

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE ELECTION COURT**

**SUIT NO. C.L. D023 OF 1998**

<b>BETWEEN</b>	<b>ABRAHAM JOSEPH DABDOUB</b>	<b>PETITIONER</b>
<b>A N D</b>	<b>PHYLLIS MAE MITCHELL</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>A N D</b>	<b>DERRICK MAIS</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>A N D</b>	<b>DANVILLE WALKER</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>A N D</b>	<b>BANCROFT ANGLIN</b>	<b>4<sup>TH</sup> RESPONDENT</b>

**APPEARANCES:** Earnest A. Smith and J. Dabdoub, instructed by Clough Long & Company for the Petitioner.

Mr. H. Cunningham Q.C. and Mr. G. Cruickshank, instructed by Linton Walters & Company for the First Respondent

Miss N. Foster instructed by Director of State Proceedings for Second and Third Respondents.

**HEARD:** July - 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 2000  
August - 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 2000  
September - 11<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 2000  
October - 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>, 2000  
November - 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 2000  
December - 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 2000  
June 29<sup>th</sup>, 2001

**REID, J:**

Following the general election to the House of Representatives held on 18<sup>th</sup> December, 1997, there was a magisterial recount in the Constituency of N.E. St. Catherine. The 1<sup>st</sup> Respondent

was declared to have a majority of thirty (30) votes whereupon the second named Respondent the Returning Officer issued the prescribed return as provided by Section 49(i) of the Representation of the Peoples Act. The Petitioner the unsuccessful candidate of the Jamaica Labour Party states that the election was marked by irregularities committed by persons who

- (a) were not entitled to vote
- (b) voted at polling stations where they were not so entitled
- (c) voted in the names of persons who were entitled to vote but who had not attended at a polling station
- (d) persons who voted more than once.

The Minister responsible under the Representation of the Peoples Act had prescribed an enumeration period which commenced on 6<sup>th</sup> January, 1997 and thereafter continued on a house to house inquiry to ascertain eligible electors under the direction of the Chief Electoral Officer or the Director of Elections. Enumerators accompanied by scrutineers conducted this exercise in the polling divisions of each constituency. In the constituency of N.E. St. Catherine, fixed registration centres were established at Glengoffe and Riversdale. On 26<sup>th</sup> November, 1997 the Prime Minister announced that the elections would be held on 18<sup>th</sup> December, 1997 and nomination of candidates would be 2<sup>nd</sup> December, 1997.

Petitioner claims that Third Defendant, the Director of Elections, contravened the Act and Regulations thereunder by certifying publishing and printing an official list of electors, otherwise than in good faith, with full knowledge that properly enumerated electors would be disenfranchised by the omission of their names. Included in such lists were persons who were not enumerated but nonetheless had been permitted to vote.

Imputed to the Director was the failure to advise the Prime Minister and the Governor-General that the lists would not be ready in time for an election to be announced shortly thereafter as well as a failure to provide a prescribed document in lieu of an identification card for each elector in the Constituency. From the certified list, fifty-four (54) named electors properly enumerated had been omitted although the Director had been advised these names did not appear on the interim list. Persons residing outside the constituency from the adjoining parishes of St. Andrew and St. Mary respectively were improperly enumerated in the constituency of N.E. St. Catherine and had polled their votes there wrongfully. Violence and intimidation at polling stations in the constituency it is alleged, had inhibited electors from duly casting ballots and in one instance an invasion of the polling division by over fifty (50) activist supporters of the First Respondent aided and abetted by her had resulted in the improper inclusion of ballots irregularly placed in the ballot box and reflecting a distortion of the polls there.

Only on the 17<sup>th</sup> December, 1997 was a complete list of Presiding Officers and Poll Clerks supplied to the Petitioner thus preventing him from making objections to persons whom he considered unfit to work on election day. Although balloting by the Constabulary and Military took place on 15<sup>th</sup> December 1997 as required by Law, a number of electors from these groups had in fact voted in the constituency on 18<sup>th</sup> December, 1997 when by law they were prohibited from so doing.

The principles by which this Court will be guided at the hearing of this petition are those outlined in the case of Morgan vs. Simpson a decision of the English Court of Appeal reported at (1974) 3 All ER page 772 and summarised by Lord Denning MR as follows:

1. If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated irrespective of whether the result was affected or not.
2. If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or mistake at the polls - provided that it did not affect the result of the elections.
3. Even though that election was conducted substantially in accordance with the law as to elections, nevertheless if there was a breach of the rules or mistake at the polls - and it did affect the results - then the election is vitiated.

These proceedings involved the hearing of testimony not only from the Petitioner and the Respondents but from a great array of witnesses called on behalf of the Petitioner. It is not disputed that a consideration of such testimony as was offered rests on a balance of probabilities.

I now turn to examine the instance of electors whose names appear as having voted but did not allegedly vote:

1. Rory Parkinson P.D. #13 – named on the official list as having voted on a transfer certificate
2. Sylbert Tindale – P.D. #8
3. Kenroy Lawrence – P.D. #17
4. Sandra Nelson - P.D. #17

5. Evadney Walters - P.D. #23
6. Morris Gordon - P.D. #23
7. Charmaine Graham – P.D. #23
8. Rosalee Plunkett - P.D. #48
9. Obadiah Reid - P.D. #48
10. Sonia Edwards-Blake – P.D.#48
11. Nehmiah Stanley - P.D. #48
12. Lynford Dunn - P.D. #48
13. Neil Russell - P.D. #54
14. Leonard Rhooms - P.D. #84
15. Felix Dezovado - P.D. #84
16. Leonie Dezovado - P.D. #84
17. Claudia Dezovado - P.D. #84
18. Taron Brooks - P.D. #85
19. Carlton Dezovado - P.D. #85

The testimony from some of these electors that they had not voted is uncontradicted. These are

Rory Parkinson

Neil Russell (see evidence given by Carol Billings)

Kenroy Lawrence

Sandra Nelson

Leonard Rhooms

Carlton Dezovado

Nehemiah Stanley

The testimony of Owen McLean (contradicting Andrade), I accept also that of Audrey Richards (contradicting Felix Dezovado, Claudia Dezovado and Leonie Dezovado) as well as Norma Edwards insofar as she contradicts Lynford Dunn and Sonia Edwards-Blake (Whose evidence was by affidavit). To Rosalee Plunkett and Obadiah Reid it was not suggested in cross-examination that they did not in fact vote.

The testimony of Verona Brissett contradicting that for Maurice Gordon, Evadine Walters and Charmaine Graham I did not find reliable.

Apart from the six as indicated, the remaining 13 must be struck off as cases of presumed personation of the proper elector.

**Names of electors recorded as having voted twice**

1. Rory Parkinson enters at P.D.#2 as voting on a transfer certificate has already been dealt with.
2. Leslie Flowers P.D.#23 (entries 126 & 130) receiving ballot twice (no record of oath administered). Verona Brissett testified as to one such person named in the polling division. On the evidence it is not clear that impersonation took place once or twice. However one vote is to be regarded as invalid.
3. Angela Smith P.D.#29 (entries 61 and 67) twice recorded but on the second occasion an oath is administered. Although there is no provision whether the first or second vote should be ignored where an oath is administered, in this case one vote must be discounted

4. Eron Foreman P.D.#48 (entries 124 and 140) a case of personation made Section 93 of the Act is clear and a deduction of one from the majority must be made.
5. Christine Small P.D.#54 (entries 93 and 130) although there is no note as to whether an oath was administered and nothing to indicate that ballot in this name was counted twice a deduction must be made accordingly.
6. Sylvin Whitelock P.D.#58 (entry No. 60) applied for a ballot after another had voted in that name but only on ballot appears to have been counted.

The position is similar with the following two.

7. Henry Dixon P.D.#58 (entry No.62)
8. Claris Thompson P.D. #58 (entry No. 58)
9. Samuel Brown P.D. #58 (entries 119 and 140) At entry 140 the word 'spoiled' appears and the total number of those recorded as having voted is 138. The second entry appears not to have been counted.
10. Desmond Hemmings P.D.#77 (entries 1 and 33) Only one vote was counted in that name.
11. Winston Frazier P.D. #89 (entries 69 and 91) The numbers of electors voting ends at 99 but a total of 98 ballots were found. There is no indication that in one of these entries the elector was sworn; hence one of the voters must be regarded as not valid.

Of the six so impugned five are to be subtracted since that relating to Rory Parkinson has already been considered in another context.

### Names of persons not on the Voters' List

Miss Foster on behalf of the Second and Third Respondents conceded that the undernamed three persons recorded as having voted without their names appearing on the Voter's List for 1997.

They must therefore be discounted form First Respondents majority. They are:

Denis Denis – at P.D. #38

Alicia Martin – at P.D.#21

Leroy Kelly – at P.D. #21

### Police and Military Voters

At Paragraphs 16 and 17 of the Petitioner's 'Notice to Admit Facts' appear fifteen (15) names of the Police and Military who should have cast their ballots on 15<sup>th</sup> December 1997, but of these eleven (11) are recorded as voting on 18<sup>th</sup> December 1997.

Sections 108 (i) of the Act states:

***“The Chief Electoral Officer shall prepare in relation to each constituency a military voters list.”***

A similar list in relation to Police and Special Constable is prescribed by section 109(1)

Section 108(i) requires the names of every person serving in the Jamaica Defence Force or is a member of the First Class of the Jamaica National Reserves on the day of the issue of the Writ for the election pending in the constituency to be included in such military voters list.

Such names appearing on the military voter's list must be deleted from the official list for any polling division in the constituency (see Section 108(3)) and must be supplied by the Returning Officer to each candidate in the constituency (see Section 108 (5)).

Section 109(2), (3) and (5) contain similar provisions with respect to Police and Special Constables.

The evidence from Mr. Walker is that he had prepared such lists respectively but the fact of those names aforesaid, remaining on the official list was attributable to a computer error. By Rule 112 in the Third or Fourth Schedules, provision is made to such persons to vote "on the day next but two before election day" – which would be on 15<sup>th</sup> December, 1997.

Ordinarily, such names would have been deleted from the official list of electors. To the submission that non-compliance rendered those votes void was a response invoking Section 107(c) of the Act which precludes the Court from voiding the election:

*“.....unless satisfied that such wrongful omission or inclusion was due to any election officer who was engaged in the preparation of such official list having acted otherwise than in good faith.”*

The important issue, it was further urged was whether such persons had voted twice. Further what should first be resolved is whether the persons named by the Petitioner were District or Special District Constables for whom special provisions are made in Section 110 of the Act.

I accept the submission that the votes of the Military and the Police who voted on December 18, should not be voided subject of course to proof of double voting occurring.

**Issue of Identification Cards and Identification by 'Black Book'**

The Petition alleges that the Director of Elections, otherwise than in good faith failed to issue an identification card to each elector or to provide a document in lieu thereof. Further, persons without producing an identification card were allowed to cast ballots without being sworn or thumb-printed as required by law. Particular reference being made to polling divisions – 23, 24, 47 and 48 in the constituency.

It was conceded that no identification cards were issued for the entire constituency for the said 1997 general election. Furthermore in none of those four polling divisions is there any indication that any elector had been sworn.

Moreover, the data in the particulars on the registration record cards relating to electors on the official list used at the polling station had not been formally prescribed as a means of identifying the elector (The Black Book). Its use as a means of identifying the electors in the absence of identification cards was on the strength of a recommendation made by the Electoral Advisory Committee to the Director of Elections.

In Section 34(1) of the Act whereby an elector may vote at the polling station on the official list of electors for which his name appears is made “subject to the provisions of this section”

(as well as) section 5 (which entitles every qualified person to be registered...”

Subsection (5) of Section 34 provides:

***“Notwithstanding anything to the contrary and subject to subsection (8) and (9) no elector shall receive a ballot***

(without first producing)

- (a) “...to the Presiding Officer his identification card or other prescribed document establishing his identity; Provided that where a prescribed document establishing identity has been issued in substitution for an identification card only that document shall be produced to and accepted by the Presiding Officer; or***
- (b) in respect of that elector all the conditions specified by subsection (7) are satisfied***

Subsection (7) *ibid*, stipulates the conditions referred to in Subsection 5(1) namely:-

- (a) that the elector is unable to produce his identification card or other particular document... (which may not yet have been delivered or has been “lost, stolen, destroyed, mutilated”)***
- (b) that the elector shall take this oath of identity...(Second Schedule)...”and otherwise establish his identity...”***

Subsections (8) and (9) which were added in 1979 – sets out the inquiries which the Presiding Officer may make in order to establish the identity of the elector.

Inasmuch as the information in the “Black Book” would provide more data than that contained on the identification card, the submission by Miss Foster that Subsections (8) and (9) provide an

alternate means of identification where the "Black Book" is referred to, appears eminently sensible and one which I accept.

Although Subsection 5(a) refers to the production of "other prescribed document by the elector" the Proviso is worded in a manner apt to include a prescribed document issued by the Director of Election and not necessarily one to be produced by the elector himself.

Moreover, there is nothing to support the imputation that the Director of Elections acted in bad faith.

**PERSONS VOTING ON TRANSFER CERTIFICATES INCLUDING CANDIDATES**  
**INDOOR/OUTDOOR AGENTS**

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Paragraph 13 of the Petition addresses the question of persons voting at polling stations other than where they were vote-listed. In this category were Presiding Officers, Poll Clerks, and Candidates Agents who might vote on Transfer Certificates. In some cases the Transfer Certificates were not located, whereas in others the record in the Poll Books indicates a vote by transfer. Of particular significance are the Agents whether Indoor or Outdoor.

Section 41(1) permits each candidate to have one agent at each polling station and in absence of agents, one elector to represent such candidate on the request of such elector during the time the poll remains open. Such agent representing each candidate is the only other person or persons

permitted to remain in the polling station during the time the poll remains open apart, of course, from the presiding officer and the poll clerk.

A candidate by a signed notice in writing delivered to the Returning Officer not less than forty-eight hours before the opening of Poll may obtain the transfer of the vote of such agent to be polled in a polling division other than where that elector's vote is listed in the constituency. It is only the Returning Officer who may grant a certificate to transfer the vote of an elector whether as agent, presiding officer or poll clerk.

Section 41A added by Act 1 of 1989 permits the candidate to appoint an Outdoor Agent by Certificate of Appointment

*“...specifying the polling station in respect of which the agent is appointed...”*

as well as substituting one Outdoor Agent for another but not more than one at any time entitled to perform the functions at any one polling station. The outdoor agent unlike the indoor agent need not be an elector. Clearly therefore a certificate of appointment of an outdoor agent is insufficient to qualify him for a transfer of his vote.

The scheme of the Act while appearing to facilitate the exercise of the elector's right to ballot operates as a safeguard against double voting. Where a Transfer Certificate has not been located but appears to have been issued, a vote ought not to be held as invalid providing double voting did not occur.

The following instances of irregularity of transferred votes alleged by the Petitioner require examination.

1. Rory Parkinson – purporting to vote at P.D. #3 has been addressed in another context and requires no further mention.

2. Merline Harrison – was not issued a transfer certificate to poll at P.D. #4 and is an invalid ballot.
3. Lacqueline Burrows – issued transfer certificate K3, but not recorded in the poll book as voting on transfer; vote invalidated.
4. Aldeith Weir – on transfer certificate voted at polling station #12; her status in the poll book not being indicated must invalidate her vote.
5. Alicia Thompson – on transfer certificate J2 recorded as voting at polling station #12, her capacity unstated; her vote is invalid.
6. Paul Anthony Smith – on transfer certificate #13 voting at P.D. #23 is not one of the three candidates' agent named. His vote is voided.
7. Anthony Neil – on transfer certificate #14 voted at P.D. #30 where neither the poll book nor the transfer certificate states his capacity. His vote is voided.
8. Gary Brown – in poll book #42 on transfer certificate #15, status unstated but referred to by Second and Third Respondents as an outdoor agent, vote voided.
9. Lascelles McDonald – on transfer certificate J6 in poll book #45, his status unstated nor taking oath as candidate's agent, vote voided.
10. Cheryl Williams – on transfer certificate J7 her status in the poll book #49B described as "voted on transfer" was not one of the three named agents of candidate, vote voided.
11. Washane Wright – on transfer certificate #18, recorded at P.D. #53 but status is not stated, hence vote voided.
12. George Simpson – on transfer certificate J9 in Poll book #54 merely as agent but not one of the three named for the respective candidate, vote voided.

13. Suzette Freckleton – on transfer certificate J10 in poll book #55B as outdoor agent, vote invalid
14. Michael Edwards – on transfer certificate J11 in poll book #69 inscribed as agent but not recorded as taking oath; vote voided.
15. Shelly-Ann Mattis - on transfer certificate J12 in poll book #69 not one of three inscribed agents nor is her capacity stated; vote voided.
16. Donovan Davidson – on transfer certificate J13 in poll book #65 not inscribed as agent, his capacity unstated, vote voided.
17. Jeffrey Taylor – voting in polling station #70B on transfer certificate, but assigned no status. Inasmuch as Miss Kaye Green Petitioners witness describes the elector as working as a “one day policeman” I would decline to void his vote.
18. Beverly Howell – on transfer certificate #114
19. Eulalee Gayle – on transfer certificate #115
20. Valrie Gayle – on transfer certificate #116

All three are recorded in poll book #80 as voting on transfer. Miss Kaye Green in evidence vouched that they were all outdoor agents for Petitioner. Their respective votes must be voided as against the Petitioner.

21. Samuel Thomas – on transfer certificate J17 voting at P.D. #82 is not one of the two names inscribed s agents in the poll book, his vote is therefore voided.
22. Teresa Downer – on transfer certificate J18 is not one of the two inscribed agents in poll book #82, the notation of a transfer certificate, without more, is insufficient and the vote is voided.

I now deal with electors appearing to have voted on a transfer certificate now missing and hence not produced. Where such an elector appears to have been an indoor agent it would appear eminently sensible to validate such a vote.

The following are instances of missing certificates:

1. Linda Scott – poll book for polling station #25 as agent for First Respondent in the poll book her attendance as such is recorded. I would decline to invalidate this vote.
2. Winsome Gordon – voting at P.D. #27 purportedly on a transfer certificate is a poll clerk whose oath as such is recorded in the poll book. This I would decline to void.
3. David Neil – recorded in the poll book for P.D. #31 as outdoor agent for First Respondent is declared an invalid vote.
4. Faudia Graham – in poll book #32 as agent for First Respondent appears to have initialed all entries in the poll book. Moreover Petitioner's agent appears to have been in attendance. I would decline to void this vote.
5. Shorna Clarke – is recorded in poll book #36 as voting on a transfer certificate as a poll clerk and candidates' agents were in attendance. The validity of her vote is upheld.
6. Donna Thompson – presiding officer for P.D. #36 where she administered oaths and signed statement of poll is recorded as voting on a transfer certificate and this ought not to be impugned.
7. Florona Crosby – presiding officer at #36 has no notation against her name in the poll book as voting on a transfer certificate; vote invalid.
8. Dorette Smith – poll clerk for P.D. #39 is recorded as voting on a transfer certificate; vote declared valid.

9. Jean Edwards – recorded in poll book for P.D. #41 as agent of First Respondent and voting on transfer; vote declared valid.
10. Donovan Edwards – poll clerk for P.D. #65 is not indicated in the poll book as voting on a transfer certificate; vote declared invalid.
11. Lilieth Tinker – as poll clerk at P.D. #42 is not recorded as voting on a transfer certificate; her vote is therefore invalid.
12. Simone Brown – is recorded in poll book for P.D. #69 as agent for the NDM candidate and having voted on transfer, no reason to invalidate this vote to the detriment of First Respondent.
13. Juliet Smith – is recorded in poll book #70B as agent for the First Respondent and voting on a transfer certificate, vote accepted as valid.

At this station are four-named JLP agents whose names appear on the voting list for that division, hence no transfer certificate was required.

There is no indication that the two named NDM agents had voted there. There are three-named agents for the PNP namely Princess Hinds, Blossom Gordon and Suzette Chin who are recorded as voting on transfer certificates, the first before 8 A.M. and the other two between 8 and 9 A.M. The notation in reference to transfer certificate reads no. 23, no. 25 and no. 23 respectively and for that reason I would invalidate the second and third ones.

### **THE OFFICIAL LIST**

The Petitioner has sought to impugn the integrity of the process of preparation of the official list

and has alleged that the Director of Elections acting otherwise than in good faith and in contravention of the Act published and printed an official list which was used for the election.

This, it is further alleged, was done with full knowledge that persons who were properly enumerated as electors “by virtue of which were on the official list of electors.....” would be disenfranchised; that in the process of this preparation of this official list, the Electoral Officer acting otherwise than in good faith caused persons to be omitted from the list.

In seeking to prove bad faith the Petitioner contended that the Director of Elections had been “pressured” by the Prime Minister and with undue haste had certified the official list fully aware of the likelihood of the ensuing consequences of such precipitate haste.

What the Letter from the Prime Minister requested was for the Director to indicate to him

*“The date on which you would be in position to issue and certify a trial voters list”*

The response on November 25, 1997;

*“With regard to your commitment to the action that the next elections should proceed on a voters list that is clean and correct. I wish to advise as follows; that a list based on demographic and photographs which he certified and issued after I have completed the necessary checks and response to the preliminary list made by the political parties. I believe these checks can be completed and a list published by the latest November 29,1997.”*

As was shown, the Director of Election had already been working within a schedule and their Preliminary Lists had already been completed, the political parties had been given two weeks from the publication on the 13<sup>th</sup> November, 1997 of the list to submit for correction errors brought to light. In a concerted effort to achieve the clean and complete list the entire field staff of Returning Officers together with their staff were assembled at the Jamaica Conference Centre in a massive task force. The Director, it appears had every reason to believe that names which had previously been omitted, would have been integrated into the official list.

Every attempt was made to rectify the instances where data on the Registration Record Forms had been inaccurately supplied.

The evidence presented indicates that the Director had acted only in good faith and not otherwise as alleged.

The submission that a qualified enumeration of an elector places him ipso facto on the Official List is, in my view, flawed. As Mr. Walker the Director of Elections in evidence makes it clear that demographic data etc. compiled in the exercise may be regarded as ‘spoiled’ even after being scanned for the computer database.

The definition of “elector” in the Act is;

*“Any person whose name is for the time being on any official list of electors for the House of Representatives”*

Section 17 of the Act equating the current Official List as the Official List has the proviso

*“That a new list shall not be published between Nomination day and Election day”*

Whereas the Director of Elections may add such names as may have been inadvertently left off it is further provided by Regulation 38 to the first schedule that no additions or corrections of errors shall take place “..... after five days next before Nomination day.”

However no useful purpose is served in exploring further these provisions as there has not been any proof of such additions, nor has an election official been shown as having acted otherwise than in good faith.

From the foregoing it is clear that account may not be taken of the names of the many witnesses who were called to testify that they had been enumerated and would have voted for the Petitioner had their names been on the official list. The omission is unfortunate but, as I have endeavoured to show, cannot be prayed in aid at the hearing of these proceedings.

### **DISCREPANCY BETWEEN VOTES RECORDED AND NUMBER OF BALLOTS**

#### **FOUND**

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The poll books for the following stations disclosed in each case one more ballot in the box than the number recorded as having voted:

No. 19 – 186 voting; 187 ballots found.

No. 52 – 155 voting; 156 ballots found.

No. 53 – 218 voting; 219 ballots found.

No. 54 – 173 voting; 185 ballots found.

In this case eleven (11) were those of the Police and the Military ballots received from the Returning Officer, hence the excess is one.

No. 55A – 62 voting; 63 ballots found.

No. 84 – 103 voting; 106 ballots found

No. 89 – 99 voting; 98 ballots found; three in excess.

In the following stations the situation was the reverse;

No. 82 – 74 voting; 73 ballots found.

No. 53 – 94 voting; 93 ballots found.

Combined, these stations will account for twelve votes to be discounted from the First Respondent's declared majority.

**PERSONS ALLEGEDLY LIVING IN ST. MARY AND WRONGFULLY VOTING IN  
NORTH EAST ST. CATHERINE**

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In the response by the third Respondent to the notice to admit facts it was revealed that only after the proceedings were underway that investigations showed only seven of some twenty names incorrectly placed on the voters list for the constituency were in fact persons living in St. Mary.

The evidence suggests that such persons were residing on the other side of the roadway constituting the boundary between the parishes. They were persons who had attended school in St. Catherine and, *inter alia*, had received mails at the Glengoffe Post Office.

The RRC forms were all signed by the JLP Scrutineer who did not appear to have taken formal steps to challenge the correctness of the enumeration. No complaint in this regard appear to have been made to the Second or Third Respondents.

Moreover, the provisions of Section 107 (c) of the Act comes into play and prevents the Court from voiding such ballots unless satisfied that the wrongful inclusion,

*“was due to any election officer who was engaged in the preparation of such official list having acted otherwise than in good faith.”*

**ALLEGATIONS OF INTIMIDATION AND/OR ACTIONS CONDUCTIVE TO  
VIOLENCE**

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The Petitioner alleges that at the Redwood All-Age which housed polling station Nos. 23, 14, 25 and 48 over fifty activists supporters of the First Respondent congregated at the entrance threatening and intimidating persons who were likely to vote for the Petitioner. This rests largely on the evidence of Winston Chambers an outdoor agent for the Petitioner who describes the visit of the first Respondent and supporters. His expression of disapproval of the manner of the First Respondents invitation to her supporters to come and vote was challenged by one of two policemen bodyguards of First Respondent who pulled a firearm and sent him from the polling station. Once outside he looked through a two-inch aperture, four feet off and saw persons marking ballots and putting them in boxes. Some 45 minutes later when events had subsided his complaint to the Presiding Officer Mrs. Brissett was met simply with “we will have to deal with it.” Mr. Stanford Lawes who was working as a “one-day Policeman” narrated the incident in similar terms although there were significant variations in their accounts. Mr. Paul Collins who testified to the visit of the First Respondent at the location but Verona Brissett a Presiding Officer denied that the First Respondent had made such a visit. Mr. Collins however had spoken

of two groups the PNP faction being larger than the other; that their exchanges became “a little boisterous” and spoke to their being “a little abusive on both sides.”

The incident was reported to Petitioner whose testimony amounted in my view to mild reproof to the First Respondent reminding her that it was the welfare of the citizens after elections were over that should be paramount (paraphrase mine).

Without going into further detail my considered view is that on the evidence I am unable to make a finding that the First Respondent conducted herself in a manner imputed to her either at that location or elsewhere on polling day.

The examination of the Poll books and cessation of initialing by agents particularly of Poll book No. 23, do not persuade the finding I have been asked to make, namely of the election process being plunged into disarray.

In short I am unable to make a finding that the threat of violence and or intimidation so undermined the election process as to require me to declare the election at any of the stations void.

### CONCLUSION

In Summary the majority of votes for the first Respondent will be reduced as follows:

- |    |   |    |
|----|---|----|
| 1. | Case where personation occurred,                | 13 |
| 2. | For votes recorded and counted twice            | 5  |
| 3. | For persons not on voters' list                 | 3  |
| 4. | Ballots voided on account of incorrect transfer | 23 |

5.	Ballots in excess of votes recorded;	
	Ballots short of votes counted	12
		<hr/>
	Total	56

From this must be subtracted the three from Petitioner's total as indicated earlier thus reducing this number to 53

As the declared majority of the First Respondent was thirty (30) votes, the Petitioner will now be declared winner with a majority of twenty-three (23).

### COSTS

The Petitioner left no ground uncovered in an attempt to vindicate his position. In the process however, he unnecessarily joined Third Respondent. Any assistance to be derived from the latter could have been achieved by having him produce documents and testifying.

Accordingly the Third Respondent will be awarded half costs against the Petitioner.

In the ordinary course the successful Petitioner should be awarded costs, but because of the protracted conduct of the proceedings involving calling witnesses superfluously, Petitioner and First Respondent will bear their own costs without further award.