected ballot papers. The presiding officer could give no explanation for the discrepancy.

The 6 rejected ballot papers were found at the trial in two envelopes instead of one - 4, with double votes, in one and 2 in the other. There was no explanation given for this. The presiding officer identified his initials on all 6 ballot papers. Of the 2 in one envelope, one was blank and appears to be the spoilt ballot. This is so because both witnesses said that the 2 ballot papers rejected at the preliminary count were marked. They did not agree on how the 2 were marked. Mr. Cockett said that on both the marks were outside of the sections for the candidates but he could not say where on the ballot papers they were. Mr. Porter said that the rejected ballot papers "had many crosses on them." He pointed out 2 ballots among the 6 rejected which he said had "many crosses"; both had crosses in the sections for the candidates. He said that the spoilt ballot paper was not marked at all; the voter went behind the screen and came back and said she did not understand to mark the ballot; she gave it a slight mark but it was not for either candidate. He said

...../he

he could not pick out the spoilt ballot paper from among those he had seen because he did not remember the mark. On the blank ballot paper, however, he pointed to a spot near the respondent's symbol and said he saw something like a mark there.

Of the 2 rejected ballot papers in one envelope, one was blank, as I have said. The other had a cross in the proper place in the petitioner's section and a vertical line, like one line of a cross, in the respondent's section. The presiding officer said he saw no ballot marked like this at the preliminary count. The vertical stroke could well have been made by the elector in error as it is not dissimilar to the strokes which made the cross in the petitioner's section.

The 4 in the other envelope are those with the double votes. The presiding officer said he did not see any ballots marked like these during his count of the votes. One has a cross made in the proper place in the petitioner's section with a second cross in the black border at the top of the respondent's section; this second cross protrudes slightly above the ~~black~~ border but there is no part of it in the respondent's section. I cannot be sure that this was tampered with. The mark in the border may well have been overlooked at the preliminary count and the ballot counted for the petitioner. On the second ballot paper, among the 4, there are 2 crosses - one in each section. Both crosses are out of character the one with the other. This was among those rejected at the final count. I find that they were not made by the same hand. The third ballot paper has a shakily made cross in the respondent's section and a blotted out cross in the petitioner's. This is one of those identified by the presiding officer as having many crosses and may have been one of those rejected by him. The petitioner cannot, therefore, benefit from this. The fourth ballot paper is the other which the presiding officer said has many crosses. The mark against the petitioner's symbol has many crossing lines and this is no doubt what the witness referred to as "many crosses." It was agreed at the bar that this would have been a valid vote for the petitioner but for the presence of a small cross under the respondent's symbol. This small cross is out of character with the mark in the petitioner's section and in all

.... /probability

probability was a mark illegally made in view of my observations on the second ballot paper from among the 4. However, I am not satisfied beyond a reasonable doubt. The cross under the respondent's symbol is so small and so placed that it may have been overlooked at the preliminary count. In any event, because the presiding officer identified this ballot as having the kind of marks which made him reject 2 ballot papers this may well have been one of those rejected by him; in which event the petitioner would not have proved that he was denied a vote which he had received at the preliminary count. I am satisfied that one ballot which was validly counted for the petitioner was subsequently tampered with and I award this to him.

Polling Station No. 33 - Resource

4 votes claimed.

The poll clerk at this station was Isabell Thompson, a typist. In her evidence for the petitioner she said that 116 ballot papers were counted at the station. There were 27 votes for the respondent, 86 for the petitioner and 3 ballot papers were rejected. She said that the agent for the respondent objected to one ballot paper which was among those rejected. At the trial the ballot papers produced showed 27 votes for respondent, 83 for petitioner and 6 rejected. The initials of the presiding officer on these 6 were satisfactorily identified by the poll clerk. 4 of these had double votes. The poll clerk said she saw no ballot paper with more than one cross upon it at the preliminary count and, more particularly, saw none marked like the 4 with double votes among the rejected ballot papers from this station shown to her.

Miss Thompson described the marks on the 3 ballot papers which she said were rejected at the preliminary count. She was able to pick out only one of those described from among all the ballot papers from this station in evidence at the trial. At least one of those she described seemed to be a valid vote. She said it had a cross with another line drawn through it. The clear inference must be that it was counted for the petitioner, in view of the constancy of the respondent's votes

..../and

and the fact that 4 ballot papers with double votes which the witness said she did not see at the preliminary count are now among the rejected ballot papers. She was handed the petitioner's ballots at the trial and asked to say whether there was any among them with 2 crosses. This was to test her evidence that she saw no ballot paper with more than one cross on it. She picked one out with a cross on either side of the petitioner's symbol but said that it was not like that at the station; though the presiding officer's initials are on it she said they didn't have anything looking like that at the station. Miss Thompson impressed me as a truthful witness. Her evidence was not discredited in any way.

I am in no doubt that the first 3 of the 4 ballot papers with double votes (which were marked "I.T.1" at the trial) were tampered with. Each of the marks in the respondent's section is the familiar looped cross; they are consistent with each other and completely inconsistent with the crosses against the symbol in the petitioner's section. There is no doubt that they were all made by the same hand while the crosses in the petitioner's section were not. I am able to call the looped crosses familiar because I am writing this after having scrutinized all the questioned ballot papers and there are several ballot papers with such marks on them. The fourth ballot paper has a cross in the respondent's section which is not like the other three but it is inconsistent with the cross in the petitioner's section. I am satisfied that this was also tampered with. With the clear evidence of tampering with the ballot papers at this station it is nothing to be surprised at that the ballot which Miss Thompson was made to pick out from among the petitioner's ballots in cross-examination (marked in evidence "I.T.3") had an additional cross which she said she did not see at the preliminary count.

I find that the 4 ballot papers in issue at this station were validly cast for the petitioner, were counted for him at the preliminary count and were subsequently tampered with. I award them to him.

..../Polling

Polling Station No. 34 - Grove Town

9 votes claimed in the petition

Evidence was given by the presiding officer, Horace Jacobs - assistant manager of a Peoples' Co-operative Bank, and the poll clerk, Merva Crawford, a student. They swore that at the preliminary count 75 votes were counted for the respondent, 86 for petitioner and 3 ballot papers were rejected. At the final count and the recount, according to the returning officer's evidence, there were 75 votes for the respondent, 80 for the petitioner and 9 rejected ballot papers. The returning officer said that he rejected 6 ballot papers from among those counted for the petitioner at the preliminary count because they had double votes. In his final address Mr. Phipps claimed these 6 only and not 9 as in the petition.

The presiding officer identified his initials on the 9 rejected ballot papers produced at the trial. Both himself and the poll clerk gave the same description of the ballot papers rejected at the preliminary count. Both said there was one among them with more than one cross. Both identified a blank ballot paper (marked "M.C.1" at the trial) among the 9 rejects as one of those rejected by the presiding officer. The poll clerk was unable to pick out any of the other rejects. The presiding officer picked one out as being among the rejects at the polling station which was not marked for either candidate but had 3 crosses at the top of the ballot paper (marked "M.C.3" at the trial). He said that when he rejected it there was only one cross on it. The poll clerk said she saw this ballot paper during the counting but not in the condition it is in now. She said she sees three different marks on it now which she did not see during the preliminary count. In view of the fact that the ballot paper is not marked for either candidate it must have been one of the rejects once it is identified, as it was, as a ballot paper taken from the ballot box at the close of the poll. The presiding officer identified a third ballot paper (marked "H.J.1" at the trial) as the one he rejected with more than one cross. He said he recognized it "because of the way the cross was marked on the head."

..../Mr. Phipps

Mr. Phipps claims this ballot in spite of this evidence. What is peculiar is that this ballot is among the 6 the returning officer said he rejected from among those previously counted for the petitioner. There is another ballot paper (marked "M.C.5" at the trial) among the 9 rejects which has a cross in the petitioner's section and a pencilled stroke against the respondent's symbol. There is nothing on the face of the ballot paper itself to indicate that it was tampered with. As has been noticed on a ballot paper already dealt with, this stroke may have been made by an elector who then found that he had made a mistake in doing so and went on to mark the cross in the petitioner's section. The poll clerk said she saw this ballot paper during the preliminary count but she cannot remember the condition in which it was; she did not remember seeing any ballot paper like that. She said she would have rejected it if she saw it like that as she did not regard it as a good vote for the petitioner in view of the stroke in the respondent's section. This may well have been the third rejected ballot paper but the evidence of both officers that one ballot paper had more than one cross cannot be ignored.

The ballot paper ("H.J.1"), which the presiding officer identified, had a cross in the section for each candidate. Both crosses appear to have been made by different hands. Although the inference from the returning officer's evidence is that it was originally counted for the petitioner, this cannot be awarded to the petitioner because of its identification by the presiding officer.

Of the remaining 5 ballot papers with double votes, one has 3 crosses, 2 of these being in the respondent's section on either side of the symbol and the third against the petitioner's symbol. On 4 of them, the crosses in the respondent's section are different in character to those in the petitioner's, markedly so on 2 ballots. On 3 of them the crosses in the respondent's section appear to have been made by the same hand. On the fifth, there was an obvious attempt to duplicate in the respondent's section the peculiar mark against the petitioner's symbol - a cross with three or four additional strokes through it. It is quite

..../obvious

obvious that the same hand did not make both marks.

The poll clerk, Miss Crawford, was a more impressive witness than the presiding officer. She struck me as being perfectly honest. I believe them that there was no more than one ballot with two crosses on it. I am satisfied, and I find, that 5 ballots cast for the petitioner and counted for him at the preliminary count were subsequently tampered with. I award him 5 votes from this polling station.

Polling Station No. 35 - Pusey Hill

12 votes claimed.

The presiding officer, Zoe Cockett, and the poll clerk, Jean Scafe, both teachers, gave evidence. Mrs. Cockett was a perfectly straightforward, honest and intelligent witness. All her duties as presiding officer were properly carried out. There was no imputation of bias either in her or in the poll clerk. They said that at the preliminary count 135 ballot papers were counted. The respondent received 38 votes and the petitioner 97. There was no rejected ballot paper. The returning officer said that at the final count he awarded 39 votes to the respondent, 83 to the petitioner and rejected 13 ballot papers. The figures remained the same at the recount. Of the 14 votes taken from the petitioner, one was awarded to the respondent and 13 rejected - 11 for double votes. There is no dispute about one of the rejected ballot papers. It was counted for the petitioner but the mark was not a cross, though the presiding officer thought it was. One of the 13 was not initialled by the presiding officer but she identified her initials on all the others. One of the 12 in issue did not have a double vote (it was marked "Z.C.2" at the trial). It had a cross against the petitioner's symbol and a horizontal line in pencil in respondent's section. This latter mark caused its rejection by the returning officer. Mrs. Cockett swore that she saw no ballot paper at the preliminary count in the condition in which the 12 ballot papers in dispute now appear.

On 9 of the 12 disputed ballot papers, all the crosses in the respondent's section are alike in character and completely different

.../from

from the crosses in the petitioner's section. They differ in shape, steadiness of hand, facility in making the crosses and in thickness of pencil point. There were 2 with looped marks. These 9 were obviously tampered with. The tenth ballot paper has 3 crosses - 2 in the petitioner's section and 1 in the respondent's. These crosses are not so clearly inconsistent, but the cross in each section to the right of the symbol is somewhat different to the third cross to the left of the petitioner's symbol. I have not the slightest doubt that this presiding officer would have rejected this ballot if it was marked in this way when taken from the ballot box. Accepting that there was only one cross on it when it was counted at the polling station, as I do, by comparing the 3 crosses I conclude that the valid cross was the one in the petitioner's section to the left of the symbol. The eleventh ballot paper is that marked "Z.C.2". Mrs. Cockett said had she seen it in the condition it is in now she would have rejected it as marked for more than one candidate. I accept her evidence that it was not so marked when she counted it. The twelfth ballot paper in dispute was marked "Z.C.3" at the trial. The questioned cross in the section for the respondent is not like those on the first 9 ballot papers - it is more in the shape of a "Y" than a cross. The mark in the petitioner's section has more than two intersecting lines and the presiding officer said she did not recall seeing that particular ballot paper marked in that way. She, however, identified 3 from the respondent's ballots and 15 from the petitioner's which are similarly marked and are not in dispute. I am satisfied that the mark in the petitioner's section on "Z.C.3" was a valid mark and on the evidence on a whole I am also satisfied that the mark in the respondent's section was illegally placed there.

I find that the 12 disputed ballot papers were validly cast for the petitioner and counted for him by the presiding officer. I find, also, that they were subsequently tampered with. I award them to him.

....Polling

Polling Station No. 38 - Pratville

8 votes claimed.

The sole witness for the petitioner was the poll clerk, Mabel Logan - a housewife. She said that at the count by the presiding officer 22 votes were awarded to the respondent, 83 to the petitioner and there was 1 rejected ballot paper. She is supported by the certificate of the preliminary count of the poll signed by herself, the presiding officer and both agents. The statement of poll in the poll book was also properly completed.

At the final count, the returning officer said he counted 22 votes for the respondent, 74 for the petitioner and rejected 9 of the ballot papers from the petitioner's envelope in addition to the ballot paper rejected at the preliminary count. The 9 ballot papers were rejected, he said, because of double votes. The figures at the final count were maintained at the recount.

The poll clerk satisfactorily identified the presiding officer's initials on the 10 rejected ballot papers. She identified the ballot paper rejected at the preliminary count, which is not in dispute. She swore that she saw no ballot paper during the counting at the station which was marked with more than one cross. In particular she did not see any marked in the way the additional 9 rejected ballot papers now appear. The cross-examination of this witness was directed chiefly at showing that she was biased in favour of the petitioner. She had a brother who was an active supporter of the petitioner and her mother also supported him. She was injured on the night before the election in suspicious circumstances and it was suggested that it was in the course of a political argument. She denied the suggestion and no evidence was called to establish it.

On 7 of the 9 ballot papers with double votes the crosses in the respondent's section are alike in character and differ from the crosses made against the petitioner's symbol. A looped cross appears on one of them. One ballot paper from the 7 has 2 crosses (one in each candidate's section) against the numbers "1" and "2" in addition to the cross against the petitioner's symbol. Another has 3 such crosses,

...../2 against

2 against the numbers "1" and "2" ⁱⁿ as the other ballot paper and a third to the left of the respondent's symbol. The 5 crosses referred to on these 2 ballot papers were clearly made at random. No elector for the petitioner who was "plusing out" the respondent would be likely to place an extra cross in the petitioner's section. The crosses in the respondent's section on the remaining 2 ballot papers out of 9 are not as different from those in the petitioner's section as the first 7.

Mrs. Logan was probably biased but she did not betray it in her evidence. It certainly did not affect her evidence regarding the ballot papers counted at the polling station and their condition. I accept her evidence and find that 9 ballot papers which were validly cast for the petitioner and counted for him by the presiding officer were rejected because of double votes. I am in no doubt that these 9 ballot papers were tampered with subsequently to the preliminary count thus causing them to be rejected. The petitioner has claimed only 8 in his petition. I award them to him and place the remaining ballot towards the alternative claim.

Polling Station No. 41 - Asia

7 votes claimed

The presiding officer at this station was Amy Thompson, who said she was a dressmaker, farmer and secretary of the Pratsville Citrus Growers' Association. She gave evidence as well as the poll clerk Alton McLaughlin, a farmer. Mr. McLaughlin was not very bright and was, perhaps, not the type of person who should have been appointed as an election officer. The poll book, as a result of his lack of competence I am sure, was not properly kept. The presiding officer must take some blame for this as she should have supervised the poll clerk. The statement of poll and other forms in the poll book which it was her responsibility to complete were not completed. This lack of competence on the part of the election officers did not, however, affect the matters to be decided.

Both officers said that at the preliminary count 90 votes were received by the respondent and 50 by the petitioner. There were no rejected ballots. The returning officer said that at the final count he awarded 90 votes to the respondent. He received 50 ballot papers
...../in

in the petitioner's envelope and rejected 7 because of double votes, leaving 43 votes, which he awarded the petitioner. At the recount the petitioner's votes were reduced to 42 as one more ballot was rejected. This ballot is not in dispute. Both the presiding officer and the poll clerk said that they saw no ballot papers during the preliminary count with more than one cross on it. The presiding officer identified her initials on all the rejected ballot papers and both said that the 7 with double votes were not in that condition when the ballots were counted at the polling station.

Both of these witnesses were probably biased in favour of the petitioner. I did not come to this conclusion because of the way in which they gave their evidence but because of admissions they made. Mr. McLaughlin said he worked as agent for the petitioner at a previous election though he denied being actively associated with the petitioner or his party. Miss Thompson admitted that she was constituency secretary for the petitioner's party and constituency up to 1970; she said she worked as a presiding officer in the local government elections of 1969 while she was secretary; she, however, said that she was not now affiliated to any political party. But the returning officer gave evidence, and I believed him, that Miss Thompson performed the duties of constituency secretary for the petitioner during the period before the 1972 general elections; she was one of the persons to whom payments were made from the petitioner's constituency fund.

The returning officer said that he found no fault with the way Miss Thompson discharged her duties on election day. I have already said that the poll book from the polling station was not properly kept. In spite of the probability of bias, I believed both witnesses that they did not see any ballot papers with double votes at the preliminary count. I saw no reason to disbelieve Mr. McLaughlin and Miss Thompson was a coherent and straightforward witness. The only blemish I found in her evidence was her statement that she had ceased being constituency secretary in 1970, which turned out to be untrue in the light of the returning officer's evidence. She also sought to give the impression that all the ballot papers she counted had perfect crosses. She said

..../she

she did not remember seeing ballot papers shown to her, with her initials and validly counted for each candidate, which did not have simple crosses or had decorations at the end of the strokes. Her evidence, however, and that of the poll clerk were supported by a copy of the certificate of the preliminary count of the poll signed by them and by the two agents, which was put in evidence, as well as by the condition of the ballot papers on scrutiny.

On all 7 ballot papers with double votes the crosses in the respondent's section are alike in character and give the clear impression of having been made by the same hand. In 5 of them these crosses differ in character from those made in the proper place in the petitioner's section. One ballot paper has 2 crosses, one in each section, against the numbers "1" and "2", as we saw on two ballot papers at polling station No.38.

I am satisfied that the 7 ballot papers claimed were tampered with after they had been counted at the preliminary count as valid votes for the petitioner, having been cast for him by the electors. I award them to him.

Polling Station No. 42A - Park Hall

5 votes claimed.

At this polling station Olive Marshall, a housewife, was the presiding officer. She swore that at the preliminary count of ballot papers 20 votes were counted for the respondent and 31 for the petitioner. There were no rejected ballot papers. The returning officer said that at the final count he awarded 20 votes to the respondent. This award was confirmed at the recount. The returning officer said he received 31 ballot papers for the petitioner; he rejected 6 leaving 25, which was the amount of votes he awarded. At the recount, one of the rejected ballot papers was restored to the petitioner and the balance of 5 rejected. The returning officer identified these 5 ballot papers as being among those he rejected and the sole reason was that they each had double votes.

Mrs. Marshall identified her initials on the 5 ballot papers in issue. She said that they came from the ballot box at her station

..../but

but not in the condition they are now; she did not at the preliminary count see any ballot paper with more than one cross - a cross for each candidate. Mrs. Marshall was a simple woman, not in a derogatory sense, and seemed perfectly honest. She proved to be faulty in her recollections - she said she was sure she had initialled all the ballot papers placed in the ballot box but she picked one out from the ballots of each candidate which did not have her initials; she said she did not at the preliminary count come across a ballot paper cast for the petitioner marked with more than two crossing lines, but 6 such from the petitioner's ballots were shown to her and had her initials on them. She said that some of the 6 had markings now which were not there when she counted. In this I think she was mistaken. She said, in re-examination, that there was no doubt in her mind that she had no ballot papers with two crosses. In spite of her faulty recollection I believed Mrs. Marshall that there were no such ballot papers.

Of the 5 questioned ballot papers, the cross in the respondent's section on 4 of them are consistent in character. On 3 of these the cross in the respondent's section is markedly dis-similar to the cross in the petitioner's section made in the proper place. On one of the ballot papers the cross in the respondent's section is looped. I am in no doubt that these 5 ballot papers were cast as valid votes for the petitioner and counted for him but were subsequently tampered with. I so find and award them to him.

Polling Station No. 42B - Manningsfield
8 votes claimed.

Harry Ramus, a headman with the Mandeville Area Land Authority and a farmer, was the presiding officer at this station. His daughter, Zona Ramus, a teacher, was his poll clerk. They said that at the preliminary count 14 votes were counted for the respondent and 36 for the petitioner. No ballot paper was rejected. The returning officer said that at the final count and at the recount the respondent's votes remained at 14. He rejected 8 with double votes of the 36 ballot papers he received for the petitioner at the final count. At the recount a further ballot paper, which is not in dispute, was rejected for the petitioner leaving him with 27 votes.

...../Both

Both Mr. Ramus and his daughter said that during the counting at the polling station they did not see any ballot paper with more than one cross. Miss Ramus gave evidence before her father did and said that the initials on the 9 rejected ballot papers shown to her were not written by her father. He however contradicted this. He said that he wrote his initials on each of the 9 ballot papers and recognized them as ballot papers he had counted, though not in the condition they are in now. He also removed doubts created by his daughter in relation to a number of ballot papers taken from among the ballots awarded the petitioner and the respondent at the recount which were shown to her. Mr. Ramus said that those ballot papers were also among those he checked at the polling station.

On all of the 8 ballot papers with double votes which were rejected, the crosses which it is claimed were unlawfully made are different in character from the crosses made in the proper place in the petitioner's section of the ballot papers. 5 of the ballot papers have looped crosses. On one there are 3 such crosses, one on either side of and one to the left of the petitioner's symbol. the respondent's symbol. These 3 crosses are obviously crosses made at random and they are in stark contrast to the cross which was made on the ballot paper to the right of the petitioner's symbol. While the crosses to the right of the petitioner's symbol differ in character from ballot paper to ballot paper the other crosses are all consistent in character and were clearly made by the same hand. There can be no doubt at all that they were tampered with, the evidence being cogent.

Mr. Ramus was a very talkative but precise witness. There was a strong indication of bias in favour of the petitioner from his demeanour when suggestions were put to him in cross-examination that he was actively involved in the petitioner's political campaign. He denied the suggestions but his bias was confirmed when the returning officer gave evidence. Mr. Ramus was one of the persons who received payment from the petitioner's campaign funds. These payments to him ceased, it was said, when he was appointed to a post in the Land Authority. No doubt he owed this appointment to the petitioner. In spite of his bias, however, I saw no reason to disbelieve him, or his daughter, when they said that there were no ballot papers with double votes at the preliminary count.

..../In

~~In any event~~, the evidence of tampering is so clear that Mr. Ramus' evidence was ~~only necessary~~ to establish the authenticity of the ballot papers.

I find that the 8 ballot papers claimed were validly cast for the petitioner, were properly counted for him by the presiding officer and were subsequently tampered with, thus causing their rejection. I award them to the petitioner.

Polling Station No. 42C - Asia

One vote was claimed in the petition from this station. Though the one ballot paper rejected at the recount has double votes, Mr. Phipps said in his closing address that he cannot with justification make a claim to any of the ballot papers. I agree that the claim has not been established. The presiding officer, Mr. George Marshall, was unable to identify the 3 ballot papers he rejected or to describe them. The probability is that the ballot paper rejected at the recount was one of those rejected by him. He said he would have rejected that ballot paper if the only mark on it was that against the petitioner's symbol "because the lines do not cross."

Polling Station No. 42D - Pratville

1 vote claimed in petition.

The presiding officer, Myrtle Manning, a teacher, gave evidence. She said that she counted 23 votes for the respondent and 58 for the petitioner. There were no rejected ballot papers. At the trial, 23 ballots were produced for the respondent, 50 for the petitioner and 8 rejected ballot papers. These represented the figures at the end of the recount. One of the rejected ballot papers is not in dispute. The balance of 7 have double votes. The returning officer said that he rejected these at the final count. Whereas up to November 12 the returning officer admitted freely in cross-examination that the ballot papers with double votes which he rejected came from among the petitioner's ballots awarded him at the preliminary count, when he resumed his evidence under cross-examination on the morning of November 13 he declined to say where the ballot papers he rejected with double votes came from. The inference is, however, clear that these 7 ballot papers
...../with

with double votes were from the petitioner's ballots.

The presiding officer identified her signature and initials on the 7 ballot papers and said that they were among the ballot papers she counted. They were not, however, in the condition in which they are now, she said, or she would have rejected them. She said that during the counting she did not see any ballot paper with two crosses.

4 of the 7 rejected ballot papers with double votes, including one marked "Q" at the trial, have very large crosses in the section for the respondent. All these crosses were consistent in character with each other and were obviously made by the same hand. On each of these 4 ballot papers the cross in the respondent's section is different in character to the cross marked in the proper place in the petitioner's section and in 3 of these the difference is distinct. On the remaining 3 ballot papers (from the 7) the crosses in the respondent's section are not similar to those on the first 4 but each is different from the cross in the petitioner's section, and obviously made by a different hand.

There was no reason to disbelieve the evidence of the presiding officer. She seemed honest and truthful. There was no imputation of bias. Her recollection proved faulty when tested with ballot papers about which there was no dispute but I do not believe that she could forget the ballot papers with the double votes. The crosses on the 4 ballot papers referred to above were too large to be overlooked or forgotten.

I find that the 7 ballot papers with double votes were validly cast for the petitioner, were properly counted for him at the preliminary count and were subsequently tampered with to make them appear as double votes.

On behalf of the petitioner it was stated that it was an error that only 1 vote was claimed from this station. Application was made to amend the petition to claim 7 but objection to the application was taken on behalf of the respondent. A decision on this application was postponed for fuller and further argument but has not been pursued. The ballot marked "Q" was eventually identified as the ballot the petitioner is claiming. This is awarded to him and the other 6 are put towards the alternative claim.

.... /Polling

Polling Station No. 43 - Victoria Town

1 vote claimed.

Eunice Williams, a postal agent, was the presiding officer. She gave evidence that she counted 65 votes for the respondent and 47 for the petitioner with 1 ballot paper rejected. At the trial 66 ballot papers were produced for the respondent, 46 for the petitioner and 2 rejected. One of the rejected ballot papers was identified by Miss Williams as the one she rejected and this is not in dispute. The other rejected ballot paper has double votes and the returning officer said that it was rejected by him at the final count. The additional vote gained by the respondent over the amount he received at the preliminary count is explained by the fact that a ballot paper which Miss Williams said was spoilt and so treated by her was subsequently erroneously counted for the respondent at either the final count or recount or both. This ballot paper was identified among the ballots for the respondent (and marked "E.W.2" at the trial).

Miss Williams identified her initials on the ballot paper with double votes. She said she saw no ballot paper during the count she conducted which had more than one cross and saw none in the condition of the disputed ballot paper.

On this ballot paper the cross in the respondent's section is much larger than that beside the petitioner's symbol. It was made by a pencil with a broader point and by a firmer hand. The questioned cross bears the same characteristics as the majority of the crosses on other ballot papers in dispute from other polling stations.

Miss Williams' recollection was tested by showing her ballots validly counted for both candidates and not in dispute but which did not have simply made crosses. In each case (there were 5 such ballots) she denied seeing the ballot paper in its present condition when it is clear that all the marks on the ballot paper were made by the elector. This weakened her reliability, but in each of the 5 cases the additional marks on the ballot papers were in one section and close to the cross made in that section. She said that no one objected to any ballot paper during the count. The cross in the respondent's section on the questioned ballot paper could not have been missed and I would have expected the

.... /respondent's

respondent's agent to object to it. Instead he, along with the other agent and the two election officers, signed the certificate of the preliminary count of the poll which was produced at the trial vouching for the accuracy of the figures the presiding officer gave in her evidence.

A suggestion that the petitioner held indoor meetings at Miss Williams' house was faintly made and firmly denied. No evidence was brought to prove it. I accept her evidence that the questioned ballot paper did not have double votes when it was counted by her. I find that this ballot paper was validly cast for the petitioner, was counted for him at the polling station and subsequently tampered with. It is awarded to him.

Polling Station No. 44 - Victoria Town

2 votes claimed.

Evidence was given by the presiding officer, the poll clerk and the petitioner's agent. The evidence is that 88 ballots were cast, with the respondent receiving 31 votes, the petitioner 54 and 3 ballots rejected. At the trial 31 ballots were produced as counted for the respondent, 45 for the petitioner and 5 ballot papers were rejected - thus, a total of 81. There were, 7 ballot papers missing which were not counted during the recount. The evidence does not disclose whether they were missing at the final count as well. As I said before, there is no record of any figures at the final count. The 7 missing ballot papers were found during Mr. Phipps' final address on November 23, 1973 in an envelope marked "Spoilt." All except one had typical double votes.

3 of the 5 rejected ballot papers produced had double votes and the returning officer said he rejected them at the final count. Mr. Wilburn Myers, a shopkeeper and farmer, who was the presiding officer, identified his initials on the 5 rejected ballot papers and said that at the count conducted by him he did not see any ballot paper with more than one cross on it. He said he cannot say what condition the 5 rejected ballot papers shown him were in at the preliminary count as they never had two marks on them. He was unable to identify or describe the 3 ballot papers which he rejected. Miss Mervis Ellis, a teacher, who was the

poll clerk described the 3 ballot papers rejected at the polling station but when shown the 5 rejected ballot papers said that she did not see the 3 among them.

On 2 of the ballot papers with double votes the questioned marks are not obviously different from the marks against the petitioner's symbol though they are similar to some other questioned marks seen. The third has the questioned cross markedly different from the cross in the petitioner's section.

The absence of the 7 ballot papers when the witnesses were giving evidence may have caused or contributed to the uncertainty of the witnesses. I was not impressed by Mr. Myers. He was cross-examined to establish that he was a supporter of the petitioner's political party and was the secretary of a branch. He denied the suggestions put to him but his denials were not convincing and I got the impression that there was substance in the suggestions. Miss Ellis appeared truthful but, as I have said, she was uncertain about the rejected ballot papers. The 2 ballot papers in the 5 rejectes without double votes seemed logically to be 2 of the 3 rejected at the preliminary count but neither witness accepted that they were. If they were not then there is no other which could be rejected unless it is one with a double vote.

I can take no account of the 7 ballot papers which were found as they have not been identified. The others are in the realms of uncertainty. The petitioner's claim has not been established to the required standard. I cannot award the votes claimed.

Polling Station No. 48 - Harmons

4 votes claimed.

James McLaughlin, a young teacher, was the presiding officer. He gave evidence that at the preliminary count there were 69 ballot papers counted, with 34 votes for the respondent and 35 for the petitioner. There were no rejected ballot papers. At the trial, the ballot papers produced were 34 for the respondent, 26 for petitioner and 9 rejected. 5 of the rejected ballot papers have double votes. One of these is not claimed. Though it has a cross in the respondent's section which is similar to the questioned crosses on the other 4 ballot papers with

.... /double

double votes, yet the mark to the right of the petitioner's symbol is of doubtful validity. The presiding officer said that he saw this ballot paper without the cross in the respondent's section during his count of the ballots; he showed it to the others and it was agreed that the lines had crossed; it was counted for the petitioner.

The presiding officer identified his initials on the other 4 ballot papers with double votes. He said that during the count of votes at the station he saw no ballot paper marked with more than one cross and said he saw none like these 4 when they were shown to him. The returning officer said he rejected them at the final count. The crosses in the respondent's section on the 4 ballot papers are similar and were clearly made by the same hand. 3 of them are looped crosses. They are all inconsistent in character with the crosses to the right of the petitioner's symbol. I am in no doubt that the 4 were tampered with.

Mr. McLaughlin was a perfectly honest and truthful witness. I believed his evidence that there were no ballot papers with double votes when he conducted his count. I find that he counted the 4 ballot papers claimed from this polling station, that at the time they bore valid votes for the petitioner and that the ballot papers were subsequently tampered with. The petitioner is hereby awarded the 4 votes.

Polling Station No. 49 - Harmons

7 votes claimed.

Both the presiding officer, Enos Bennett - farmer, and the poll clerk, Mary Morris - dressmaker, gave evidence. They said that 73 ballot papers were counted at this station, with 5 votes for respondent, 63 for petitioner and 5 rejected. At the trial the ballot papers produced were: 4 for respondent, 56 for petitioner and 13 rejected. The presiding officer identified his initials on the 13 rejected ballot papers. When asked to pick out the 5 he rejected, if he could, he did so (they were marked "E.B.1" at the trial) and later picked out a 6th, which is a blank ballot paper (marked "E.B.2."). Eventually he could not pick his 5 rejected ballot papers out of the 6. He said it is such a long time he does not remember which 5 but he is certain he rejected only 5.

..../

The poll clerk said she did not remember the condition of each of the rejected ballot papers but would be able to pick them out if she saw them. From the 13 rejected she picked out 4 of the 5 ("E.B.1.") the presiding officer had picked out plus the 6th ("E.B.2."). She said there were 2 ballot papers without pencil marks seen during the preliminary count.

Among the 13 rejected ballot papers there are 7 with double votes. The returning officer said he rejected these at the final count. I am satisfied that none of these was rejected by the presiding officer. The respondent's votes were reduced by 1 from the preliminary count. There is a ballot paper (the 3rd among "E.B.1.") in the balance of 6 which has a mark in the respondent's section. It can reasonably be inferred that this was counted for the respondent at the preliminary count and subsequently rejected as not properly marked. The inference is clear, in my view, though the two electoral officers say, or imply, that it was among those rejected. This ballot paper is among those which it is contended should be awarded to the respondent as being wrongly rejected. I believe that the remaining 5 are those rejected at the preliminary count. Included among them are 2 ballots not marked for either candidate.

I am afraid the two officers did not impress me in the way they, apparently, impressed Dr. Barnett. He submitted that Mr. Bennett was generally completely unreliable and pointed out the deficiencies in the poll book for which he was responsible. Mr. Bennett had his short-comings, he is a simple man and is, perhaps, not presiding officer material. He admitted that he did not know the statement of poll in the poll book should be completed. When the poll clerk, as she said, brought to his attention that it should be completed by him he said the assistant returning officer did not tell him to write it up. In spite of his short-comings he appeared to me to be a perfectly honest witness. I believe him when he said that he did not see any ballot paper with more than one cross on its face and that if he had seen any such he would have rejected it. One of the forms he did not omit to complete was the certificate of the preliminary count of the poll which was signed by
...../himself

himself, the poll clerk and the two agents. This not only bears him out on the figures he gave of the result of his count but also impliedly bears out his evidence on the absence of double votes in view of the silence of the respondent's agent.

On the 7 ballot papers with double votes, all the crosses in the respondent's section are consistent in character and appear to be made by the same hand. 5 of these are different in character from the respective crosses against the petitioner's symbol. The difference is outstanding in 3 cases where the crosses made against the petitioner's symbol were made with obvious difficulty while the corresponding crosses in the respondent's section were made with clear, steady strokes. I have not the slightest doubt that the 7 ballot papers were tampered with.

I find that they were tampered with after they had been validly cast and counted for the petitioner on election day. I award them to him.

Polling Station No. 50 - St. Toolis.

4 votes claimed.

The evidence shows that at the preliminary count 38 votes were counted for the respondent and 19 for the petitioner, a total of 57 ballots. There were no rejects. At the trial 53 ballot papers only were produced, 38 for the respondent and 15 for the petitioner. The recapitulation sheet shows that at the end of the recount there were 4 rejected ballot papers. These were not produced and there was no explanation for their absence. The petitioner's claim at this station could not, therefore, be considered.

Polling Station No. 51B - St. Toolis.

6 votes claimed.

The presiding officer and the poll clerk gave evidence. The presiding officer, Gloria Boothe, a clerk, said that 42 ballot papers were counted at the polling station with 4 votes for the respondent, 35 for the petitioner and 3 rejected ballot papers. At the trial 4 ballot papers were produced for the respondent, 29 for the petitioner and 9 rejected. Of the 9 rejected, 6 had double votes. The returning officer said he rejected these at the final count.

.../The presiding

The presiding officer identified her initials on the 9 rejected ballot papers. She said she saw no ballot paper at the count she conducted with more than one cross on it. When asked to pick out, if she could, from the 9 rejected ballot papers those rejected by her, she picked out 3 (marked "G.B.1" at the trial). She, however, identified 2 others (marked "G.B.2") as also among those she rejected though she had rejected only 3. In the first 3 she identified there were 2 with double votes. The balance of 4 ballot papers with double votes (apart from "G.B.1" and "G.B.2") have crosses in the respondent's section which are consistent with each other in character - there are 2 looped crosses. These crosses are consistent in character with questioned crosses at other polling stations and on each ballot paper the cross in the respondent's section is different in character from the cross made in the petitioner's section.

The presiding officer was a very poor witness. She was proved to be untruthful about an incident in which it was alleged that one of the petitioner's supporters, Mr. Carlton Lewis, was in an adjoining court room coaching the petitioner's witnesses while they waited to be called to give evidence. The poll clerk, Olga Wright, a teacher, could not remember most things and added nothing to the presiding officer's evidence. Both were thoroughly negligent in the writing up of the poll book. Neither, it seems to me, should have been appointed electoral officers.

The 2 rejected ballot papers with double votes identified by the presiding officer (in "G.B.1") had the 2 crosses in the respondent's section consistent in character and each inconsistent with the cross in the petitioner's section. They appear, along with the 4 others with double votes, to have been tampered with. In view, however, of the poor quality of the evidence, the fact that the presiding officer was uncertain about the ballot papers she rejected and, what is more important, the fact that she positively identified 2 ballot papers with double votes, I am not satisfied that the petitioner's claim to the 6, or any, votes has been established. The 6 ballot papers will go towards the alternative claim.

..../Polling

Polling Station No. 53 - Harmons.

6 votes claimed.

The presiding officer was Rupert Easy, a preacher. He was one of the persons whom the returning officer said were paid from the petitioner's constituency fund. There was no indication during his evidence that he was biased. He was a difficult witness, he misunderstood many of the questions asked. The poll clerk, Lucy Morris, a dressmaker, also gave evidence. She was a witness of poor quality. Pastor Easy's duties in relation to the completion of the poll book were inefficiently done. He admitted that in relation to this he did not have the proper understanding.

The electoral officers gave evidence that at the polling station 78 ballot papers were counted, with 23 votes going to the respondent and 55 to the petitioner. There were no rejected ballot papers. 78 ballot papers were produced at the trial, 23 being for the respondent, 48 for the petitioner and 7 rejected. 6 of these 7 ballot papers have double votes. The returning officer said he rejected them at the final count. The presiding officer and the poll clerk said that at the count at the polling station they did not see any ballot paper with a cross made on it for each candidate. The presiding officer identified his initials on the 7 ballot papers.

The ballot paper rejected which did not have a double vote was marked "R.E.1" at the trial. The presiding officer said he remembered seeing that ballot paper when he was counting. The only mark on it is against the petitioner's symbol and is not a simple cross but has three lines crossing, a sort of double cross in one. As there were no rejected ballot papers at the preliminary count this must have been counted for the petitioner. The returning officer said he would not have rejected this ballot paper so, presumably, it was rejected at the recount.

The presiding officer said that while he was counting he saw one ballot paper with two crosses but both crosses were in favour of the same candidate, he did not remember which. He was shown the 7 rejected ballot papers and said he did not see that ballot among them. In cross-examination he was shown the ballots for the petitioner and the respondent but said he did not see among them the ballot paper with the two crosses

....for

for the same candidate. A ballot paper was taken from among the 6 rejected with double votes and shown to him (it was marked "R.E.2"). He was asked if that was the ballot paper with the two crosses which he saw. He said it was not^{as} the one he saw had no cross for the other candidate. This ballot paper which was shown to him, has on it a cross against the petitioner's symbol and a large mark in the respondent's section and extending above it. This mark is not a simple cross but has two parallel lines with a third line crossing both thus having the form of two crosses joined. The witness insisted that he had not seen this ballot paper during his count. He was asked to cover the cross in the petitioner's section leaving the mark in the respondent's section and asked to say whether (without the cross in the petitioner's section) that was the ballot paper he saw. He said it was the "very one" and it was counted for the respondent. He said he would not regard it in its present condition as a good vote for the respondent and when asked the question: "Somebody spoilt it?" he answered: "Must have been."

On the remaining 5 rejected ballot papers, the crosses in the respondent's section on 3 of them are clearly different in character from those against the petitioner's symbol. One of the crosses in the respondent's section has the familiar loop. Of the 6 with double votes (including "R.E.2"), the crosses in the respondent's section on 3 are similar in character and appear to have been made by the same hand using the same pencil, while the other 3, though different in character to the first 3, are similar in character the one to the other and also appear to have been made by the same hand though a different hand to the first 3. All 6 appear clearly to have been tampered with, being originally good votes for the petitioner. But should I disallow them, or some of them, because of Pastor Easy's evidence about "R.E.1" and "R.E.2"?

By saying he did not see among the 7 rejected ballot papers the one with two crosses which he saw during his count and that "R.E.2" was that ballot (without the cross in the petitioner's section) he was quite clearly saying that "R.E.1" was not it. I am, however, satisfied that "R.E.2" was not that ballot and that Pastor Easy is mistaken. He said

...../he

he had counted "R.E.2" for the respondent. If this is true and it was subsequently rejected the respondent's votes would have been reduced, but it was not. Both at the final count and the recount the respondent's votes remained at 23, the amount he obtained at the preliminary count. The petitioner's votes were, however, reduced by 7 votes, the amount of the rejected ballot papers. Further, as I have said, the mark on "R.E.2" in the respondent's section is similar in character to the questioned crosses on 2 of the other 5 ballot papers with double votes while the cross against the petitioner's symbol was crudely made - each stroke of the cross was thickened by being marked over with about three lines. I am in no doubt at all that this crudely made cross was made by an elector. This is one of the many ballot papers which I saw on which the evidence of tampering stands out. The double cross in the respondent's section, like the questioned crosses on the other 5 ballots, were all smoothly made, obviously by a trained and steady hand. I believe "R.E.1" is the ballot with two crosses that Pastor Easy saw. The mark on it is not unlike the questioned mark on "R.E.2" in form/they are otherwise different. On close examination the mark on "R.E.1" can be said to be two separate crosses with the lines intermixed while that on "R.E.2" is definitely 2 parallel lines with a third crossing them.

It was submitted that the presiding officer, Pastor Easy, was a generally unreliable witness with a faulty recollection. I agree that he was not the best of witnesses but I have no reason for disbelieving him and the poll clerk that there were no ballot papers counted at the polling station with a cross for each candidate. Besides, the evidence of tampering is clear on the face of the ballot papers. I am satisfied that the 6 ballot papers were validly marked for the petitioner, were counted for him at the preliminary count and were subsequently tampered with. I award them to him.

Polling Station No. 55 - Reeves Wood

4 votes claimed.

The poll clerk, Ivy Lopez, a housewife, gave evidence as well as the petitioner's agent Ivy Williams. They said that a total of 127 ballot papers were counted at the polling station - there were 86 votes
..../for

for the respondent, 39 for the petitioner and 2 rejected ballot papers. At the trial the ballot papers produced showed 85, 33 and 9 respectively. Of the 9 rejected ballot papers 4 had double votes. The poll clerk identified the presiding officer's initials on the rejected ballot papers but she did not remember what were the marks on the 2 ballot papers which were rejected at the preliminary count. Nor could she remember whether she saw any ballot paper there with a cross for each candidate.

The petitioner's agent said that she saw no ballot with a cross for each candidate. In cross-examination she was shown 3 ballot papers from among the rejected ballot papers which were, obviously, genuinely marked by electors. She said she did not see two of them at the count at the polling station and the third she was not sure whether or not she saw it.

The 4 ballot papers with double votes had all the characteristics of having been tampered with. In view, however, of the poll clerk's uncertainty about ballot papers with double votes I cannot safely award these to the petitioner. Apart from the agent's defective memory, she would obviously be biased. I am not prepared to rely on her evidence alone. These 4 ballots should, however, go towards the alternative claim.

Polling Station No. 57 - Broadleaf

6 votes claimed.

The witness called was the poll clerk, Cephas King, a minister of religion. The presiding officer at this station was a Rev. Mr. Berry. Mr. King said that 116 ballot papers were counted at the station, with 57 votes for the respondent and 59 for the petitioner. There were no rejected ballot papers. At the final count and the recount the figures were 57 and 51 respectively, and there were 8 rejected ballot papers. Of the ballot papers rejected, the cross made for the petitioner on 2 of them was in ink and were valid rejects (these were marked "C.K.4" at the trial). A third ballot paper had a cross in pencil against the petitioner's symbol and a circle in pencil in the respondent's section (it was marked "C.K.3" at the trial.) These 3 ballot papers are not in issue and are not claimed. The balance of 5 have double votes and are claimed. The

..../returning

returning officer said he rejected these along with the other 3 at the final count. The presiding officer's initials on all 8 ballot papers were satisfactorily identified by the poll clerk. He said he did not see any ballot paper with a cross for each candidate during the count at the polling station.

At the trial, 2 of the 5 ballot papers with double votes were marked together as "C.K.1" and the other 3 were marked together as "C.K.2". One of the ballot papers in "C.K.1" had 3 crosses in addition to the cross to the right of the petitioner's symbol. 2 of the 3 crosses were in the respondent's section and one in the petitioner's. The cross to the right of the petitioner's symbol is completely and unmistakably different and out of character with the other 3 crosses on the ballot paper. The other ballot paper in "C.K.1", in addition to the cross to right of the petitioner's symbol, has a cross in the respondent's section which is completely consistent in character with the questioned crosses on the first ballot paper in "C.K.1" and, in fact, is identical with one of them. In addition, on this second ballot paper in "C.K.1" there are 2 marks, crescent shaped, one on either side of the figure "2" in the petitioner's section. These marks appear to have been made by the same hand as made the questioned cross on this ballot paper.

Of the 3 ballot papers in "C.K.2", there are 2 with crosses in the respondent's section and these crosses are consistent in character with the questioned crosses on the ballot papers in "C.K.1". The cross in the respondent's section on each of these 2 ballot papers in "C.K.2" is completely inconsistent in character with the cross made to the right of the petitioner's symbol on each ballot paper. The third ballot paper in "C.K.2" has a cross in the respondent's section which is not like the other questioned crosses in "C.K.1" and "C.K.2" and may have been made by a different hand from theirs.

Mr. King proved to be a person of poor intelligence. He was, however, more stupid than dishonest. He was actually "carried" by the presiding officer when it came to the performance of his duties. He admitted that all his duties in relation to the keeping of the poll book

....were

were done by the presiding officer, his brother minister. In examination-in-chief he said he did not see the ballot paper "C.K.3" at the preliminary count. As this had a circle in the space for the respondent which may have got there subsequent to the preliminary count he may well have meant that he did not see the ballot paper in that condition as several others said during their evidence. In cross-examination he was asked whether he had seen the 2 ballot papers marked "C.K.4" which had crosses in ink. He identified the presiding officer's initials on them and said he had seen them when they were counting; then he said that he did not remember seeing them and that they were not there, at the counting; then when asked to explain the Rev. Berry's initials on them if they were not there on election day, he said that the ink marks were not on the ballot papers. Finally, when asked whether the 8 rejected ballot papers were the very ballot papers he saw at the polling station he said "the initials but not the marks."

In spite of Mr. King's faulty recollection and making allowance for his short-comings in intelligence, I believe that he spoke the truth when he said there were no ballot papers with double votes counted at the polling station. The evidence of tampering on the 5 ballot papers is too plain to admit of any doubt. I find that the 5 ballot papers with double votes were validly cast for the petitioner, were counted as good votes for him at the preliminary count and were subsequently tampered with. I award them to him.

Polling Station No. 58B - Ramble

4 votes claimed.

The poll clerk, Beverley Brown, a shopkeeper, gave evidence. She said that 32 ballot papers were counted at the polling station, with 14 votes for the respondent and 18 for the petitioner. There were no rejected ballot papers. At the trial the ballot papers produced were 14 for the respondent, 14 for the petitioner and 4 rejected. The returning officer said he rejected these 4 at the final count because each had double votes.

The poll clerk, though saying that she saw no ballot paper during the preliminary count with a cross for each candidate, failed to identify the ^{rejected} 4 ballot papers as being among those at the polling station./She

She said she did not know the presiding officer's handwriting.

The indoor agent for the petitioner at this polling station, Ruby King, was called to supply the evidence of identification of the ballots. She said she saw the presiding officer write her initials on the 4 ballot papers. I am, however, not prepared to accept her evidence alone to supply this necessary ingredient of the petitioner's claim. A poll clerk would have much more opportunity of seeing a presiding officer write and I have regarded evidence from this source as sufficient. A candidate's agent would hardly be paying attention to a presiding officer's writing. This agent did not even remember if a poll book was written up by the poll clerk. In any event, there is too much risk of the evidence being given purely to accommodate the petitioner's case and not because the agent had any recollection of the presiding officer's initials.

Evidence of tampering is present on the 4 ballots claimed. On 3 of them the crosses in the respondent's section are similar in character the one to the others and each of them is different in character from the cross beside the petitioner's symbol on each. They will be taken into account on the alternative claim, if necessary.

Polling Station No. 61A - Scott's Pass

3 votes claimed.

The claim for this polling station was not established. The only witness called was the petitioner's indoor agent, Hazel Livingston. She said that 21 votes were counted for the respondent and 28 for the petitioner. There were no rejected ballot papers. The ballot papers produced at the trial showed 21 votes for the respondent, 25 for the petitioner and 3 rejected ballot papers. When shown these 3 ballot papers and asked who wrote the initials on them the witness shook her head. She was shown the ballots cast for the respondent and said the presiding officer, Mr. Young, wrote the initials on them. When asked who wrote the initials on the ballots for the petitioner she said she did not know. She was again shown the 3 rejected ballot papers and then said, after she looked at them for several minutes, that the initials

..../"look

"look like" Mr. Young wrote them. No wonder she could not identify the initials as they were written in script. This witness did not even know the Christian name of the presiding officer or the initial of that name.

There was evidence of tampering on the 3 ballot papers so I place them towards the alternative claim.

Polling Station No. 65 - Porus

3 votes claimed.

The presiding officer, Annette Powell, a teacher, gave evidence. Louise Butler, the petitioner's indoor agent also gave evidence. Mrs. Powell was a very intelligent and impressive witness. The evidence proved that at the count conducted by her there were 55 votes for the respondent and 19 for the petitioner. There were no rejected ballot papers. The returning officer said that at the final count he awarded 55 votes to the respondent, 16 to the petitioner and rejected 3 ballot papers because of double votes.

Mrs. Powell swore that during her preliminary count she saw no ballot paper with a cross for each candidate. She identified her initials on the 3 ballot papers.

The evidence of tampering on the 3 ballot papers is clear. Each of the crosses in the respondent's section is the familiar looped cross. On one ballot paper there are two such crosses. These crosses are different in character from the cross on each against the petitioner's symbol. Apart from the form of the crosses, the point of the pencil making the crosses in the respondent's section was broad while each of the crosses for the petitioner was made with a fine point. There can be no doubt at all about these ballot papers.

I find that the 3 ballot papers were validly cast for the petitioner, were counted as good votes for him at the polling station and subsequently tampered with. I award them to him.

Polling Station No. 68 - Old Porus

5 votes claimed.

The presiding officer, Virginia Siddon, a housewife, gave evidence. She said she counted a total of 69 ballot papers taken from

..../the

the ballot box at her station. She said there were 53 votes for the respondent, 16 for the petitioner and 1 spoilt ballot. There was no rejected ballot. In cross-examination she said that the spoilt ballot was included in the 69 taken from the ballot box and counted among the 53 votes for the respondent, but she put it in a separate envelope. She said she awarded the spoilt ballot to the respondent because it was cast for him. The witness was, obviously, confused as between a rejected ballot and a spoilt ballot. She said that she found out the spoilt ballot when she was counting; that the cross was not crossed as it should. She said that she calls a spoilt ballot "one that is not properly marked" while she calls a rejected ballot "one that has more than one mark."

The figures given for the final count by the returning officer were 54 votes for the respondent, 11 for the petitioner and 5 rejected ballot papers, which he rejected because of double votes. He gave the figures for the magisterial recount as 53, 10 and 6 respectively. He could not explain the difference of one ballot between his count and the others.

Mrs. Siddon identified her signature on each of the 6 rejected ballot papers. She said she saw no ballot paper during her count with a cross on it for each candidate; that she did not see any of the 5 which have double votes with more than one cross during the count.

The rejected ballot paper which is not in issue has one cross only for the petitioner, made partly in pencil and partly in ink. It was, no doubt, rejected for this purpose. Each of the 5 with double votes has a cross to the right of the petitioner's symbol. On 4 of them the cross for the petitioner is marked with an unsteady hand, and is different in character from the cross in the respondent's section. On the fifth ballot paper, there is a clearly marked cross against the petitioner's symbol with 3 additional crosses on the ballot paper - 2 in the section for the petitioner and one in the space for the respondent. These 3 crosses are all looped and correspond with a similarly looped cross on one of the other 4 ballot papers.

Suggestions were made to Mrs. Siddon that she was associated with the petitioner in election campaigns for his party, that he has offered to help her finish the unfinished house which she admitted having

..../and

and that at one time she kept lumber belonging to the Housing Department. All these she firmly denied. The returning officer, however, swore that she was paid by him from the petitioner's constituency fund. She admitted that her husband is a supporter of the petitioner's party and she was probably biased. She, however, impressed me as being a truthful witness. In any event, there is convincing evidence on the face of the ballot papers that they were tampered with and when this is taken with her evidence I have no doubt that they were.

I find that the 5 ballots claimed were validly cast for the petitioner, were counted as good votes for him at the preliminary count and were subsequently tampered with. I award them to him.

Polling Station No. 69A - Coffee Grove

4 votes claimed.

The poll clerk, Pauline Powell, a student, gave evidence. She said that the total ballot papers counted at the close of the polls was 49 - 22 votes were awarded to the respondent and 27 to the petitioner. No ballot papers were rejected. She said that she did not, during the count, see any ballot paper with more than one cross on the ballot paper. At the final count and the recount the figures were - 22 votes for the respondent, 23 for the petitioner and 4 rejected ballot papers. The returning officer said that he rejected the 4 ballot papers because each had a double vote.

Miss Powell was shown the rejected ballot papers but did not identify them as being among those counted at the polling station. She said that there were no initials on the ballot papers counted at the polling station when they were being counted. In respect of the 4 rejected ballot papers, she said she did not remember seeing the initials "D.D." on them on election day. The name of the presiding officer was Dorrel Daley.

The petitioner's indoor agent, Linette Lewis, gave evidence. She said that when the ballot papers were counted they had Dorrel Daley's initials on them. She said she saw him place his initials on them after each person came in to place his or her vote. When

..../shown

shown the rejected ballot papers she said: "I see Mr. Daley's initials on all of them."

For the reasons already given in respect of other cases where the only witness identifying rejected ballot papers is the agent of the petitioner, I am not prepared to accept the evidence of identification in this case. There is clear evidence of tampering on the face of the ballot papers. While I cannot award them to the petitioner because of lack of sufficient evidence of identification I will place them towards the alternative claim.

Polling Station No. 70 - Porus

6 votes claimed.

Eva Denton, a dressmaker, was the presiding officer at this station and gave evidence. She said that 76 ballot papers were counted by her at the close of the poll. There were 36 votes for the respondent, 39 for the petitioner and 1 rejected ballot paper. At the final count and the recount 36 votes were awarded to the respondent, 33 to the petitioner, with 7 ballot papers rejected. The returning officer said that he rejected these 7 at the final count and 6 of them then had double votes.

Mrs. Denton satisfactorily identified her initials on the rejected ballot papers. She said that at the count at the polling station she did not see any ballot paper with a cross for each candidate and no such ballot paper came from the ballot box. When shown the 7 ballot papers she identified the one she rejected. This is not in issue. She said that she saw no ballot paper at her count marked like the 6 ballot papers with double votes; had she seen any, she said, she would have rejected it. She prepared a certificate of the preliminary count of the poll, which was signed by herself, the poll clerk and the two indoor agents. A copy of this certificate was produced and supported the witness' evidence on the figures she gave.

The 6 ballot papers claimed were undoubtedly tampered with. The crosses on the ballot papers which are questioned are all consistent in character with each other and inconsistent with the crosses made against the petitioner's symbol. In 2 of them the crosses for the petitioner were made with an unsteady hand in contrast to the questioned crosses
..../which

which were smoothly made. On 2 of the ballot papers there are 2 questioned crosses, one in the respondent's section and one in the petitioner's. On one of them there are 3 such crosses - a large one in the respondent's section and 2 in the petitioner's. It is utterly ridiculous to suggest that all the crosses on this ballot were made by an elector who wished to "plus out Manley."

Mrs. Denton impressed me as a perfectly honest and truthful witness. She admitted quite readily that she had been a member of the petitioner's political party and that branch meetings had been held at her home. She, however, said that she had given up politics for the Church since 1969. It was suggested to her that she was actively involved in politics up to the day before the last election. She denied it and no evidence was brought to contradict her. She was an intelligent witness. She said she has been employed as an electoral officer in one capacity or another since 1944. No doubt as a result of this experience, the duties at this polling station were efficiently carried out.

I am satisfied that the 6 ballots claimed were validly cast for the petitioner, were properly counted by the presiding officer as good votes for him and were subsequently tampered with. I so find and award them to the petitioner.

Polling Station No. 71 - Porus

2 votes claimed.

The poll clerk, Adina Walker, a housewife, gave evidence. She said that at the close of the poll a total of 114 ballot papers were taken from the ballot box and counted. 72 were awarded to the respondent, 38 to the petitioner and 4 rejected. The ballot papers produced in court showed that at the recount 70 votes were awarded to the respondent, 32 to the petitioner and 12 were rejected. There are 5 ballot papers with double votes. The returning officer said that those were among the ballot papers he rejected at the final count.

A copy of the certificate of the preliminary count of the poll was produced signed, according to the evidence, by the presiding officer, the poll clerk and the two indoor agents. It bore out the poll clerk's evidence on the figures she gave. The poll clerk said that the
.../writing

writing in the "space for initials" on each of the rejected ballot papers is Gloria Charley's, the presiding officer. In cross-examination she said that if she saw this writing among other writing she would be unable to pick it out. At the end of her evidence she said, in answer to me, that she knows it is Miss Charley's initials on the ballot papers shown to her because she saw her initial them. I am prepared to accept this evidence as satisfactory identification of the rejected ballot papers.

7 of the rejected ballot papers are not in issue. 2 of them had properly marked crosses for the respondent but they were made in ink. 2 others had marks for the respondent but these were rejected, apparently because the marks were not properly made crosses. Either of these set of 2 must have been counted by the presiding officer for the respondent and subsequently rejected, thus accounting for the reduction in his votes from 72 to 70. One of the 7 had a mark for the petitioner which was not a properly made cross and must have been rejected because of this. The remaining 2 were marked in the space for the presiding officer's initials and are 2 of those which the respondent referred to in his evidence to demonstrate the illiteracy of the electors.

The 5 ballot papers with double votes have all the questioned crosses consistent in character and differing in character from the crosses against the petitioner's symbol. On 2 of them there are 2 questioned crosses, one each in the sections for the two candidates. On 2, the cross against the petitioner's symbol on each was made with obvious difficulty by an unsteady hand and is in vivid contrast with the questioned cross which was clearly and crisply made.

Mrs. Walker was not a very bright witness but I believe her evidence that when the ballots were being counted she did not see any ballot papers marked like the 5 rejected ballot papers shown to her, with a cross for each candidate. I am also satisfied that these 5 ballot papers were tampered with.

I find that the 5 ballot papers were validly cast for the petitioner, were counted as good votes for him at the preliminary count and were subsequently tampered with. He claimed 2 only of these ballots and they are awarded to him. I place the balance of 3 towards the alternative claim.

.... /Polling

Polling Station No. 72 - Blue Mountain

18 votes claimed.

The poll clerk, Sadie Sellers, a teacher, gave evidence. She struck me as a perfectly honest witness and she must have so appeared to others in court as she was not cross-examined. She said that the presiding officer at this station, Mrs. Phigina Small, has since died.

Miss Sellers said that 182 ballot papers were counted at the close of the poll. The respondent was awarded 71 votes, the petitioner 108 and 3 ballot papers were rejected. She said that there was one ballot paper which was spoilt. It was punctured by the presiding officer, put in the appropriate envelope and eventually locked in the ballot box with the other documents. A copy of the certificate of the preliminary count of the poll, which Miss Sellers said she prepared and was signed by the presiding officer, the two indoor agents and herself, was put in evidence. It supported Miss Sellers' evidence regarding the figures she gave.

The returning officer said that at the final count he awarded 72 votes to the respondent, 93 to the petitioner and rejected 17 ballot papers. He said that the figures for the respondent and the petitioner were the same as his at the recount but that 18 ballot papers were rejected at the recount. Included in the rejected ballot papers produced at the trial was a ballot paper (marked "S.S.1" at the trial) which I am satisfied was the spoilt ballot.

Miss Sellers satisfactorily identified the presiding officer's initials on all the rejected ballot papers. There is one (marked "S.S.2") which is blank. This was identified as one of the 3 ballot papers rejected at the polling station. There is another (one of two marked "D.T.1") which has a cross for the petitioner only. This is no longer in issue. The other 15 rejected ballots all have double votes. The returning officer said these were among the ballot papers he rejected. On one of these 15 the cross against the petitioner's symbol is made in ink and is not now claimed. Apart from the blank ballot paper "S.S.2", Miss Sellers said she was not sure which of the other 16 rejected ballot papers (not including the spoilt ballot paper "S.S.1") were the ones rejected by the presiding officer. She was shown the one with the cross

....in

in ink against the petitioner's symbol, asked to cover the cross in pencil in the respondent's section and to say whether or not that was among the ballot papers rejected. She answered that she was not clear now which were the other rejected ballot papers so she cannot say that this was one of them.

On the balance of 14 ballot papers there are crosses (one on each) in the respondent's section which are similar in character and were obviously made by the same hand. The cross in pencil in the respondent's section on the ballot paper with the cross in ink for the petitioner was also obviously made by the same hand that made those on the 14 ballot papers. On 2 of the 14 (including the second ballot in "D.T.1") there is an additional cross to the right of the respondent's symbol. Both of these are similar and appear to have been made by the same hand. On the other hand the crosses against the petitioner's symbol on the 14 ballot papers vary in character from paper to paper and on each is dissimilar to the cross or crosses in the respondent's section. On 5 of the ballot papers the crosses in the respondent's section are looped. These are almost identical in character to other such crosses on other ballot papers already dealt with.

The petitioner's agent, Daniel Thompson, also gave evidence but he was an obviously untruthful witness and no reliance could safely be placed on anything he said.

When asked if she saw any ballot paper taken from the ballot box at her station with more than one cross i.e. a cross for each candidate, Miss Sellers answered: "Not that I can remember." She said she would have rejected such a ballot paper. Though this answer which she gave was not as positive as it should be, on scrutiny of the ballot papers the evidence of tampering is so outstanding that when taken together with the clear inference to be drawn from a comparison of the figures, I am in no doubt that these 14 rejected ballot papers were originally cast for the petitioner, were counted as good votes for him by the presiding officer and were subsequently tampered with. I have no hesitation in awarding them to him.

..../In

In summary the votes awarded to the petitioner are as follows: Polling station No.11 - 4, No.13 - nil, No.14 - nil, No.17 - 15, No. 23 - nil, No.24 - nil, No.29B - 5, No.29C - 5, No.30A-nil, No.30B - 3, No.31 - nil, No.32 - 1, No.33 - 4, No. 34 - 5, No. 35 - 12, No. 38 - 8, No.41 - 7, No. 42A - 5, No.42B - 8, No. 42C - nil, No.42D-1, No.43 - 1, No.44 - nil, No.48 - 4, No.49 - 7, No.50 - nil, No.51B - nil, No.53 - 6, No.55 - nil, No.57 - 5, No.58B - nil, No.61A - nil, No.65 -3, No.68 - 5, No.69A - nil, No.70 - 6, No. 71 - 2 and No.72 - 14. A total of 136 votes.

The ballot papers placed towards the alternative claim are: Polling station No.14 -4, No.23 - 15, No.24 - 9, No.30A - 5, No.30B - 1, No.38 - 1, No.42D - 6, No.51B - 6, No.55 - 4, No.58B - 4, No.61A - 3, No.69A - 4, and No.71 - 3. A total of 65.

It was submitted for the respondent that on a scrutiny of the ballot papers for the purpose of determining which party had a majority of lawful votes the respondent is entitled to claim that the petitioner did not have the majority on the grounds, inter alia, (a) that the votes previously awarded to the petitioner include votes which ought properly to have been rejected and that his total number of votes should be reduced accordingly, and (b) that in addition to the votes awarded to the respondent there are other votes which should have been awarded to him but which were improperly rejected. On behalf of the petitioner, it was submitted that the respondent should not be able to claim additional votes for himself and the rejection of the petitioner's votes unless the claim is made in writing.

In the United Kingdom, when a scrutiny is ordered by the Court and takes place the disputed ballot papers are set aside for the determination of the court. Each side then makes a list of the ballot papers which it objects to or claims to be added. These lists must be delivered to the court before the hearing and a party cannot vary his list without the consent of the court. At the trial of the petition votes may be struck off or added. Formerly, scrutiny took place at the trial of the election petition (see Renfrew (1874) 2 O'M.& H.213). It appears that when this was done claims to additional ballots could be

...../made

made then. The acts complained of in this petition involve a scrutiny of ballot papers and it is on this basis that the respondent seeks to deprive the petitioner of votes previously awarded to him and claims additional votes. On the authorities, it seems that he is able to do this. It is my opinion, however, that the claims and objection are limited to ballot papers which are in issue. This is not a case of a general scrutiny where all the ballot papers cast at the election in the constituency are being reviewed. It is not a recount. The petitioner has specified the polling stations and the ballot papers from them which it is alleged were tampered with and which he claims gave him a majority of the lawful votes. The allegations are confined to the rejected ballot papers and, in my judgment, only these are in issue. It was open to the respondent to make a cross complaint under s.11 of the Election Petitions Law claiming additional votes and objecting to votes awarded to the petitioner. He could then have claimed or objected to any ballot paper cast at the election which he specified. There is no cross complaint so the area in which the respondent may claim or object is limited as I have indicated.

It was contended that 8 ballot papers (marked "A.C.5" at the trial) awarded to the petitioner from polling station No. 14 should be disallowed on the ground that they had writings on the back of them which provided a means of identifying the voters and should have been rejected. These ballot papers were taken from among the petitioner's ballot papers and shown to the poll clerk, Annabelle Clarke, during cross-examination. She agreed that there are numbers written on the backs of the ballot papers. On one there were, in addition, the letters "N.F." and on another "N. Forbes." There are 10 ballot papers among those awarded to the respondent with similar writings but it is said that though I have power to reject the petitioner's I cannot reject the respondent's. The presiding officer at this polling station was Nicanor Forbes. I was referred to s.51(2)(d) of the Representation of the People Law which directs that ballot papers with marks by which an elector can be identified should be rejected. I hold that the petitioner's ballot papers were not in issue. These ballot papers cannot, therefore, be objected to in the absence of a cross complaint.

.../In

In any event, on examination of the writings I am satisfied that it was the presiding officer who wrote on the backs of the ballot paper. Section 51(2)(d) also provides that no ballot paper shall be rejected on account of any writing, number or mark placed thereon by any presiding officer.

The next ballot paper which it is contended should be disallowed is one from among those awarded to the petitioner at polling station No. 33. It was marked "I.T.3" at the trial. The ground on which I am asked to disallow it is that the poll clerk, Isabell Thompson, to whom it was shown during cross-examination denied seeing the ballot paper at the polling station. This ballot paper has a cross on either side of the petitioner's symbol. The witness did not deny seeing it. What she said was that "it was not at the station like this. We didn't have anything looking like this at our station." She identified the presiding officer's initials on the ballot paper. I did not understand the witness to be saying that she did not see that ballot paper at all. As I said when I dealt with the petitioner's claim from this polling station, there was clear evidence that ballot papers from among those awarded to the petitioner were tampered with and the additional cross may well have been placed on this ballot paper when the others were being tampered with. In any event this ballot paper was not in issue.

I am also asked to disallow 2 ballot papers from polling station No. 59A and one from polling station No. 61B on the same ground as that from polling station No. 33. The ballot papers from these polling stations were among those introduced on behalf of the respondent to show that there were ballot papers rejected for double votes other than those claimed by the petitioner. These were not put in issue by the petitioner.

Dealing now with the claim by the respondent to be awarded votes from ballot papers which he claims were improperly rejected, I accept the submission that once the voter's intention is clear we should, in this Country, take a liberal view of the statutory requirement (see s. 42(3) of the Representation of the People Law, Cap. 342) that the ballot paper should be marked with a cross. There must, however, be a cross or a
...../semblance

semblance of one (see Bloomfield v Benjamin (1945) 4 J.L.R.247). I approach the respondent's claim to additional votes on this basis.

I agree that the ballot paper marked "E.W.2" among the rejected ballot papers from polling station No.13 should have been counted as a good vote for the respondent. It clearly has a cross marked on it and is not rendered invalid by the additional mark. The rejected ballot paper marked "L.G.2" from polling station No.30A is claimed. I regard the mark, which has two almost parallel lines crossed by a third, as a valid mark. The petitioner's claim to have 5 ballot papers from this polling station awarded to him was, however, not allowed because the rejected ballot papers were not sufficiently identified. For the same reason the respondent cannot be allowed the vote he claims. I agree that the second ballot paper of the two marked "S.P.1" among the rejected ballot papers from polling station No. 32 is a good vote for the respondent. It has a properly made cross in the respondent's section with a mark in the petitioner's section which there was an obvious attempt to obliterate. The ballot papers marked "W.M.1" and "W.M.2" among the rejected ballot papers from polling station No. 44 are claimed. These cannot be allowed because there is no proof that they were among those cast at the election and, if they were, that they were marked as they now appear. The presiding officer said in evidence that he saw no ballot paper marked like these during his count. The claim for the third ballot paper among those marked "E.B.1" from polling station No. 49 is allowed. The mark is two parallel lines with other lines across them. The claim to the last ballot paper among the three marked "G.B.1" from polling station No.51B is also allowed. The mark is, in effect, two crosses joined. I allow it in spite of the fact that the votes claimed by the petitioner at this station were not allowed. I am satisfied from the evidence that this ballot paper was cast at the polling station in its present condition. Two votes are claimed from among the ballot papers rejected from polling station No.55. There is no cross or the semblance of one on one of these. On the other there is the semblance of a cross and I allow it. Though on the state of the evidence I could not award the petitioner the votes he claimed from this polling station, I am satisfied that this one that I allow to the respondent was a ballot paper validly

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cast. I also allow the first and third ballot papers of those marked "A.W.3" from the rejected ballot papers from polling station No. 71. The first has two parallel lines crossed by two others almost parallel. The other has a clear cross with other markings which do not, in my opinion, invalidate the ballot. Claims were made in respect of ballot papers from polling stations Nos. 61B, 64 and 69B but the ballot papers from these polling stations were not in issue. They were introduced in evidence on behalf of the respondent.

The respondent is, thus, awarded an additional 7 votes which, when added to his majority of 94 at the end of the recount by the learned Resident Magistrate, gives him a majority of 101 votes. This majority is, however, absorbed by the additional 136 votes awarded to the petitioner leaving the petitioner with a final clear majority of 35 votes.

It was submitted by Dr. Barnett for the respondent, supported by Mr. Davis for the returning officer, that the petitioner is not entitled to succeed on his petition because, in the light of the evidence, the petition fails to seek relief on any valid ground of complaint. This submission is based on the fact that the petition complains, in paragraph 9, that 214 ballots "were wrongly rejected by the Returning Officer and ought properly to have been accepted by him as good and valid votes" cast for the petitioner. The contention is put on two grounds. It is said, firstly, that the ground of complaint is not valid because the return of the respondent was based on the result of the magisterial recount and not of the final count by the returning officer and the ballot papers in issue were rejected by the learned Resident Magistrate. Secondly, it is said that the returning officer was legally bound to reject the ballot papers with double votes and that, in any event, no complaint was made to him on the basis of which, assuming he had the power to do so, he could embark upon any inquiry into allegations of tampering with ballot papers. In reply, Mr. Phipps contended that the petition has been completely misconceived by his opponents and that the petitioner's one and only ground of complaint is that he had received the majority of the lawful votes at the election. He disclaims the allegation of wrongful rejection of ballot papers as a ground of complaint.

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As I understand the argument, it is being contended that in spite of a finding that ballot papers have been tampered with and that if they had not been tampered with the petitioner would have received the majority of lawful votes at the final count and the recount, the petitioner is not entitled to succeed because his petition does not allege any valid ground on which he can obtain relief. In the light of the findings I have made, it would, obviously, be a gross injustice if this contention is allowed to prevail.

Section 8 of the Election Petitions Law provides that it shall be sufficient that a petition shall state generally the grounds on which the petition relies for challenging the election or return and requires the petitioner to furnish particulars of the acts complained of as avoiding the election or return. The criticism of the petition in the light of the evidence is not without justification. If, as Mr. Phipps contends, the petitioner's one and only ground of complaint is that he had received a majority of the lawful votes this should have been expressly so stated in the petition, but it was not. It is my opinion, however, that the petition can be so interpreted. Paragraph 4 states that the ballots described in paragraph 8 were proper ballots for the petitioner when cast and when counted at the preliminary count and alleges that by the time of the final count they had been tampered with, resulting in their being rejected. The petition states the majority of votes in favour of the respondent at the end of the final count and the recount. In view of this, of the number of ballot papers which the petition alleges were tampered with and of the concluding words of paragraph 9 that if the ballot papers wrongly rejected were accepted, as they ought to have been, the petitioner would have had a majority of 120 votes, I hold that the real ground on which the petitioner relies for challenging the election or return is that he had obtained a majority of the lawful votes at the election. In my judgment, he has succeeded in establishing this ground and he, and not the respondent, was duly elected and ought to have been returned. I shall so certify to the Speaker of the House of Representatives.

My decision on the question of costs is postponed until I have heard argument on the matter.