JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 39 of 1972

BEFORE: The President (Ag.).
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Grannum, J.A.(Ag.).

ELECTION PETITION

ARTHUR HENRY. W. WILLIAMS PETITIONER

Dr. DOUGLAS MANLEY

and

H.A. YOUNG (RETURNING OFFICER) RESPONDENTS

A.L. Davis and Shirley Playfair for appellant Young.

F.M. Phipps Q.C., Norman Hill Q.C. and
Peter Rickards for petitioner.

Hugh Small and Raymond King for respondent Manley.

1973 - May 9, 10 & 11. June 8.

SMITH J.A.:

Arising out of the general elections held on February 29, 1972, an election petition was filed by Mr. Arthur Henry Winnington Williams, who was a candidate in the constituency of Southern Manchester. The petition was directed to Dr. Douglas Manley, the successful candidate in the elections for that constituency, and to the returning officer for the constituency, Mr. H.A. Young. Copies of the petition were served on them. The returning officer subsequently applied by summons to have his name struck out of the petition as a respondent on the ground that the petition did not complain of his conduct as returning officer. The application was heard by the learned Chief Justice, who dismissed the summons with costs on November 27, 1972, but granted leave to appeal.

The question for our decision on appeal is whether the petition can properly be said to "complain of the conduct of (the) returning officer" within the meaning of those words in s.18 of the Election Petitions Law (Cap. 107). It was submitted for the returning officer that "conduct" in the section means "misconduct"; that the allegation in the petition concerning

the returning officer amounts to no more than an allegation that he committed an error of judgment and that this is not misconduct as justifies the returning officer being named a respondent. For this submission reliance was placed upon Harmon v. Park and anor. (1880), 6 Q.B.D. 323.

Section 18 of the Election Petitions Law provides as follows:

> "Where an election petition complains of the conduct of a Returning Officer, such Returning Officer shall for all the purposes of this Law ..... be deemed to be a respondent."

These provisions are the same in substance as those of s.13(6) of the Corrupt Practices (Municipal Election) Act, 1872 (35 & 36 Vict. c. 60), which were considered in Harmon v. Park. There a mayor, who it was contended was a returning officer, had bona fide given a decision on the validity of an objection made to a nomination paper. He was subsequently made a respondent in an election petition in which his decision was challenged. On appeal to the Court of Appeal, in proceedings brought to strike the mayor's name out of the petition, it was held that a complaint of the mayor's decision as erroneous, assuming him to have been the returning officer, was not a "complaint of the conduct" of such mayor within the meaning of s.13(6) of the Act of 1872. In his judgment Lord Selborne, L.C. said, at p.328:

> "In this case we all agree that this petition does not complain of the conduct of a returning officer within the meaning of s.13 of the Corrupt Practices (Municipal Election) Act, 1872, even assuming that the mayor was here a returning officer. The words 'complain of the conduct' must, as I read them, be taken to mean that there must be an imputation of misconduct. As at present advised, I am inclined to doubt whether any act on the part of a returning officer, which did not fall within the list of offences enumerated in s.11 of the Ballot Act, could be treated as misconduct, so as to render him liable to be made a respondent in a municipal election petition; but it is unnecessary here to determine that point, for of one thing I am perfectly clear - that an erroneous decision upon the validity of a nomination paper given bona fide by a mayor, whether he be returning officer or not, is not misconduct, and that a complaint of such decision as erroneous is not a complaint of his conduct."

At p.329 Lord Selborne continued:

> "Anything more vexatious or unreasonable than to make a man, the propriety of whose conduct is not impeached, and who is

> alleged merely to have decided a question of law erroneously, a respondent, for the sake of mulcting him in costs, I can hardly conceive. I am glad that I have had an opportunity of expressing my opinion on this point, an opinion in which my learned Brothers agree, as it appears that in one or two cases before this the same thing has been done, though no question of law as to its propriety was ever raised."

Section 11 of the Ballot Act (35 & 36 Vict. c.33), to which Lord Selborne referred, provided that "every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall ..... forfeit ..... a penal sum ....." Brett, L.J. seems to have gone a little further than Lord Selborne in his interpretation of s.13(6) of the Act of 1872. He said (at p.331):

> "The first question then is whether, assuming that the mayor here was a returning officer, there is in this petition such a complaint of his conduct as brings him within the statute. Now, before the statute, there would have been no remedy against a returning officer for anything done by him in that capacity except by action, and no action would have lain against him except for malice or misconduct. And I am of opinion that no conduct on the part of a returning officer can now be called in aid, for the purpose of making him a respondent under the statute, which would not have been ground of action against him before it."

No case was cited to us in which the interpretation put upon s.13(6) of the Act of 1872 in Harmon v. Park has been followed. On the contrary, in subsequent cases courts have declined to follow the decision. In Wilson v. Ingham (1895) 64 L.J.Q.B. 775, an Election Petition Court impliedly held that negligence in a returning officer was sufficient ground for making him a respondent. In that case, in which the returning officer was a respondent, Day, J. said, at p.777:

> "I think that it would be dangerous in the highest degree that it should be laid down that a returning officer incurs no liability to costs by bringing such consequences as have followed in this case upon others by reason of his negligence. I protest most strongly against such a view of the construction of the statute. But I take into consideration that the error in this case was inadvertently committed by a clerk of many years' experience, and was not the result of gross negligence."

The other member of the Court, Wright, J. said (ibid):

> "I agree, and I wish to express no opinion as to the class of case in which a returning officer might be ordered to pay costs, or as to the amount of misconduct which would make him liable for them."

These observations of the members of the Court were made in respect of the contention, on behalf of the returning officer, relying on Harmon v. Park, that he was improperly made a party and so was not liable to pay costs. Though the contention that the returning officer must be guilty of wilful misfeasance or a wilful act or omission before he can properly be joined as a respondent and made to pay costs was not accepted yet it appears, at any rate from the judgment of Wright, J., that it was accepted that he must be guilty of some misconduct.

In The Islington Division Case, (1901) 17 T.L.R. 230, the returning officer was made a respondent where the allegations made in the petition were of breaches of the law by presiding officers and their assistants at polling stations. It was contended for the returning officer that he had done nothing wrong, that the presiding officers had done nothing worse than wrongly construing a difficult Act of Parliament and that the returning officer was, therefore, entitled to be indemnified as to his costs. Again Harmon v. Park was relied on. In delivering the judgment of the Court (consisting of himself and Darling, J.) Kennedy, J. is reported as saying (at pp. 231,232):

> "Mr. Laing had contended that Mr. Gasquet (the returning officer) was entitled to an indemnity, and ought not to have been made a party at all. ..... they did not think that they ought to leave the matter without expressing an opinion as to whether he ought to have been joined. In their opinion, having regard to the decisions of the Election Petition Courts both before and after 'Harmon v. Park', they were unable to say that this respondent was improperly joined. Lord Selborne's language in that case was language on which the decision did not proceed, and it was only the expression of a view. There were several other cases in which the Courts considered it not improper that the returning officer should be joined. In 'Wilson v. Ingham,' as to one of the questions - namely, as to whether the returning officer ought to be made a party where there was no wilful misconduct on his part - the point was expressly dealt with.

> They were of opinion, and they held, that there might be circumstances, and the present case came under that head, in which, without there being wilful misconduct on the part of the returning officer, there might be acts on the part of his subordinates which might justify the returning officer being made a party .....
> A returning officer was properly joined as respondent where the acts, omissions or negligencies complained of were the acts of those who were working under him."

In the Rainham Parish Council Election Petition case, (1919) W.N.199, on an application for costs against the returning officer, who was made a respondent, it was submitted that there was no case in which a returning officer had been ordered to pay costs of an election petition unless he had been guilty of wilful misconduct. The Court (Earl of Reading, C.J., Avory and Roche JJ.) said that a mistake which ought not to have occurred had been made in the counting of the votes, and the Court had had to rectify the mistake by a declaration. The deputy returning officer was made to bear a part of the costs of the petition.

Nearer home, the Supreme Court of Trinidad & Tobago in Sabga v. Solomon (1963) 5 W.I.R. 66 held that the election petition in that case complained of the conduct of the returning officer. The majority of the court held as a result that the failure to join him as a respondent invalidated the petition. The allegation on which this decision was based was a failure by the returning officer to enlarge polling stations in breach of election rules. The majority judgment of the Court, delivered by McShine,Ag. C.J., said (at p.73) that "this is not an analogous situation as arose in Harmon v. Park which is authority for the proposition that an error of judgment is not misconduct. It was therein an error of erroneous interpretation and so could not amount to a complaint of conduct." In Barbados, in Brathwaite v. Edwards, (1967) 11 W.I.R. 475 complaint was made of the failure on the part of a petitioner to make the returning officer a respondent. The petition complained that the named respondents had obtained an apparent and colourable majority over the petitioner whereas in truth and in fact the petitioner had a majority of votes over one of the named respondents and ought to have been returned. This complaint was in identical terms as that prescribed in Atkin's Court Forms where the ground on which relief is sought in an election petition is a return on votes

wrongly counted. (see Atkin's Court Forms, 2nd edn., V. 18 p.184). Douglas,C.J. held that this was a complaint of the conduct of the returning officer within the meaning of the relevant statutory provision and that the requisite documents should have been served on the returning officer. He said (at p.482) that what the petitioner was there saying was that although he had obtained a majority of the votes cast, the returning officer had improperly returned the respondent as having been elected.

In all the cases since Harmon v. Park to which reference has been made there were statutory provisions corresponding with those of s.18 of our Election Petitions Law. In the light of these cases, Mr. Davis for the returning officer was constrained to concede that, for the purposes of s.18, negligence and breaches of statutory rules and regulations by a returning officer are within the term "misconduct." He, however, submitted that the cases since Harmon v. Park were not decided contrary to that case and he maintained that misconduct by a returning officer must still be alleged in the petition before he can properly be made a respondent.

There is no clear indication from the cases that Lord Selborne's opinion in Harmon v. Park that the words "complain of the conduct" must be taken to mean an imputation of misconduct has been rejected. What is clearly rejected, and in my opinion rightly rejected, is the view which he tentatively put forward that the misconduct must amount to wilful misfeasance or a wilful act or omission in contravention of the statute. The reason for his construing the words as he did may be found in the passage cited above (at p.329) where he said: "Anything more vexatious or unreasonable than to make a man, the propriety of whose conduct is not impeached, ..., a respondent, for the sake of mulcting him in costs, I can hardly conceive." In answer to this, it may well be said that if a returning officer, the propriety of whose conduct is not impeached, is made a respondent he cannot justifiably be made to pay costs and he is entitled to have his costs paid. With all due respect, if this is all that Lord Selborne had in mind it does not appear to be a justifiable ground for so limiting the meaning of "misconduct." If it is a valid ground it should apply equally to a successful candidate, the propriety of whose conduct is not impeached. Yet under the law such a candidate must always be a respondent. The reason given by Brett, L.J. seems to be even less valid. An election petition cannot truly

be said to seek a remedy against a person named in it as a respondent. It only prays for the judgment of the Court upon the election and the validity of the return that has been made. There is, therefore, no justification for Brett, L.J. equating the position of a returning officer named as a respondent in an election petition with that of a returning officer against whom remedy could have been sought by action.

But why should the word "conduct" in the respective statutes and in our s.18 be construed to mean "misconduct"? And if that construction is right and the misconduct alleged need not be wilful misfeasance or a wilful act or omission, what is to be comprehended in the term "misconduct"? In my opinion, nothing is to be gained by reading "misconduct" into s.18 in place of "conduct". At the same time, no harm is done by the substitution. To my mind, a "complaint of conduct" necessarily involves an imputation of misconduct in its widest sense. The only reason for anyone complaining of another's conduct must surely be because that other's conduct is said to be wrong or improper. Wrong or improper conduct is misconduct. I prefer, however, to try to ascertain the intention of the legislature from the words they actually used. So, what did the legislature have in mind when s.18 was first enacted in 1885? (see Law 3 of 1885).

Law 3 of 1885 was modelled on The Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125) of the United Kingdom. Formerly, the right of deciding upon the validity of all elections to the House of Commons in England was exercised exclusively by the House itself. This right was subsequently transferred to the judges of the superior courts and the Act of 1868 is one of the earliest in which comprehensive provisions to this end were made. It then became the duty of the judges to decide whether an election in respect of which a petition is brought was properly conducted according to the laws governing the conduct of elections. In this Country in 1885, as in England at that time, the returning officer of each electoral district was solely responsible for the holding of elections in that district, for declaring the candidate who was duly elected and for certifying the return of such candidate. The election or the return could be challenged by petition. The judge who tried the petition was required to determine whether the person whose return or election was complained of "was duly returned or elected, or whether the election was void" and to certify such determination to the Governor.

In the report of Harmon v. Park in the Law Journal Reports (50 L.J.Q.B. 227) as well as in the Law Times (44 L.T. 81), Lord Selborne is reported as saying (at pp. 229 & 83 of the respective reports) that a returning officer is deemed a respondent by the statute "because justice requires that he should have an opportunity of answering when charges are made against him." In Sabga v. Solomon (supra at p.83), Corbin, J. said that "the intention of the legislature in deeming (the returning officer) a respondent must have been to give him an opportunity of objecting to the security for costs and to answer any complaints made in the petition." In my view, the intention was not so much to give the returning officer an opportunity of answering charges or complaints made against him as to enable the judge hearing the petition to be in a position to call upon him to answer or account for his acts or omissions in the conduct of the election. I have come to this conclusion because of the scheme and content of the legislation and the duty imposed upon the judge on the trial of an election petition. If he is to make a proper inquiry and determination regarding the validity and conduct of the election it is essential that he should be able to question the person who had sole charge of the conduct of the election where that conduct is impeached and, therefore, at issue. It is for this reason, in my opinion, that he is deemed by law to be a respondent rather than the petitioner being obliged by law to make him a respondent, as one would expect if the purpose was merely to give him an opportunity of answering.

The purpose for which s.18 was first enacted has not altered. In my judgment, consistent with what I consider to have been the intention of the legislature, any act or omission of a returning officer, or anyone for whose actions he is legally responsible, in the conduct of an election which a petition claims resulted in an undue election or an undue return, is a complaint of his conduct under s.18.

The petition now under consideration alleges that the appellant as returning officer wrongly rejected ballots which ought properly to have been accepted by him as good and valid votes cast for the petitioner. This allegation is made against the background of an allegation that the ballots in question were deliberately and fraudulently tampered with and spoilt after

they had been cast and counted at the preliminary count. For most of the period between the preliminary and the final counts the ballot boxes sealed with ballots in them are, by law, in the safekeeping of the returning officer. I am in no doubt whatever that the petition complains of the conduct of the returning officer and that he is, therefore, properly deemed a respondent. I would dismiss his appeal.

PRESIDENT:

I agree with the conclusion and the reasons given therefor in the judgment just delivered and there is nothing that I can usefully add.

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GRANNUM J.A. Ag.:

On the 27th November, 1972, the learned Chief Justice dismissed with costs a summons brought by the second-named Respondent Young who sought an order that his (the said Respondent's) name be struck out of an election petition filed by the Petitioner, and that service thereof on him (the said Respondent) and all subsequent proceedings against him be set aside.

The said Respondent now appeals against that order of dismissal on the ground that the learned Chief Justice erred in law in holding that he (the said Respondent) had been properly joined as a Respondent to the Petition.

The background is as follows:

General Elections to the House of Representatives were held on the 29th February, 1972. Included among these Elections on that date was an election for the Constituency of Southern Manchester, at which Dr. Douglas Manley of the People's National Party (the first-named Respondent) and the Petitioner of the Jamaica Labour Party were the candidates respectively. The Appellant Mr. H.A. Young was the Returning Officer for the Election, and on the 2nd of March 1972 he returned Dr. Douglas Manley as being the duly elected successful candidate.

On the 10th and 11th March, 1972, there was a recount of the votes by the Resident Magistrate for the parish of Manchester which showed a majority in favour of Dr. Douglas Manley.

The Petitioner in his petition stated that a certain number of votes amounting to a total of 214 votes and particularised in the said petition were proper ballots for him (the Petitioner) at the time they were cast and at the time they were counted at the preliminary count. He alleged in the petition that this was stated to be so by the presiding officers and by the agents respectively for both candidates, but he further alleges that by the time the Returning Officer made his final count, the said ballots had been tampered with and what were formerly proper ballots cast in favour of the petitioner, were then declared to be spoilt ballots and as a consequence, rejected.

The Petitioner also stated in the said petition that at the end of the magisterial recount and again because of the rejected ballots as aforesaid, the Resident Magistrate declared that Dr. Douglas Manley had obtained a majority of 94 votes over the Petitioner.

He makes the allegation in his petition that the 214 votes which were votes cast for him, were deliberately and fraudulently spoilt after they had been cast and counted at the preliminary count. He further complains in the petition that the 214 ballots aforesaid 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 giving him (the Petitioner) a majority of 120 votes over his opponent Dr. Douglas Manley.

The relief which the Petitioner seeks by his petition is a determination that Dr. Douglas Manley was not duly elected or returned to serve as a member of the House of Representatives for the said constituency of Southern Manchester.

Alternatively, he prays that the said election of Dr. Douglas Manley be declared wholly null and void.

Following service of the petition on the Respondents, the first-named Respondent, Dr. Douglas Manley required of the Petitioner further and better particulars as to how, by whom, when and where the ballots alleged by the petitioner to be proper ballots cast in favour of the Petitioner, were tampered with, and also, with regard to the 214 votes alleged by the Petitioner in his said petition to have been cast in favour of the petitioner and to have been deliberately and fraudulently spoilt, particulars as to how, by whom, where and when the said 214 votes were so spoilt.

Pursuant to an order made by a Judge in Chambers on 26th June, 1972 the Petitioner supplied the particulars as required. With regard to the alleged tampering, he stated that the ballots which were formerly proper ballots cast for him were tampered with in the said constituency of Southern Manchester by a person or persons unknown, on a day unknown between 5 p.m. on the 29th February, 1972 and 12th March, 1972.

With regard to the manner of tampering, the Petitioner specified 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 appear that the elector had voted for each candidate, the vote becoming thereby, a double vote.

In his further and better particulars the Petitioner also stated that the 214 votes aforesaid were deliberately and fraudulently spoilt in the

His contention is that there being no specific allegation in the petition of negligence or breach of any statutory provision or rule relating to the Election on the part of the Returning Officer, it is not possible for a complaint as to his conduct to be inferred or implied in such a way as to enable him to be joined as a Respondent to the Petition, under the provisions of s. 18.

Secondly, as I understand it, counsel for the Appellant contends further or alternatively that even if it could be said that there is a vague allegation that the alleged acts of tampering or spoiling the ballots were done at a time when the Returning Officer could be said to have the ballots in his custody and safe-keeping, there is nevertheless no clear indication in the petition or in the particulars as to the exact point in time when the Returning Officer was given charge of the ballot boxes by the Presiding Officer after the preliminary count. It is only after he has received the ballot boxes into his custody, that he becomes personally responsible for their safe-keeping.

His argument is that if the Returning Officer in counting the ballots makes an erroneous decision as to the validity of a ballot paper, then that is an exercise by the Returning Officer of his functions under the law and cannot be regarded as a complaint of his conduct. It would at the utmost be an error of judgment.

In my opinion the stand sought to be taken by the Appellant in this case would be altogether untenable were it not for certain dicta expressed by Lord Selbourne in the case of Harmon v. Park Q.B. 6. 1880-1 p.323. I shall return to this case shortly but I can express my firm opinion now on the hypothesis that even without reference to any of the cases which have been cited in the arguments before us, the contention, of the Appellant is clearly without validity. In my view the petition itself contains material which unequivocally covers the provisions of Section 18 of Cap. 107, in the sense that it complains of the conduct of the Returning Officer in relation to the Election. It would suffice I think, if I advert to only two features of the Petition itself, one expressed, and the other consisting of material which, speaking for myself leads to an inescapable inference.

In paragraph 9 of the petition the express allegation, is that the 214 ballots were "wrongly rejected by the Returning Officer". This can mean nothing less than an undisguised complaint against the conduct of the

Returning Officer in relation to his management and/or superintendence of the Election.

Turning to what I have described above as the inescapable inference, it is equally clear to me that the whole gravamen of the petition in this case is that the ballots referred to were altered or tampered with or spoilt, while they could properly be said to be in the safe custody of the Returning Officer. Even assuming that the Appellant is right when he says that the petition does not pin-point the exact time when they are alleged to have been so interfered with, the fact is that the petition covers the whole of the period when the Returning Officer is entrusted under the Law with the safe keeping of the ballots and the Petitioner charges in these premises that his opponent was not duly elected or returned to serve as a member of the House of Representatives. I have no hesitation in saying that such an allegation can leave no doubt in the mind of anyone that a serious charge or complaint is directed against the conduct of the Returning Officer in relation to his management of the Election, and as such brings him unmistakably within the spirit and intendment of Section 18.

The matter could end here for the purposes of my decision in this appeal but I will go further and mention some of the cases cited largely because counsel intimated during the course of the argument that it would be of advantage and may serve as guidance in any future consideration of Section 18 of Cap. 107 if this court would express its views as to the proper interpretation and import of the Section.

In Harmon v. Park and anor Q.B. 6. 1880-1 p.323, the headnote reads as follows:

> "Where a Mayor has bona fide given his decision on the validity of an objection made to a nomination paper, a complaint of such a decision as erroneous is not "a complaint of the conduct" of such Mayor within the meaning of S.13 of the Corrupt Practices (Municipal Election) Act 1872."

In the course of his judgment in this case Lord Selbourne L.C. who was there dealing with a provision corresponding to our S.18 of the Election Petitions Law, Cap. 107 said this:

"The words 'complain of the conduct' must, as I read them be taken to mean that there must be an imputation of misconduct. As at present advised I am inclined to doubt whether any act on the part of a Returning Officer which does not fall within the list of offences enunciated in Sec. 11 of the Ballot Act could be treated as misconduct, so as to render him liable to be made a respondent in a municipal election petition. Under Sec.13 it is not open to a petitioner to make him a respondent or not at his option, for the Section says that where a petition complains of the conduct of a Returning Officer he shall be deemed to be a respondent, that is to say, he shall be treated ipso facto as a respondent by reason of the complaint.

Anything more vexatious or unreasonable, than to make a man, the propriety of whose conduct is not impeached, and who is alleged merely to have decided a question of law erroneously, a Respondent for the sake of mulcting him in Costs I can hardly conceive."

These are unquestionably strong words from an eminent Judge which would appear at first sight not only to support but to formulate the proposition that the words of the section should be given a strict and limited interpretation and in effect should mean that a Returning Officer shall not be joined as a Respondent except where there is an allegation of wilful misconduct on his part.

On the other hand when one looks further at some of the later cases decided in England it can be seen that the above dicta of Lord Selbourne have been so severely criticised and expressly rejected, that the proposition which he purported to establish in Harmon v. Park could fairly be said to have been exploded.

The case of the West Borough of Islington, Times Law Rep. 1900-1 p. 230 is perhaps most worthy of mention in this regard. This was a case in which it appears to have been conceded on all hands that the Returning Officer had done nothing wrong and the Presiding Officer had done nothing worse than wrongly construe a difficult Act of Parliament.

Kennedy J. in delivering the judgment of the court said that "having regard to the decisions of the Election Petitions Courts, both before and after Harmon v. Park they were unable to say that the Returning Officer had been improperly joined as Respondent. Lord Selbourne's language in that case was language on which the decision in that case has not proceeded and it was

only the expression of a view. There were several other cases in which the courts considered it not improper that the Returning Officer should be joined. In Wilson v. Ingham, as to one of the questions, namely whether the Returning Officer ought to be made a party when there was no wilful misconduct on his part - the point was expressly dealt with. The court was of the opinion and they held that there might be circumstances and the present case came under that head, in which, without there being wilful misconduct on the part of the Returning Officer, there might be acts on the part of his subordinates which might justify the Returning Officer being made a party. A Returning Officer was properly joined as a Respondent when the acts, omissions or negligences complained of were acts of those who were working under him.

In Francis v. Duhaney 13 W.I.R. p.133 which albeit was principally concerned with the proposition that a Returning Officer was responsible for the conduct of (among other Election Officers) Presiding Officers, Luckhoo J.A. delivering the judgment of this court had this to say:

> "An examination of the English Authorities and of the relevant statutory provisions, show that the Courts in England have considered that it is not improper for a Returning Officer to be made a party to a petition where acts (not of the candidates) in the conduct of the election are in question, are acts which it is said avoided the election and acts which were not confined to the personal acts of the Returning Officer."

It is this line of reasoning, following the Islington Case, which leads me away from a strict and narrow interpretation of the words "complains of the conduct" as suggested in Harmon v. Park, and as is now invoked here by Counsel for the appellant, and attracts my view towards a much broader and more generous treatment of what I understand to be the intention of the Legislature underlying the provisions of Sec. 18.

I will refer only to two other cases decided quite recently in the West Indian Courts, in which the question of the joinder of the Returning Officer as a Respondent to an Election Petition was considered.

The first is Sabga v. Solomon 5 W.I.R. 66, where the complaint in the petition was that the Returning Officer did not enlarge certain polling stations as required by an election rule with the result that many persons were admitted to vote who were disentitled under the Rule.

It was held there that the failure to join the Returning Officer as Respondent invalidated the petition. The other case is Braithwaite v. Edwards 11 W.I.R. p. 481. In that case the complaint was that one candidate had obtained an apparent and colourable majority over the other and that the Returning Officer had in effect improperly returned the Respondents.

Douglas C.J. regarded this as a complaint about the Returning Officer, even though no grounds nor facts were specified in the petition.

In the light of the cases I have referred to, I have arrived at the opinion that the Legislature both under the Representation of the People Law Cap. 342 and the Election Petition Law Cap. 107 envisaged the situation as being one in which it is the general duty of the Returning Officer at a parliamentary election to do all such acts and things as may be necessary for effectively conducting the election by the rules or law governing such an election.

I think that where grave allegations are made in an Election Petition which affect the Returning Officer, in relation to his superintendence of the Election the provisions of the law require that he should be a Respondent, and whether the allegation in the Petition relates directly or indirectly to acts or omissions on the part of the Returning Officer in exercising his powers and duties under the Law, then as Returning Officer he is under an obligation, both in his own interest and that of the public to make himself ready and available to explain or answer these allegations or charges. There should be no shrinking away by a Returning Officer from a petition which contains allegations which are aimed at his management of an Election.

Speaking for myself I would go as far as saying that the Legislature contemplated the Returning Officer as being the Superintendent or Chief Steward of an election, in so far as his particular constituency is concerned and it would not be improper to join him as a Respondent to a petition in any case where there is material in the petition which could fairly be regarded as calling into question, his acts or omissions or negligences in connection with the election, and which could reasonably be regarded as requiring him to give an account of his stewardship in relation to that Election.

Of course there may be from time to time instances where the imputations contained in, or to be derived from the petition are, on the face of it so frivolous or vexatious that they can be readily discernible

as being attempts to abuse the process of the Court and in such circumstances the Court should have no difficulty in rejecting any purported joinder of the Returning Officer as respondent.

For the reasons that I have expressed it follows that I would dismiss this appeal and affirm the order of the learned Chief Justice.

PRESIDENT:

The appeal is dismissed with costs to the petitioner and the respondent Manley.