IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

A.D. 1989

(C I V I L)

No. 34 of 1989

In the Matter of the Representation of the People Act, 1975

In the matter of a Parliamentary Election for the Constituency of St. John's City West held on the 9th day of March, 1989.

BETWEEN:

DONALD HALSTEAD – Petitioner

and

HENDERSON ST. CLAIR SIMON

HUBERT HENRY – Respondents

Dr. F. Ramsahoye S.C., Mr. S. Christian, Mr. C. Derrick and Mr. A. James for Petitioner.

Mr. Rex McKay S.C., Miss B. Lake, Q.C., and Mr. E. Luckhoo for the first named Respondent.

Mr. L. Luckhoo S. C., Mr. C. O. R. Phillips Q. C. and Mr. L. Osborne for the second named Respondent.

Mr. A. Rose for the Director of Public Prosecutions.

1989, April 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

May 2, 3, 4, 5, 8, 9, 10, 11, 12

June 30

Elections *– Irregularities on polling day – shortage of ballot papers – Late opening of the poll – Extension of polling time by returning officer and other election officers – Polling not conducted in accordance with the election law and regulations.*

Background facts

The petitioner claimed that the election of the first named respondent was invalid because of widespread election irregularities. These included late opening of the polls, shortages of ballot papers and illegal extension of polling beyond prescribed hours.

Held

That the election was invalid.

Cases cited in the Judgement

Morgan v *Simpson (1974) 3 All ER 722*
Gill v *Reid and Another (1874) 2 OM & H77*
Regina Ex Rd Dyck v *Ell (1953) 9 WWR 101*
The Limerick Case (1833) P&L 373
The Drogheda (1974) 20 M&H 201
Re Shaw and Portage La Praire (1910) 14 WLR 542
Islington Case 50 OM&H 120
Re Mullings and the City of Windsor 61 OLR (3) 601
Woodward v *Sarsons 10 C.P. 733*
Re Hickey and the Town of Rillia (1909) 17 OMR 317
The Akaroa Election Petition (1891) 10 NZLR 158
PI0 v *Smith (1987) LRC (Const) 250*
North Kensington Parliamentary Elections (1960) 1 WLR 762
Borough of Worcester 3 OM & H 189
Mtoba & Others v *Sede & Others (1975) 4 A.A. 413*
Evo v *Supa and Another (1986) LRC (const.) 18*
Rex rel Fennessey v *Wade et al (1939) 3 DLR 424*
Gribbin v *Kirker 7 IRR 30*
Rex el rel Smiley v *Evans (1927) 4 DLR 629*
Levers v *Morris (1971) 3 All ER 1300*
Lattham and Others v *The Corporation of Glasgow and Others (1921) S.C. 692*
Montreal Street Railway v *Normandin (1917) AC 170*
Phillips v *Goff (1886) 17 K.B. 805*
Re Wychhum Terrace (1974) 3 WLR 649
Radix v *Gairy (1978) 25 WLR 553*
Eastern Division of the County of Clare 19 OM & H 156
Borebecks v *Boland (1886) 2 Times Reports*
James v *Davis 76 L.G.R. 184*

IN COURT
REDHEAD J

The Petitioner, Donald Halstead, is now 52 years old. He began his active political career in or about the year 1965. Prior to and up to 1968 he was an active trade unionist. In 1968 there was a by-election for the city of St. John's City West. He won that seat which he contested for the Progressive Labour Movement (PLM). In 1971 and 1976, general elections were held in Antigua and Barbuda. Mr. Halstead contested the seat for St. John's City West, again for PLM. He won on both occasions, with majorities of about 600 over his nearest rival.

The Petitioner left Antigua in June 1978 for the United States of America where he remained until October 1986. Upon his return he again became involved in active politics.

A general election was held in Antigua and Barbuda on 9th March, 1989. There were three candidates for the constituency of St. John's City West. The Petitioner contested the seat, this time for the United National Democratic Party (UNDP); the first-named Respondent, Henderson St. Clair Simon contested the seat for the Antigua Labour Party (ALP) and Alister Thomas contested the seat for Antigua Caribbean Liberation Movement (ACLM).

In the constituency of St. John's City West there were some 2,829 registered voters. The Petitioner received 611 votes, the first-named Respondent 874 and Alister Thomas 67 votes. There were 9 rejected ballots. The first-named Respondent was therefore declared the duly-elected candidate by the Returning Officer.

The Petitioner, on the 15th March, 1989 filed an election petition. By paragraph 3 of the Petition he alleges as follows:

> "3. That in the holding of the said election divers breaches of the statutory rules governing the conduct of elelctions were committed by the Returning Officer and/or his servants or agents in that :
>
> (a) Polling was not allowed or conducted continuously between the hour of 6 a.m. on election day in accordance with the Table provided in Rule 1 of the Election Rules and in particular there was no polling conducted or allowed by the Returning Officer, his servants and/or agents between the hours of 6 a.m. and 8.30 a.m. and between 12.55 p.m. and 5.40 p.m. on election day at Polling Divsion A at Pilgrim High School and between 6 a.m. and 8.30 a.m. and 1.10 p.m. and 5.40 p.m. at Polling Division B at Villa School;
>
> (b) Polling was carried out during hours other than those specified or allowed by the said Table in the Election Rules, to wit, polling was carried out

after the hour of 6 p.m. and until the hour of 9 p.m. on election day.

(c) An indeterminate number of persons were unable or were not permitted to vote between the hours of 6 a.m. and 6 p.m. on election day because the Returning Officer, his servants and/or agents did not make available ballot papers for electors between the said hours when voting was not conducted or allowed in the two Polling Divisions mentioned and referred to above.

(d) Ballots cast during a period when voting was not allowed in accordance with the said Table in the Election Rules, being ballots cast between the hours of 6 p.m. and 9 p.m. on the election day were counted by the Returning Officer, his servants and/or agents in declaring or making the return by the Returning Officer of the successful candidate.

(e) The Returning Officer, his servants and/or agents wrongly and unlawfully relied upon an order of the High Court (Mitchell J) made on election day purporting to exercise a jurisdiction to extend time by three hours for voting on election day, the High Court having been imposed upon and misled into assuming a jurisdiction which by the *lex et consuetudo parliamenti* is committed to and vested only in Parliament itself.

(f) The election was not conducted by the Returning Officer, his servants and/or agents in accordance with the law regulating the conduct of elections pursuant to the Representation of the People Act 1979 and the Election Rules in the First Schedule thereto.

I find as a fact, and it is beyond dispute, that voting in the St. John's City West constituency did not begin on time, that is at 6.00 a.m. as stipulated by Rule 1 of the Election Rules; that after voting had commenced, ballot papers ran out and that voting stopped at about 12.30 p.m. to 1.00 p.m.; that voting re-commenced at about 5.30 p.m. to 5.40 p.m. and continued until about 9.00 p.m.

As I said, it is beyond dispute as Mr. McKay, Learned Counsel for the first-named Respondent, said in his opening address:

> "I do not think that there would be any issue as regards the commencement of voting, that it did not commence at 6.00 a.m. I do not think .... that there is any issue that at 12.30 p.m. or thereabout there was a shortage of ballot papers. Further, there can be no issue that there were voters waiting in line to vote and that their ballots must have been cast after 6.00 p.m."

Now, what were the reasons for this unfortunate occurance? Nomination day for the General Election was on 27th February, 1989. Mr. Keithley Wentworth Alister Hill was the Supervisor of Elections. He first acted as such in 1978 for the by-election in Barbuda. Thereafter, he performed the functions of Supervisor of Elections for the General Elections of Antigua and Barbuda for 1980 and 1984. In my view, therefore, he is a person with some experience in this field.

On 2nd March, 1989 he requisitioned 2,600 ballot papers for St. John's City West constituency from the Government Printery. I think it is necessary to analyse in detail the requisitioning of the ballots by the Supervisor of Elections and the delivery of the ballots to him because this was the source of the problem. And in analysing that problem to determine whether any improper or corrupt motive could be imputed to the Supervisor of Elections. This requisition was in the form of a memorandum from the Supervisor of Elections to the Superintendent of the Government Printing Office, and reads in part as follows:

> **"Ballot Papers**
> **General Elections**
> Would you kindly supply me with the number of Ballot Papers as shown against the respective constituencies, in accordance witht he speciment enclosed, and in books of fifty:
>
> | | | |
> |---|---|---|
> | 1. | St. John's City West | 2,600 |
> | | ..... | ..... |
>
> I should be grateful if these could be delivered to me as soon as possible.
>
> Keithley W. A. Hill,
> Supervisor of Elections"

The specimen referred to in the memorandum was a statement of persons nominated (Exhibit 7). This statement contained all the constituencies with the names of the candidates, their occupation and residence. The names of the candidates, so far as the constituency of St. John's City West was concerned, were placed in the correct alphabetical order.

In the official Gazette of 2nd March, 1989 (Exhibit 6), there appeared the statement of persons nominated. The names of the candidates for St. John's City West appeared in the Gazette in the wrong alphabetical order. The Supervisor of Elections went to the Government Printery at about 8.00 p.m. on the 6th March, 1989 to proof-read the ballot papers for the constituency of St. John's City West. He then saw the Gazette for the 2nd March, 1989 for the first time. He proof-read the ballot papers against the Gazette on 2nd March, 1989 which contained the names of the candidates inthe wrong alphebetical order, thereby compounding the error. It is reasonable to

assume that the ballot papers which he proof-read contained the names of the candidates in the wrong alpahbetical order.

On the afternoon of 8th March, 1989 the Printery delivered the ballot papers for St. John's City West – all 2,600 of them to the Supervisor of Elections. The ballot papers were given to the Returning Officer, Mr. Hubert Henry, who in turn distributed them to the presiding officers of the polling stations for St. John's City West.

After Mr. Henry had distributed the ballot papers an amazing thing happened. He was on his way home when someone, whom he did not know, told him (Mr. Henry) that he heard that the ballot papers were not printed in alphabetical order. Mr. Henry then spoke with the Supervisor of Elections who instructed him to collect all the ballot papers and return them to him. This was done and the Supervisor of Elections discovered, in fact, that the rumour was well-founded.

Mr. Hill spoke with the Acting-Superintendent of the Printery, Mr. Charity, and requested that the ballot papers for St. John's City West be reprinted. In fact, during the course of the evening Mr. Hill discovered that the ballot papers for two other constituencies were not printed in alphabetical order. At about 11.00 p.m. he went to the Printery and requested the reprinting of the ballots for St. Jon's City West and the ballot papers for the other two constituencies. Mr. Charity agreed to and promised Mr. Hill that he would have 1,000 ballot papers for St. John's City West by 5.00 a.m. on 9th March, 1989. Mr. Hill believed that Mr. Charity would be able to keep his promise and, as he said, he acted on it. In my view, Mr. Hill was too optimistic having regard to the fact that he proof-read the ballots on 6th March, 1989 and it was not until the evening of the 8th March that 2,600 ballots were delivered to him. Taking into consideration also that other ballot papers had to be reprinted, I cannot see how he could have hoped to obtain about 6,000 ballot papers in six and a half hours. However, Mr. Hill said he believed that Mr. Charity would have been in a position to give him those ballot papers; if not, he would have gone elsewhere. Again, it is difficult for me to see where else he could have gone at that late hour.

Unfortuntely, Mr. Charity did not, or perhaps it would be more correct to state, could not keep his promise and the 1,000 ballots were not delivered at 5.00 a.m. I find as a fact that the 1,000 ballots were not delivered until about 8.15 a.m. and that voting commenced in St. John's City West at about 8.30 a.m.

The constituency of St. John's City West is divided into two polling divisions – A and B. The 1,000 ballot papers were distributed between the two divisions and by 12.30 p.m. or thereabouts, ballots ran out in Polling Division A and at 12.55 p.m. ballots ran out in Polling Division B. Consequently, voting ceased at those times in the two polling divisions.

When the ballot papers were about to be exhausted, Mr. Henry, the Returning Officer himself, went to the Printery at about 11.45 a.m. to enquire whether the remaining ballot papers for St. John's City West were ready. He was told to wait. He had a long wait, as he said from 11.45

to 5.30 p.m. when the ballot papers were delivered to him. He received 1,500 ballot papers for St. John's City West. He went back to the constituency and delivered all 1,500 to the presiding officers. Voting re-commenced at about 5.40 p.m.

Having regard to what I have outlined above in relation to the facts concerning the names on the ballot papers being printed in the wrong alphabetical order, the late delivery of the ballot papers which resulted in the voting not commencing on time, this, in my view, was a matter of gross collective incompetence. Unfortunately, one cannot say how long Mr. Charity has been Acting-Superintendent and whether he has had experience in the printing of ballot papers. Mr. Hill was unable to give that information when asked. However, one can come to the conclusion that he may not have been in charge of the Printery for the previous general election because he is Acting-Superintendent of the Printery and by General Orders one should not be acting in any position longer than one year.

Although in the memorandum of request to the Printery for the ballot papers the Supervisor of Elections requested that the ballot papers should be delivered to him as soon as possible, it was seen that on the evening of 6th March, he was proof-reading ballot papers, barely two days before the general elections.

Yet again the ballot papers were delivered to him just a few hours before the general elections were due to commence. This could hardly be satisfactory in my view, although he said that ballot papers were delivered to him in the past on the very morning of the general elections. This, to my mind, is perilously close and does not leave any room to manoeuvre in case of human error. If, for argument's sake, the ballot papers were delivered two days before the general elections and the error was then discovered, there would have been ample time to reprint the ballot papers and have them ready in time for the voting to commence on time on 9th March, 1989.

It is inconceivable in my view that when the ballot papers were delivered to the Supervisor of Elections, neither he nor Mr. Henry bothered to check them to ensure that they were in order. I must say here, that these two men have obviously served their country well and long and this may very well have been an oversight on their part. This comment in no way is meant to cast aspersions on their past performances. The Returning Officer had to be told by soneone other than an election official that the ballots were not in alphabetical order. One can draw that irresistible conclusion because Mr. Henry did not even know the identity of the person who told him that the ballot papers were not in alphabetical order.

I am, however, satisfied in my mind that what was done – that is to say, the error in the printing and the late delivery of the ballot papers for St. John's City West – was not deliberate but purely accidental and therefore one cannot impute a corrupt motive on the part of the Supervisor of Elections or the Returning Officer.

In the First Schedule to the Representation of the People Act, the Election Rules, it is stated:

> "(1) The proceedings at the election shall be conducted in accordance with the following table ..... In the case of general election between the hours of 6.00 a.m. and 6.00 p.m. on the ninth day after the delivery of nomination papers."

Prima facie there was an irregularity in the taking of the poll at St. John's City West. It is therefore of critical importance to determine whether that breach affected the result and whether the times fixed by Parliament for voting is mandatory or permissive.

Dr Ramsahoye submitted on behalf of the Petitioner that Parliament has provided that an election should take place between the hours of 6.00 a.m and 6.00 p.m. An election is not only for the young it is also for the old, sick and infirm. It is a matter of great importance, that the election should be held during daylight hours and that is what Parliament has provided, that the election should be conducted between the hours of 6.00 a.m. and 6.00 p.m.; and that the people should resort to the polling stations and there they should be allowed to vote. Once they present themselves at the polling stations, a ballot paper should be delivered to them. Learned Counsel referred to Section 35 (1) of the Election Rules which reads in part as follows:

> "A ballot paper shall be delivered to a voter who applies therefor....."

Mr. McKay submitted that it is not axiomatic, that is to say a breach, that if voters are prevented from voting the election must be void. I yield to this submission. I agree entirely with this submission.

In my view, what must be decided is whether the breach affected the result of the election.

Dr. Ramsahoye submitted that the issues in this Petition concern whether breaches of the law as to elections caused by the loss of seven (7) hours of voting during polling day and an extension of voting hours from 6.00 p.m. to 9.00 p.m. at night on election day, together with other breaches established on the evidence, were so grave either separately or collectively to avoid the election.

An alternative issue is whether they were not so grave as by themselves, separately or collectively, to avoid the election. The Petitioner's case is that the election was not conducted substantially in accordance with the law as to elections in the first phase.

Learned Counsel referred to the case of *Morgan* v *Simpson* (1974) 3 All ER 722 at page 728. Lord Denning said:

> "Collating all these cases together, I suggest that the law can be stated in these propositions:

(1) If the election was conducted so badly that if 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. This is shown by the *Hackney Case* where two out of 19 polling stations were closed all day, and 5,000 voters were unable to vote;

(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 a mistake at the polls – provided that it did not affect the result of the election. This is shown by the *Islington Case* where 14 ballot papers were issued after 8 p.m.

(3) But even though the election was conducted in accordance with the law as to elections, nevertheless if there was a breach of the rules or a mistake at the polls – and it did affect the result, then the election is vitiated. That is shown by *Gunn* v *Sharpe* when the mistake in not stamping 102 ballot papers did affect the result.

Applying these provisions, it is clear that in that case, although the election was conducted substantially in accordance with the law, nevertheless the mistake in not stamping 44 papers did not affect the result. So the election is vitiated. The election of Mr. Simpson must be declared invalid. I would allow the appeal accordingly."

***Gill* v *Reid and Another (The Hackney Case)* (1874) 2 OM & H 77.**

In this case, 2 of the 19 polling stations were closed all day. There were others that were opened part of the day. The result was that 5,000 out of 41, 000 persons were unable to vote.

At page 81 Grove, J said:

"Mr Bowen has I think I may fairly say, said everything which could possibly be argued in support of the election and has presented a most ingenious and able argument upon the words of the statute. Still he was bound to admit that if the irregularity was so great as to prevent the election being a true election, that would avoid it even at common law. I certainly should not here take advantage of any admission of counsel upon which to found my judgment, but I am perfectly certain as far as my judgment goes that an election which is conducted in such a way as (whether by accident or design) not to afford to a very large mass of the electors an opportunity of voting, cannot be true election of members. And therefore, for a moment leaving the Ballot Act out of the question, it appears to

> me that there was not a real election here which was in any sense a fair representation of the views of the electors of the Borough of Hackney. Then, does the Ballot Act in any way alter that? The section of the Ballot Act on which Mr. Bowen relied was the 13th. He contended that no election may be declared invalid unless both the conditions named in the Act are fulfilled, that is to say, unless it appears 'to the tribunal having cognizance of the question that the election was not conducted in accordance with the principles laid down in the body of the Act' and also 'that such non-compliance or mistake affected the result of the election' in this sense, that but for such mistake, another candidate would have been elected. I have turned the matter over in my mind and I cannot see, assuming that argument to express the meaning of the section, how the tribunal can by possibility say what would or might have taken place under different circumstances. It seems to me a problem which no human mind has not yet been able to solve, namely, if things had been different at a certain period, what would have been the result of the concatenation of events upon that supposed changed of circumstances. I am unable at all events to express an opinion upon what would have been the result, that is to say who would have been elected provided certain matters had been complied with here which were not complied with."

Dr. Ramsahoye further submitted that in common law countries such as Antigua and Barbuda, breaches of the law as to elections and their effect are determined both by common law and under statute – The Representation of the People Act, 1975; that the meaning of Section 12(3) is that a substantial breach or breaches of the law as to elections avoids an election. Where the breach or breaches cannot be said to prevent an election from being conducted substantially in accordance with the laws as to elections, then the election court must uphold the election, if it is shown that the results were not affected. That the respondents' case that a breach or breaches of the code of proceedings laid down by Parliament cannot in law be substantial as long as the election is by ballot is wholly erroneous. So is the view that, whatever the nature of the breach or breaches of the law as to elections, it must be proved that the results were affected before the election can be avoided.

Mr. McKay submitted on behalf of the first-named respondent that breaches of the election law and rules do not, *ipso facto*, render an election void. The Court must go on to consider whether the election was so badly conducted that even though the result was not affected, the Court is obliged to render the election void, that there are several cases where polling commenced late and the courts held the election valid.

Regina Ex Rel Dyck v *Ell (1953) 9 WWR 101*
The Limerick Case (1833) P & L 373
The Drogheda (1974) 20 M & H 201
Re Shaw and Portage La Prairie (1910) 14 WLR 542

In one case, the presiding officer adjourned for lunch but still the election was held valid. He submitted that, if I find that the election was a sham, if it was conducted so badly that nobody can say it was an election, then I do not have to go on to consider anything else. If I do not, then I have to proceed to examine the circumstances which unfolded. I will have to go on to consider whether the curative section 12(3) applies. And in order to do so, I have to look at the circumstances unfolding.

Learned Counsel referred to the judgement of Kennedy, J in the *Islington Case 50 OM & H 120* at page 125 and suggests that this is the proper approach which I should take when considering the emergency which arose. I now quote the passage referred to by Learned Counsel:

> "Our opinion is, that an election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the elections where the court is satisfied that the elections where the court is satisfied that the election was, notwithstanding those transgressions, *an election really and in substance conducted under the existing law,* and the result of the election i.e. the success of the one candidate over the other, was not, and could not have been affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws *or it is open to reasonable doubt whether these transgressions* may not have affected the results and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections, the court is then bound to declare the election void."

Counsel submitted that only in the latter circumstances will the court declare the election void.

Learned Counsel then referred to the case of *Re Mullings and The City of Windsor 61 OLR (3) p 601* to which I shall return later in this judgement. This was a case which concerned, among other things, the late opening and postponement of the polls. The City of Windsor was hit by a severe snowstorm resulting in the late opening of the polls. It was said in that case that it was an emergency situation which the city clerk, the election official, had to deal with.

Learned Counsel submitted that Mr. Hill, the Supervisor of Elections in the instant case, like the officer in *Re Mullings,* was using his judgement, endeavouring to do his best, that it matters not

that the snowstorm was an act of God. What is important is that there was an emergency which called on the Returning Officer to do his best under the circumstances.

Mr McKay pointed out that in the *Re Mullings Case* there were serious breaches: boxes from 383 polling stations were in the possession of the city clerk from the previous evening, the late opening of the polls and putting off the elections to the next day. Yet the election was held to be valid.

Learned Counsel then referred to the case of *Woodward* v *Sarsons 10 C.P. 733 at 743:*

> "As to the first, we are of the opinion that the true statement is that an election is to be declared void by the common law applicable to Parliamentary Elections, if it was conducted that the tribunal which is asked to avoid it is satisfied, as a matter of fact, either that there was no real election at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be satisfied, i.e. that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if the majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as by polling stations being demolished, or not opened, or by other of the means of the voting according to law not being supplied or supplied with such errors as to render the voting by means of them void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think the same result should follow if, by reason of any such or similar mishaps, the tribunal without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred."

Mr. McKay submitted that by the sentence – "if it were proved to the satisfaction whether the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer" in the paragraph above quoted – says "proved" there means 'proved by evidence.' That no attempt was made to do that. He submitted that although a certain onus is cast upon the respondent, that onus does not arise until the evidential burden is satisfied.

Mr Phillips submitted that there must be facts of a *prima facie* case, that the result might have been affected. Evidence must first be given, not that there was just a breach, trivial or otherwise, but that the result might have been affected and when that is given, then the other side is called upon to show that it was not affected. That is what happens when the onus is placed upon the respondents. The Petitioner must first give evidence showing *prima facie* the result was affected.

In support of this submission Learned Counsel, referred to the case of *Re Hickey and the Town of Orillia (1909) 17 OMR 317 at page 322* where Meredith, C J said:

> "When prima facie the result might have been affected by the failure to comply with the provisions of the statute, then and then only is the onus cast upon the persons supporting this by law to show that the irregularity did not affect the result...."

I do agree with the submissions of both Counsel, Mr. McKay and Mr. Phillips, that the Petitioner must establish a *prima facie* case. He should lead evidence which will show, on the face of it, that the result was or might have been affected. Of course, the Petition contains only allegations. What then does the Petitioner have to prove? In my view, the Petitioner must establish that there was a breach or breaches of the rules, that is that voting did not take place from 6.00 p.m. and that there was voting from 6.00 p.m. to 9.00 p.m.

For instance, if the allegation was that the Presiding Officer gave out 14 ballot papers after the statutory hours for voting, as in the *Islington Case,* then the Petitioner will have to establish by evidence that the Presiding Officer did in fact give out 14 ballots. He may also establish this if the other side admits it. Then the Court will go on to examine the circumstances in order to determine whether that affected the result of the election.

This is how the court dealt with the matter in the *Islington Case* at page 124:

> "It is further alleged, as an illegality that after 8 p.m. ballot papers to the number of 40 to 50 were supplied to voters at Polling Section A in the Bingfield St. School and one ballot paper at each polling station B and C in the same place, six to ten ballot papers at polling station B in the Buckingham Street School and about four or five ballot papers at the single station in Blunden Street....."

page 129:

> "..... After careful consideration of the evidence, we have formed the opinion that we can rely upon the evidence of the respondents in regard to the number of ballot papers which were supplied to voters at Polling Station A in Bingfield St. School came after 8.00 p.m. That number is 2.... It was, as we have already said, common ground that not more than two voters received ballot papers after 8.00 p.m. at polling stations B and C. It follows that the total number of votes which we think the presiding officers, while acting quite honestly did not rightly construe the election statues, is 14."

Similarly, if the allegation of the Petitioner is that a number of ballot papers were rejected because they were not stamped, as in the *Morgan* v *Simpson Case,* then the Petitioner will have to lead

evidence to establish that fact. The court will then, on the basis of those facts, investigate whether the result of the election was affected.

Has the Petitioner led evidence to satisfy the Court that a breach of th rules has taken place? I think he has. That is in relation to his allegation of non-voting and the extension of voting hours from 6.00p.m. to 9.00 p.m. Moreover, it has been admitted by the respondents that voting did not take place in the constituency as alleged by the petitioner.

I now look at the allegation in paragraph 3(c) of the Petition, that is to say, " An indeterminate number of persons were unable to vote between the hours of 6.00 a.m. and 6.00 p.m..."

The petitioner said in evidence that:

> "Between 6.00 a.m. and 8.30 a.m. there were large crowds of people standing in line in all five stations, others were standing in line waiting to vote. The officers conducting the election gave information that there were no ballot papers. I myself spoke to each presiding officer and was told that there were no ballot papers. I enquired from each of them when ballot papers would be available. They could give no answer.
>
> I heard voters enquiring about ballots, at the same time complaining that they have to go to work and will not be able to return to vote. They were complaining to the presiding officer. They were complaining about the fact that there were no ballot papers for them to vote and they would have to go to work and they were not going go be able to return..... I know a substantial amount of the voters. I saw people that I know at the polling stations that day. I know the people who were complaining."

This is the extent of the evidence led by the petitioner in support of his allegation that an indeterminate number of persons were unable to vote. Mr. McKay, Learned Counsel for the respondent submitted that the petitioner has not produced even one voter. No attempt was made to do that, that he is not oblivious of the fact that a certain onus is cast on the respondent but that onus does not arise until the evidential burden is discharged.

The Akaroa Election Petition (1891) 10 NZLR 158 at page 166
Williams, J said:

> "It is obviously absurd to suppose that a large number of voters have learned that they were, or at least have good grounds for believing that they were disfranchised by the wrongful act of the returning officer without their taking advantage of this opportunity of having the injury redressed. We know of no reason whey people who have suffered by errors should not have come forward to say so, and no

> reason why the petitioner's advisers should not have availed themselves of the information. We know enough of the spirit evoked by a closely contested election, and by an election petition, to justify us in saying that the difficulty in inducing witnesses to come forward is not one which is usually complained of."

I agree entirely with the submissions by Counsel. Even in the *Akaroa Case* notwithstanding what was said there, the petitioner in fact produced three witnesses.

At page 165 Williams, J said:

> "The petitioner did produce one case, that of three brothers who stated, we believe truly that they informed that the hour was ..... and were prevented from casting their votes by improper closing of the poll."

In *Pio* v *Smith (1987) LRC (Const) 250,* the petitioner in that case was seeking to have the election declared void because of the non-availability of claim forms at the polling stations for some six hours. At page 276 Mfalila, J said:

> "That the witnesses complained that, as persons eligible to vote by virtue of this section they were prevented from doing so by the non-availability of the prescribed forms i.e. Form VI and that, had they been able to vote, they would have voted for the petitioner."

There was some evidence in the *Pio* v *Smith Case* where, as in the instant case, all the petitioner says is that there were large crowds of people at the polling stations; that the voters were enquiring about ballots and that some of them were saying that they would not come back. In my view, the fact that the Petitioner said the voters said they would not come back is not evidence of the truth that they did not go back to vote. On the contrary, Mary Clare Hurst said in her evidence:

> "During the period from 2.00 p.m. until voting continued, I remained in the polling station throughout – Villa School Polling Station ..... During that period I mingled around the station. I noticed potential voters at that point in time. I did not hear them say anything in relation to the period of non-voting. They were just waiting around. I did not observe any of them leave at that time. Those I saw in the afternoon at 2.00 p.m., I recognised a few from the morning at 6.00 a.m."

Dr. Ramsahoye referred to the case of *Re North Kensignton Parliamentary Elections (1960) 1 WLR p 762* and submitted that the judgement in that case says three things:

1. that the election court is not bound by the rules relating to hearsay;

2. that where there is a breach of the statutory rules, the onus of proving that the result was not affected would lie on the respondent, where the petitioner established the breach; and

3. that by reason of the drafting of what is Section 12(3) of the Antigua Law, a question of onus of proof does not arise and the election court would look on the whole of the evidence to ascertain whether there was substantial compliance with the law or whether the result was affected.

In my view, the reception of evidence in the *North Kensington Case* was governed by statutory provision S. 137(2) of the Representation of the People Act 1949. There is no similar provision in the Representation of the People Act 1975 of Antigua and Barbuda. The Election Court is therefore bound by the rules of hearsay. I so hold. In the premises, therefore, the Petitioner has not established by evidence that an indeterminate number of persons were unable or were not permitted to vote between the hours of 6.00 a.m. and 6.00 p.m. on election day.

In the *Islington Case* on page 130 Kennedy, J said:

> "We agree with Mr. Jelf that there being an infraction of the law in the supply of ballot papers at the polling stations in Bingfield Street, that burden of proving that this infraction did not and could not affect the result of the election vested in the case on the respondents..... We hold that the respondents have discharged themselves of the burden....."

In *Re Hickey* v *Town of Orillia (1908)* 12 OLR at page 327 Anglin, J said:

> "The law certainly casts upon the party attacking a by-law on the ground that the vote upon such by-law has been irregularly taken that burden of establishing that there has been a disregard – not merely trivial but important, not merely of the letter but of the substance of the statutory provisions intended to regulate the conduct of the polling. Where such disregard has been shown those supporting the by-law are still permitted to satisfy the court, if they can, that notwithstanding any irregularity prove 'the election was conducted in accordance with the principles laid down in the Act and that such ... irregularity did not affect the result of the election. But the onus of satisfying the court upon both those points rests upon the respondents."

In Gribbin v *Kirker (1873)* 1 R p 30 Monaghan, C J said as referred to in *Islington case* at page 130:

> "...is that in such a case as the present the petitioner is not called upon to prove affirmatively that the result of the election was affected by the proved

> transgression of the law; but the respondents must satisfy the Court that it was not and could not have been affected by it."

Once the petitioner has led evidence to show that there was a breach then the onus is on the respondents to show that the breach does not affect the result.

I shall therefore carefully analyse the respondents' case to see whether they have discharged that onus. The respondents have led an abundance of evidence. This evidence in my view is intended to serve a two-fold purpose:

1. to discharge the onus placed on them; and

2. to show that notwithstanding the irregularity, the results could not have been affected.

First of all, the respondents' attempt to show that, notwithstanding that there were some 2,829 names on the voters list, many voters were absent from Antigua, in prison, too ill or were dead, and therefore were unable to vote on the 9th March, 1989.

It is, in my view, a difficult task to analyse that evidence but the Court cannot refuse to undertake such a task because it is difficult. I shall first of all analyse the evidence which was led by the respondents and then determine the cogency of that evidence.

The first-named respondent, Henderson Simon is a Civil Engineer. He graduated from Toronto University. After graduation, he returned to Antigua where he worked in the Public Works Department. He left Antigua and took up employment in Nassau, Bahamas as a Sanitary and Environmental Engineer from 1979 to 1982. While he was in Nassau approaches were made to him to contest the St. John's City West constituency. He became involved in active politics in 1983. He began to keep a record of the people in this constituency by means of a card system. On the cards he recorded the names of the constituents, their nicknames and their addresses. He updated the system every year. He had agents to assist him. He held weekly constitutency meetings at which the system was updated from information received from his agents.

In 1984, Simon contested the St. John's City West constituency. He won the seat for the Antigua Labour Party. In 1986, he acquired a personal computer and transferred the information from the card system into the computer. For the 1989 General Elections he had about 20 agents. About a year before the General Elections of 1989 was due, he updated the information in the computer. He made house-to-house calls. The information which he obtained and information given to him by his agents was put in the computer.

The respondent produced in evidence a number of documents as exhibits. These exhibits, H.S. 1–9, show the names of persons who are on the electoral register but reside abroad, too ill to vote on election day, dead or in jail. To give an example – Exhibit H.S.1 is a list which contains

forty-seven (47) names – persons who reside abroad and who this repondent claims were not physically present in Antigua on election day.

Exhibit H.S.2 is a list which contains the names of sixty (60) persons who the respondent says reside overseas and who were not in Antigua on polling day. Exhibit, H.S.2 also contains twelve (12) persons who are shown as deceased.

Exhibits H.S. 3 and 4 are two lists with a total of fifty-three (53) names of persons who the respondent says were too ill to vote on election day.

The respondent, Henderson Simon said "I know Arah Armstrong, (Named on Exhibit H.S.1) very well. She has been a very close friend of mine and also of Mr. Halstead. In fact, Mr. Halsted is the godfather of her only child." He also said "I know Valerie King, Yvette King and Marva King. They have been very strong supporters of Mr. Halstead." These are names which appear on Exhibit H.S.1.

Exhibit H.S. 2 contains a list of sixty (60) persons represented by the respondent to be overseas. On the list the name Ricardo Mapp appears. The petitioner had said in cross-examination that he, the petitioner, had seen him in the English Harbour area recently. The first-named respondent says he knows Ricardo Mapp very well; that Ricardo Mapp writes to his grandmother Albertha John. The first-named respondent said that he would read the letters to Mapp's grandmother and he would reply to Mapp on behalf of Albertha John.

In relation to Exhibit H.S. 3, he said "I know personally eleven of them in Division A (on list) who were too ill to vote. I know personally Arthur Dorsett, Joseph Edwards, Ambrosine Rennie, Mildred Richards, Alice Richardson, Irvin Richardson, Anthony Samuel, Millicent Shaw, Lorna Mae Stevens, Gordon Tittle, and Sybil Usher. I know they were too ill to vote. Ambrosine Rennie, Joseph Edwards and Irvin Richardson have since died.

Similarly, in relation to Exhibit H.S. 4, Simon said "On that list I personally know twelve (12) persons on that list who were too ill to come out to vote." He names them and says "Joseph Solomon and Inez Pigott have since died."

The first-named respondent said that during his house-to-house campaign, he confirmed that these persons were too ill to vote. He made a list of those persons. He listed them in their respective divisions.

In reference to Exhibits H.S.5 and H.S.6, the persons listed by the respondent as untraceables, he said, "I have been able to trace Winston Walker. He now lives in Miami. I was able to trace Austin Gumbs and Jacintha McKay who is now married and is now Jacintha Hall. Austin Gumbs lives in Antigua on Fort Road in my constituency. Jacintha McKay, I can't say exactly where in Antigua she lives. I prepared the list. I extracted the names from the electoral register. When

we started in 1982 we did extensive research. We got information on these people. In our more recent search over the last year, none of these people I have been dealing with have any information of these people which goes back to 1982. This list relates to Polling Division A. I consistently update the information."

He also said, "For the eight (8) years I have been going into the constituency, I have not been able to trace any of these persons on the list." (Exhibit H.S. 5)

Mary Clare Hurst is the political secretary of Henderson Simon. She is 25 years old. She has, except for nine (9) years, lived all her life in the constituency. She has been associated with the first-named respondent from 1983.

As political secretary, she campaigns by paying house-to-house visits in the constituency. She speaks to people in the constituency. She finds out how they stand politically. There were about eight (8) other persons working along with Miss Hurst. The information which they received was passed on to the first-named respondent on Wednesday nights, when they held their weekly constituency branch meeting. That information was fed into the computer by Mr. Simon, assisted by his secretary.

Mary Clare Hurst said:

> "We would use an electoral list on Wednesday nights. We catalogued that information which was brought back to Mr Simon. The persons who are overseas, deceased and those who were in Antigua and those who were in jail... we were not able to find all the persons on the register.
>
> In Division A I know six (6) persons who are overseas. I extracted these names from the computer out of the overall list ..... I supplied the names of these persons."

This witness produced in evidence five (5) exhibits (M.C.H.1-5). Exhibit M.C.H. 1 contains the names of 109 persons whom the respondent claims to be resident overseas at the date of the general election.

Mary Clare Hurst said in evidence:

> "Apart from going out and doing the canvassing, I had other groups working in the constituency – City West Youth for Labour. I was the chairperson of the group. Apart from general canvassing, we have handed out food packages for the sick and 'shut-in', visited them monthly. Food packages given to them every three months. We canvassed those who were 'shut-in' with a view to voting. As election came closer, we find out their state of health and whether they were able

to come out to vote. If they were too ill we would take the information back to Mr. Simon and both him and myself would put them in the information as 'ill'."

In relation to Exhibits H.S.5 and H.S.6, this witness said, "Having taken names on H.S.5, I went out to canvass these people. I could not find them. They were not known. I went to the addresses as shown on the voters' list to look for them. I was not able to find any of them at the addresses shown on the register. For the years I have been living in the constituency, I have not come across any of them.... I assisted in compiling the list (Exhibit H.S.6). It relates to Division B. This was taken from D.H. 1 (Electoral Register). Having taken H.S.6, I tried to canvass them. I went to the addresses as shown on the electoral register. I made enquiries of persons who live on the same street. I got no information about them."

Mary Clare Hurst produced two lists in evidence, Exhibits M.C.H.4 and M.C.H.5. M.C.H.4 contains the names of 49 persons, M.C.H.5 contains 79 persons whom the respondents claim are dead. The witness said that she carried out a search in the registrar's office. In relation to M.C.H.4, she found the names of twenty-eight (28) recorded as dead and fifty-one (51) recorded as dead in relation to Exhibit M.C.H. 5.

Finally Mary Clare Hurst said, "I have seen that list Exhibit (H.S.9) before. It shows a list of constituents who were in jail. I know all of these persons on the list. They were in jail before election, and on 9th March, 1989."

In cross-examination, Mary Clare Hurst, on M.C.H. 1, said she personally saw fourteen (14) persons leave Antigua. She gave the names and addresses of these fourteen (14) persons. She also said of the fourteen persons whom she said had left the state, four of them are connected to her by family. All the others are close friends.

It is my opinion that, from the evidence, Mary Clare Hurst is very knowledgeable of the people in the constituency.

There were eight other witnesses who produced exhibits in evidence and gave evidence similar in nature to that given by Mary Clare Hurst. Their testimony was to the effect that they made enquiries from persons in the neighbourhood. As a result of these enquiries they concluded that they had gone away. In some instances, some of the persons whose names appear on the list told the witnesses that they were leaving Antigua. They knew them well and had not seen them in Antigua subsequently. In some instances the witnesses themselves had seen some of the persons leave the state.

Mr. McKay, Learned Counsel for the first-named respondent submitted that in relation to the evidence which the respondent Simon has led, it shows that on a balance on probabilities, certain persons whose names appear on the electoral register were either living overseas and were not in Antigua on 9th March, 1989 or were deceased or were in jail or were untraceable or were too ill

to vote; or whose names had been duplicated; that this evidence was properly accepted by the Court.

Dr. Ramsahoye on the other hand submitted that this evidence tended to falsify the accuracy of the register of voters as on 9th January, 1989 which was signed by the presiding officer. It is inadmissible because the Register of Electors is conclusive under Regulation 19(3) of the Registration Regulations, or, if admissible was not of sufficient probative force to establish that on election day a number of people were not able to vote, although they were on the list of electors; that it is impossible to find, with certainty, proof to a degree which a Court is entitled to expect, having regard to the matter to be proved that on election day a large number of electors were actually unable to vote in St. John's City West because they were overseas, ill or otherwise disabled; that the exercise would require proof in relation to each voter, and the proof tendered is weak and unreliable, bearing in mind that the evidence implies that the register of the voters, which by law is conclusive as to evidence at the time of registration.

Rule 19(3) of the Registration Rules states:

> "The copy of the lists transmitted to the Supervisor of Elections shall be deemed to be the Register of Electors for the constituency and shall remain in force until the next list of electors have (sic) been revised and certified in accordance with the provisions of the Act and these regulations."

I agree entirely with Dr. Ramsahoye's submission that the register of voters is conclusive as to residence. In that, it is my view that if someone turns up at a particular polling station to vote, that voter cannot be challenged on the ground that the address shown in the register of voters is not his address and that he cannot vote in that constituency which corresponds to the address in the electors' register.

But the evidence led by the respondents is not to challenge in any way their right to be on the register and vote in the St. John's City West constituency Polling Division A or B. If any of these voters showed up on election day and demanded a ballot paper, the voter would have been entitled to a ballot paper and entitled to vote in St. John's City West.

The purpose of this evidence is, as I undersand it, to establish that these persons were not physically present in Antigua and Barbuda on election day and therefore could not vote, not that they were not entitled to vote but could not because of their absence. By this evidence, the respondents are attempting to show that a determined number of persons could not vote in spite of the non-availability of ballot papers for the period stated.

As Mr. Phillips submitted:

> "The respondents are not saying that on his petition the court must weed out on that list persons who were away because they were not eligible to vote on election day. That is not the purpose. The purpose of this evidence is not to invite the court to weed out of the list those persons because they were ineligible to vote on election day. Because in respect of those who are alive and those who are dead – those who are alive we recognise they had a right if they appeared at the polling station to be given a ballot and to be allowed to vote."

With this I agree entirely. (See the *Borough of Worcester 3 OM & H* p 189 at page 186.)

The question therefore is whether the evidence of Simon and his witnesses, who testified as to the number of persons living out of the state, those who are dead and those too ill to vote, those who are untraceable and those who are in jail, is admissible? And if admissible, what weight if any I should attach to it?

The gist of the evidence, as I have said before, given by these witnesses is to the effect that the persons who were on the electoral list and some of whom they knew told them that they were going away and that subsequently they were not seen in the constituency; that in some instances, they saw some of these persons leave the state and have not subsequently seen them in Antigua.

I have no doubt in my mind that evidence of intention is admissible. The respondents' case is that these people say they are leaving. They have not been seen in Antigua since then. There are other persons in the community who have not seen them in Antigua. Having regard to that, the closeness of the community, I formed the impression that the constituency of St. John's City West, particularly the Point Area, is a very closely-knit community and that population is concentrated. It is therefore my view that if these people who are allegedly out of Antigua were in Antigua they would have been seen in Antigua. Moreover, not one of them has come forward during the trial to say that, as alleged, he was away, too ill to vote, or in prison on that day and that this was not so. This, in my view, is not a unreasonable observation, viewed in light of the wide publicity which was given to this trial within and outside of Antigua and Barbuda, in the newspapers, on the radio and televison, before and during the trial. Also during the trial, local newspapers (exhibits A and B) gave full coverage of the proceedings.

In this regard, I adopt the sentiments expressed by William, J in the *Akaroa Election Petition* para 59 at page 166 where he said:

> "It is obviously absurd to suppose that a large number of others have learned that they were, or at least have good grounds for believing that they were disfranchised by the wrongful act of the Returning Officer without their taking advantage of this opportunity of having the injury redressed. We know no reason why people who have suffered by the act should not have come forward to say so, and no reason why the petitioner's advisers should not have availed themselves of the

> information. We know enough of the spirit evoked by a closely contested election, and by an election petition, to justify us in saying that the difficulty in inducing witnesses to come forward is not one usually complained of."

In addition, I make the observation that the evidence was given in open court which was at times packed; names were mentioned publicly alleging that persons were away on election day, too ill to come out to vote or were in prison. In relation to the last category which I have mentioned, although it forms the least number of all the categories, yet I find it difficult to accept that if anyone is stigmatised in this way, that is by alleging that he was in prison whereas he was not, would not come forward and clear his name.

With reference to the persons whom the respondents claim were too ill to vote, Mary Clare Hurst said:

> "My Youth Group has an on-going visitation group which visits the sick and 'shut-ins'. I personally visited all of these persons in Division B(H.S.4). Most of them told me that they were too sick and would not come out to vote..... I did not go to collect any of them (Division B) on election day."

I am of the view that on a balance of probabilities, the respondents have established that there were some persons who were in fact too ill to vote, out of the state, untraceable and in jail. There is no evidence that any of them turned up to vote on election day and were not given a ballot paper.

In determining whether the result was affected by the non-availability of ballot papers, I shall take into account the number of persons on the register who were not phisically present in Antigua and Barbuda on election day. I find the number, from my calculation, to be 850 persons. I find support for this approach in the judgement of Riddle, J in *Re Hickey and the Town of Orillia (1908) p. 317 at p 332* where he said:

> "To deal with the second objection. The Town has three polling sub-divisions, containing the following number of names of voters: in polling sub-division No. 1 – 480; No. 2 – 438; No. 3. – 451; in all 1378. But from these numbers must be deducted the numbers of those who were not entitled to vote in the polling sub-divisions at the election in question with the following result: number as revised in polling sub-division No. 1 – 445; No. 2 – 414; No. 3 – 379: in all 1238.

Learned Counsel, Mr. McKay referred to the case of *Mtoba & Others* v *Sede and Others* (1975) 4 A.A. 413. In citing this case, Counsel was in, what I thought, a lot of agony. He said this is the first time in his practice at the Bar that he was referring to South African jurisprudence and I believe that Counsel has been at the Bar for many years. He said he was referring to this case

because it was very helpful. I understand Counsel's agony because I say unreservedly I shall be very reluctant myself to found any judgement based solely on South African jurisprudence. However, in this case, the judge referred to many English authorities, and as Counsel puts it, clothe the judgement with respectability.

At page 422 of the judgement Kotze, J said:

> "The votes case in the election in favour of the various candidates appear on the last page of Exhibit 29 and are correctly set out in paragraph 20 of the petition. These figures establish that the total number of votes cast in favour of an unsuccessful candidate (third respondent) exceed the highest number of votes cast in favour of an unsuccessful candidate (first applicant) by 5,347. It is common cause that the registered voters in the electoral division of Zwelitsha totalled 92,705 as referred in Exhibit 29. An aggregate of 269,728 votes were cast, which means that one-fourth of the total, i.e. 67,432 respresent the number of registered voters who cast votes which were not rejected. This number swells to 69,586 if the 2,154 rejected ballots were added. It follows that (not allowing for contingencies such as death or registered voters prior to the polling period) 23,119 did not exercise their right to vote. On quarter of the votes of these voters added to the total votes cast in favour of the first applicant could therefore have resulted in his election instead of the third Respondent. Mr. Jannett, on behalf of the Respondents presented a series of calculations, which at first glance establish a strong improbability that the result would have been different if there were no ballot paper shortages. These calculations proceed on the assumption that there were no significant popultion shifts in the Ciskei between the date of registration of voters (i.e. July – August 1972) and the date of the election and that the number of the voters who were physically present in the affected area at the time of registration would have remained more or less stable until the election – an assumption of problematic validity."

From the above, Learned Counsel argued that the reasoning is clear. The judge is seeking to exclude persons who are on the register but are dead.

I now turn to consider the question of the burden of proof.

Mr. McKay, Learned Counsel for the first-named Respondent submitted that it is important for this Court to determine whether or not an evidential burden is placed on the Petitioner, to lead evidence to satisfy the Court that the breach or breaches complained of did affect the result. He referred the Court to *Woodward* v *Sarsons* and argued that this case is still good law for what it decides. Mr McKay argues that *Woodward* v *Sarsons* does not say that all a petitioner must establish is a breach and the court will axiomatically find that the results were affected; that the present case is not a case like the *Hackney Case.* Learned Counsel also referred to *Kensington*

North Parliamentary Case which decided that there is no burden on the respondent to establish that the breach did not affect the result. It does not say that the petitioner has no evidential burden; that this is in accord with a statement in Phipson on Evidence, 13th Edition, p 45 which states as follows:

> "But it would seem in an election petition, alleging breaches of the rules made under the Representation of the People Act 1949, that the court will look at the evidence as a whole and that if breaches are proved by the petitioner, the burden of showing that the election was conducted substantially in accordance with the law, does not rest upon the respondent."

Mr. McKay then concluded that the respondent did not have to establish that the irregularity did not affect the result.

Dr. Ramsahoye, on the other hand, submitted that once the petitioner establishes that voting was going on between 6.00 p.m. and 9.00 p.m. he establishes a clear breach. The court will then look at the breach to see whether the breach was substantial. Learned Counsel then referred to the *Kensington North Parliamentary Case (supra)* and submitted that that case says three things, one of which is that by reason of the drafting of what is section 12(3) of the Antigua Law, a question of onus of proof does not arise and the Election Court will look at the whole of the evidence to ascertain whether there was substantial breach of the law or whether the result was affected.

In *Re Hickey and the Town of Orillia (Supra)* at p 322, Meredith, C J said:

> "When prima facie the result might have been affected by the failure to comply with the provisions of the statute then and then only is the onus cast upon the person supporting the by-law to show that the irregularity did not affect the result."

In *Islington Parliamentary Election Case* Kennedy, J said at page 130:

> "We agree with Mr. Jelf that there being an infraction of the law in the supply of ballot papers at the polling stations in Bingfield Street.... the burden of proving that this infraction did not and could not affect the results of the election rested in this case on the respondent."

I am of the opinion that the plaintiff will be required to lead evidence to show that there was a breach of the election law, except of course where the breach is admitted by the respondents, *(Woodward* v *Sarsons)*. The respondents will then have to show that notwithstanding the breach the result was not affected.

I, however, agree with Dr. Ransahoye that by reason of the drafting of s. 12(3) of the Antigua Representation of the People Act, the question of burden of proof does not arise, and that the Court would look at the whole of the evidence to ascertain whether there was substantial compliance with the law or whether the result was affected.

As I have said above, the petitioner has failed to lead any evidence in relation to paragraph 3(c) of the petition. He cannot therefore rely on that paragraph.

Dr Ramsahoye said in his opening address to the Court:

> "Now, some might have returned, some might have left from frustration and not returned."

If his statement was meant to show that voters were deprived of their right to vote because of non-availability of ballot papers, the petitioner has failed to establish that because he has led no evidence in relation to that allegation.

Mr. Luckhoo, Learned Counsel for the second-named respondent submitted that no evidence has been led of any act or omission on the part of the Returning Officer. That all the matters complained of relate to, and were the responsibility of the Supervisor of Elections; that no complaints have been made against the Supervisor of Elections, that the full amount of the 2,600 original ballot papers were delivered to the Returning Officer in time for the election of 9th March, 1989. The Returning Officer reported to the Supervisor that names were printed in the wrong order. The Supervisor recalled the ballot papers. The Returning Officer was duty-bound to return them. He did so.

Rule 27(1) of the Act states as follows:

> "The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as in the opinion of the returning officer may be necessary."

In my opinion, the Act therefore casts upon the Returning Officer the sole duty and responsibility for providing the ballot papers for the elections. In addition, the Returning Officer was the conduct of the elections. When the Supervisor of Elections gave him directions to keep the polls open until 9.00 p.m., he was not under any obligation to comply with the instructions of the Supervisor of Elections. It is my view, therefore, that the allegations contained in paragraphs 3a, b, d, and e are well-founded. I shall deal at a later stage with paragraph 3(f) of the Petition.

The failure of the Returning Officer to provide ballot papers for the St. John's City West is an omission of his official duty. The resulting non-voting from 6.00 a.m. to 8.30 a.m. and from 12.55 p.m. to 5.30 p.m. is a breach of the election rules. The extension of voting from 6.00 p.m.

to 9.00 p.m. is prima facie a breach. Was this a substantial breach? Was the election in St. John's City West conducted substantially in accordance with the law as to elections? If it was, was the result affected?

If the breach was substantial so as to render the election a sham or a travesty, then it is voided, that is if the breach falls within the first of the three principles enunciated by Lord Denning in *Morgan* v *Simpson:*

> "if the election was conducted so badly that it was not substantial in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected or not...."

Mr McKay concedes this when he said in his opening address:

> "If you find that this election was a sham and it was conducted so badly, that nobody can say it was an election, then you do not have to go further."

The evidence is that the ballot papers were delivered late in the St. John's City West constituency. One thousand (1,000) ballots were received by 8.15 a.m. – 8.30 a.m. Voting began about 8.30 a.m. By 12.30 p.m. and 1.00 p.m. ballots had run out. The irresistible inference therefore is that 1,000 votes were case between 8.30 a.m. and 1.00 p.m. Voting resumed at about 5.30 p.m. The total number of votes cast in the constituency was 1,561. This means that 561 votes were cast between 5.30 and 9.00 p.m. There is a total of 2,829 persons registered in St. John's City West as voters. On the basis of my calculations, 850 were not physically present in Antigua to vote on election day. This means that about 318 persons did not cast their votes on election day in St. John's City West constituency for one reason or the other. I cannot say, I will not speculate, as to the reason but, as I have said earlier, the petitioner has not shown by any evidence that not one person was unable to vote because of the non-availability of ballot papers.

The instant case is not a case like the *Hackney Case* for two reasons: firstly, in the *Hackney Case* polling stations were closed all day and five thousand (5,000) persons could not get to the polls. The reason for their non-voting was known. They could not vote even if they wanted to, because the polls were closed. Five thousand (5,000) out of an electorate of 12,000 persons were disfranchised; and secondly, it cannot be said in this case, as was said in the *Hackney Case* (page 51):

> ".... that an election which is conducted in such a way as (whether by accident or design) not to afford a very large mass of the electorate an opportunity of voting cannot be a true election of members."

It cannot be so said because 318 not voting for whatever reason is not a very large mass of the electorate. In fact from the calculations above, 76 per cent of the electorate voted, taking into

account those who were not physically present to vote on 9th March. Even excluding that number, it is shown that about 50 per cent of the electorate cast their votes in the St. John's City West on election day.

In this regard, I am of the opinion that the election was not conducted in such a way as to make the ordinary condemn it as a sham or travesty.

In *Morgan* v *Simpson (1974)* 3 AII ER p 722 at page 731 Stephenson, L J said:

> "For an election to be conducted substantially in accordance with the law there must be a real election by ballot and no such substantial departure from the procedure laid down by Parliament as to make the ordinary man condemn the election as a sham or travesty of an election. Instances of such a substantial departure would be allowing voters to vote for a person who was not in fact a candidate or refusing to accept a qualified candidate on some illegal ground or disfranchising a substantial portion of qualified voters..."

In this case, there is no doubt that there was a real election by ballot. There is no complaint that the secrecy of the ballot was violated in any way. I have already decided that there was not in this case a disfranchising of a substantial portion of the electorate.

Was the election so conducted as to be substantially in accordance with the law as to elections? If it was, then it is not vitiated by a breach of the rules provided it did not affect the result of the election (Lord Denning's second proposition in *Morgan* v *Simpson).*

The law as to elections in Antigua and Barbuda is purely statutory and is contained in the Representation of the People Act 1975, and the Election Rules. In *Morgan* v *Simpson (supra)* at page 730 Stephenson, L J said:

> "Gone are the principles laid down in the body of the Act and in their stead is substantial accordance with the law as to elections. Blurred is the distinction betweent the Act and the rules, between the breaches of the rules. The law as to elections is to my understanding of the Section recognised as embodied in the Act and rules and an election will stand if there have been breaches of the law, but they are not substantial or they have not affected the result."

When, therefore, the Parliament of Antigua and Barbuda lays down that voting should be from 6.00 a.m. to 6.00 p.m., was there substantial compliance with the rule if voting took place from 8.30 a.m. to 1.00 p.m. and 5.30 p.m. to 9.00 p.m.? Is that rule mandatory or permissive?

Mr. Mckay, Learned Counsel, referred to the *Mtoba Case (supra)* and contended that despite all the irregularities that took place in that seven hours were lost at several polling stations, the

Learned Trial Judge did not say the election is void and that's it. Evidence was led and after considering the evidence, he came to the conclusion that there was irregularity. He did not say immediately these elections were a sham or it would be travesty to call it an election by ballot. He went on to consider whether having regard to the circumstances, the irregularity materially affected the results. He came down on the side of the Petitioner and confirmed that it materially affected the results.

Mr McKay also submitted that it is not axiomatic that a breach, where voters are prevented from voting, the election must be declared void.

In the *Mtoba Case at page 421, letter A,* Kotze, J dealt with the problem thus:

> "The collapse endured for many hours at some of the polling stations in some cases for as long as either and a half out of fourteen polling hours. In the aggregate voting could not proceed at 12 polling stations for 58 out of 168 polling hours i.e. for more than one third the polling time. On the evidence several of the areas where these elections were scheduled are densely populated. In not one instance was it suggested in evidence that the slightest attempt was made to improvise ballot papers in accordance with the enabling authroity conferred by the proviso to S. 37. It is, in my view, impossible to conclude in the face of so extensive of a collapse – that in the Zwelitsha electoral division, the election as a whole was conducted in accordance with the laid-down principles that every voter be afforded a fair and free opportunity to exercise his vote. The departure from the principle was on a substantial scale..... I conclude therefore, that in the Zwelitsha electoral division a vital principle of the election proclamation was voilated on an extensive scale. It follows that the curative provision is ousted and inoperative for the purpose of preserving the election. The interpretation placed on the curative provision ..... requires the court to disregard the size of the majority. If an election is not a true election, the extent of the majority obtained by the successful party is irrelevant."

In that case, the judge is not saying that the election was conducted substantially in accordance with the law as to elections and therefore he will examine the circumstances in order to determine whether the result was affected. He is saying, as was said in the *Hackney Case,* that this election was conducted so badly that a substantial number of qualified voters was disfranchised, that the election was void *ab initio*, – in spite of the fact that he proceeded to examine the evidence. There was not need to apply the curative section.

In *Pio* v *Smith (1987)* L.R.C.p. 250, the petitioner was seeking to have the result of the election declared void on the ground, *inter alia*, that voting forms were not available at the polling station for some six hours on polling day.

In Zimbabwe, one was not deprived of the right to vote if he was not registered. He could exercise his right to vote by going into a polling station on election day and register on a claim form and so exercise his right to vote. With the absence of claim forms for many hours, it was the claim of the petitioner that many persons were deprived of that right to vote.

Mfalila, J said at 279:

> "The question was therefore whether the election was conducted in accordance with the principles laid down in the Act and whether such non-compliance or mistake did affect the results of the election..... the question then is whether, if the petitioner's contention is to be accepted, the position in this case is the same as the position which was obtained in the Hackney Borough Election. In my view there are very strong and important differences between the election at Norton, in this case and that in Hackney. At the Norton Polling Station, the mistake involved the non-provision of claim forms for only part of the polling day, i.e. between 0915 and from 1600 hours. This means, the claim forms were available from opening time to 0915 and from 1600 hours to closing time. This contrasts with the position at Hackney where no facilities at all for the whole of the polling day were provided resulting in the voters of that area being absolutely prevented from voting. In the present case it was question of timing, with some incovenience perhaps, but no voter who wanted to utilise the provisions of statutory instruments 155A of 1955 to register and vote, could have failed to do so. Thus, unlike the *Hackney Case,* the mistake only caused some inconvenience to the would be voters under section 6(1) of the Statutory Instrument 155A of 1955, but did not have the effect of absolutely preventing them from voting. Indeed none of the three witnesses said so."

It is, in my view, necessary for a proper determinant of the issues in this case, to consider separately the period of non-voting or the periods when voting took place.

The period of voting from 8.30 a.m. to 1.00 p.m. and 5.30 to 6.00 p.m. would have resulted in about 5½ hours' voting time out of 12 hours' voting. If, for instance, everyone on the voters' list had cast their ballots, in those circumstances without anything more, no Court despite the breach, would declare the election void.

There would certainly have been a breach of the rules because voting would not have been conducted in the constituency from 6.00 a.m. to 6.00 p.m., as stipulated by the Election rules. But, notwithstanding that breach, no Court would, in my view, declare the election void because it could not be argued that the results would be affected in any way. The Court must take a commonsense approach to the situation.

In the *Borough of Drogheda (1874) OM & H p 201* the polling stations were not opened at the statutory hour of 8.00 a.m., and in fact, no votes were (or could be) received until 8.45 a.m. It was clear that the fact of not opening the polling stations until three quarters of an hour after the appointed time had no effect whatsoever upon the result of the election and that not a single voter was in consequence prevented from, in fact the whole constituency was almost entirely polled out before the poll was closed.

In the instant case, it should be assumed that the voters would know that the time of voting in the constituency would be from 6.00 a.m. to 6.00 p.m. In considering, therefore, whether the breach, the non-voting hours, was substantial, it would, in my view, be relevant to consider matters such as the size of the constituency, the acessibility of the voters to the polls and lastly, whether news is easily disseminated in the community.

The evidence is that the constituency is relatively small in area, about two square miles. It is densely populated in parts. Everyone in the constituency owns a radio. When the electors turned up to vote at 6.00 a.m. and there were no ballot papers, they were told by officials at the polling stations that ballot papers were expected, although they were not told when. When ballot papers ran out at about 1.00 p.m., later on they were told tha voting would resume. Notices were posted up, announcements were made on the radio and television stations that voting would resume and the voting time would be extended. It is a reasonable assumption that most of the electorate in the constituency were kept informed and had a good idea of what was going on in the constituency, because of the high percentage of voting and because of the large numbers that were present when voting resumed at about 5.30 p.m.

Applying the reasoning of Mfalila, J in *Pio* v *Smith (supra)* in the passage which I have quoted above and in regard to all the surrounding circumstances which I have just referred to, it is my view that the election in St. John's City West was conducted substantially in accordance with the law as to elections.

It is now left for me to decide whether the result of the elections was affected by the breach of the rule.

In the *Islington Case* (*supra*) the respondent, who was declared the winner, received a total of nineteen (19) votes over his rival, the petitioner. It was established that 14 votes were cast after the statutory hour of 8 o'clock. It was decided that even if the 14 votes were given to the petitioner, the respondent would still have a majority of 5 votes. Accordingly, the result was not affected by the irregularity.

In *Evo* v *Supa and Another* (1986) LRC (Const.) p.18, the petitioner had complained that 154 persons voted who were not lawfully entitled to vote. These persons were registered to vote because of a boundary error. The petitioner argued that the election was void because their votes

were illegal. It was there decided that there was substantial compliance with the law and that even if that 154 votes were given to the petitioner, the result would not have been affected.

In the *Akaroa Case* (*supra*) ten polling stations out of eleven were closed at 6.00 p.m. instead of 7.00 p.m. The total number of electors who voted at the election was 1,544 leaving 499 electors. The successful candidate had a majority of 107 votes over his nearest rival. The court held that there was no reasonable ground for believing that by reason of the premature closing of the ten (10) polling places, a majority have been prevented from voting or that the result of the election could have been affected in any appreciable degree; and accordingly declare the election void.

I am fortified in my view that on a careful analysis of the *Akaroa Case,* that in determining whether or not there is substantial compliance with the law or rule as to the opening and closing of the poll, one is not or should not be confined solely to the number of polling hours which were lost but with what was achieved, that is the number of votes which were cast during polling hours. Because in that case an aggregate of ten voting hours was lost. In my view, the reasoning is that in spite of the loss of ten hours, only 497 voters who might have voted, did not. It is my view that it is in light of that reasoning which prompted the Learned Judge in the *Akaroa Case* to observe:

> "But the majority in the present case is 107. Sitting as judges of fact, and applying, in the words of one of the English Judges, one's commonsense to the circumstances of the case, to be reasonably possible that that number of voters could have been prevented from recording their votes by the irregularity complained of."

It is in this regard, too, that I view and adopt the statement of Rose, C J, H.C. in *Rex rel Fennessey* v *Wade et aL (1939) 3 DLR 424* at page 428:

> "There is, then, no object in comparing the cases in the hope of extracting from them a formula that can with confidence be applied in every case that may arise. In each case, at it comes up, the tribunal I think, must try to form a practical conclusion as to whether upon the facts as they appear, there was a general endeavour to conduct the election upon the principles in accordance with which an election held under the Act ought to be conducted and whether that endeavour was so successful as fairly to call for the application of the Section."

In that case, the town clerk irregularly added five names to the assessment roll and issued voting certificates to the five, one of whom was not qualified and the reeve was elected by a majority of one vote.

At page 428 of the judgement, Rose, C J said:

> "On the one hand care must be taken not to create the impression amongst those in charge of municipal elections that the courts will be astute to find excuses for the ignoring of the regulations prescribed by the Legislature.
>
> ..On the other hand it must be remembered that the section is remedial legislation which is to be given full effect. The finding of the middle ground may be difficult but the attempt must be made. In the present case, my opinion which I express with deference, is that in the judgment under review too narrow a meaning has been given to the section – a meaning which almost deprives that section of effect. It is true that as regard the five voters the Act was not obeyed, and that in that sense, the election was not conducted in accordance with the principles laid down in the Act; but in the wider sense, the election does seem to have been conducted in accordance with these principles, and my opinion is that the saving sections ought to be applied if, in fact the mistakes or irregularities in question are such as fall within any of these cases named in the Section."

In *Gribbin* v *Kirker 7 IRR p 30*:

> "It appears that the poll was kept open after the proper hour so as to allow those who were then within the polling booth to vote. The Court of Common Pleas in Ireland set aside the election."

In the *Borough of Worcester Case 3 OM & H 184 Lush, J* said at page 185:

> "The question which we have ultimately to decide is whether the poll was closed before the proper time or not and if so whether electors on the register were precluded from exercising their franchise in such numbers as to outweigh the majority of one or both of the respondents."

In trying to rationalise the decisions in the cases Mr. Justice Williams said in the *Akaroa Case* at page 163:

> "The cases which apparently conflict with this view (the above view) are the *Harwick Case, Gribbin* v *Kirker* and the *New South Wales Case, Ex Parte Russell.* In the *Harwick Case* the majority was six, and the poll, was closed in consequence of a disturbance a few minutes only before the proper hour and no proof was given that other voters were waiting to vote, yet the election was set aside by a Parliamentary committee. It may well be, however, that the fact that the poll being closed in consequence of a disturbance would be sufficient to justify the reasonable inference that a number of voters sufficient to change such a narrow

> majority might have been deterred from voting, though no direct evidence of the fact was given. The case does not, therefore, seem to be inconsistent, then as pointed out in Rogers on Elections it can hardly be supported since the *Warrington Case."*

It is my view that it is very difficult to reconcile the decisions in the cases. It is therefore, with respect that I prefer the view expressed in *Fennessey* v *Wade* quoted above.

In *Re Ex Rel Dyck* v *Ell 9 WWR 162*, two of the polls in a municipal district wee not opened on time on election day. In one case, a blizzard delayed the arrival of the D.R.O. at the polling place. In the other case, the same blizzard caused the D.R.O. to doubt whether the election should be held at all and, with the acquiescence of the relator, he went somewhere to enquire what he should do.

On proceedings to have the election declared invalid, Sissons, D C J in giving judgement of the court beginning at page 165, said:

> "In *Re Ex Rel Smith* v *Browne* the poll was closed at about three o'clock instead of four o'clock as required by statute. It was held that the election was void."

In *Re Hach and Oakland R.M. (1910) 14 WLR 309*, one of the polling places was closed for three quarters of an hour during the hours of polling, while the deputy returning officer, poll clerk and scrutineers were at lunch. There was no evidence that any person had been deprived of his vote by the closing, neither was there any evidence that some electors might not have been deprived.

In that case Mathers, C J K B said:

> "If there was any satisfactory evidence that the closing of the poll at midday did not affect the result of the election, it would probably be saved by the curative section (200 of the Municipal Act). The closing of the poll was deliberate and intentional and the onus was on those supporting the by-law to show that such irregularity had not that effect and they have absolutely failed to do so."

A somewhat similar situation was before Mathers, C J in *Re Shaw and Portage La Prairie R.M.* 190 WLR 542. In that case, the poll was not opened until 10 a.m. (9 a.m. being the hour for opening). For three days a snowstorm had raged over the whole country. The D.R.O. had left home before 7 a.m. and made all possible speed but did not reach the polling place on time.

His Lordship said:

"I am satisfied that the failure to open the poll was not the deliberate act of the officer, but that he made an effort to comply with the statute and was prevented simply because the weather conditions were such as to make it impossible for him to comply. In the *Oakland Case* I held the deliberate closing of the poll for an hour at midday was fatal. That, however, was a deliberate and intentional violation of the Act. I think where an official makes an honest effort to comply with the statute that his default should not be visited with the same consequence unless it is shown that the result was probably affected.

In *Rex El Rel Smiley* v *Evans (1927)* 4 DLR 629, the D.R.O. closed the poll at 6 o'clock (instead of 7 o'clock) and went to his home for a lamp and stayed longer than he should have done..... It appears that one voter, Devitt did attempt to exercise his franchise and the poll being closed, he failed to be afforded the privilege. It is suggested that a number of voters might have voted at that point had the poll remained open during that period. But there is not evidence before me to show that there was any attempt and failure on the part of any other voters to exercise their votes through the temporary closing of the poll....

The election was held in accordance with the principles of the Act.... Upon all the facts as disclosed in the affidavits, while an irregularity or non-compliance as I have mentioned occurred in connection with the election, still I find that irregularity or non-compliance did not in the words of the statue 'materially affect the result of the election'.

It further appears to me that the irregularity did not entirely affect the result of the elections. As in *Rex El Rel Smiley* v *Evans* it is suggested in this case that some voters might have appeared at the Deer Park School pool before it was open. However, there is nothing to indicate any person did appear. All the evidence points the other way. It seems unlikely that any person interested enough to come out in a blizzard in order to vote would have left the polling place without waiting a reasonable length of time.... None of the witnesses has heard of any person who lost his vote through the poll being closed."

It is my view that the above cases should be looked at against the background that the judges were using their discretion to declare the election valid or invalid because they had the power so to do by the legislation.

In *Regina Ex Rel Dyck* v *ELL 161,* the headnote reads as follows:

" Sec 30 (2) of the Controverted Elections Act R.S.A 1942. Ch. 155 is not properly speaking a curative provision. What it does is to give the judge the power in his discretion to do one of two things, either

(a) declare the election invalid or

(b) declare it valid if he finds that it was conducted substantially in compliance with the Act and that the irregularity, if any, did not materially affect the result."

Section 30(2) reads as follows:

"In any case where the validity of an election or a voting upon a by-law is contested before a judge by reason of non-compliance with or violation of a provision of this Act or any other Act applicable to election or to the voting as the holding of the polls or the counting of the votes or by reason of mistake in the use of any of the forms rquested in connection with the election of the voting of by reason of any irregularity,the judge, in his discretion may adjudge the election or the voting to be invalid or if it appears to him that the election or voting was conducted substantially in accordance with the requirements of the Act under which the election or the voting was conducted substantially in accordance with the requirements of the Act under which this Act applies, and that the non-compliance, violation or mistake or irregularity did not materially affect the result of the election or the voting he may adjudge the election or the voting upon the by-law to be void."

On a reading of s. 12(3) of the Antigua and Barbuda Act, I am of the view that it does not give a discretion to the judge to adjudge the election valid or invalid as the case may be. In my opinion once the judge is satisfied that the election was not conducted substantially in accordance with the law as to elections or even if conducted substantially as to the law as to election and that an act or omission did affect the results, then he has no option but to declare the election invalid. It is to be noted that the section [12(3)] says "affect" and not "materially affect" as in the Canada legislation.

In my view, therefore, I cannot be guided by statements of principle such as –

"I think that strictly speaking there was an irregularity in not opening the polls on time. In my discretion, I could adjudge the election to be void. However, I do not think that I would be exercising a proper judicial discretion if I make such an adjudication without considering the surrounding circumstances."

(Per Sissons, D.C.J. in *Rex Rel Dyck* v *ELL at* p 166).

I now turn to consider whether the rule relating to voting hours is mandatory or permissive.

In *Re Mullings and City of Windsor Et 6 DLR P.601*, Windsor was struck by a serious snowstorm. Election was to be held on 2nd December, with the polls opening from 11 a.m. and remaining open until 8.00 p.m. There were 445 polling places, 383 opened on time on 2nd December and 58 opened late. At least one polling booth did not open at all that day.

The city clerk instructed the Deputy Returning Officer not to count the ballots of the 383 polling places but to bring the boxes to his office and to attend at Clery Auditorium at 9.00 p.m. the following evening where the ballots would be counted. The 58 polling stations which opened late and the ones which did not open at all were directed to open on 3rd December at 11.00 a.m. and remain open until 8.00 p.m. The 58 polling officers who were unable to open their polls on time were directed to take the ballot boxes home with them and return to the poll the following morning. This was a violation of s. 76(6) under the Municipal Elections Act 1972 (Ont.) C. 95, which prohibits a deputy returning officer from taking the ballot box home after the close of the polls under any circumstances. It was conceded at the hearing that the election was not in any way affected by this procedure.

Donnelly, J in delivering the judgement of the Court at page 604 said:

> "We accept that the burden of satisfying the Court that the election was conducted in accordance with the principles of the Act was upon the defendants. We believe that consideration must be given to the very exceptional circumstances which prevailed and the lack of precedents. It is essential that the elections be held fairly and openly and that the electors have free access to the polling stations. In directing that the 58 polling stations which opened late and the one that did not open be opened on December 3, the city clerk was endeavouring to give the electors of the city uninterrupted access to a polling booth for an uninterrupted access to a polling booth for an uninterrupted nine-hour period. It is probable that the city clerk, in taking the action that he did, was attempting to comply with s. 67 of the Act."

Section 67 of the Canadian Act is in substance the same as Rule 48 of the Representation of the People Act 1975 of Antigua and Barbuda which reads as follows:

> "48 (1) When the proceedings at any polling station are interrupted or obstructed by riot or open violence, or by the occurence of any earthquake, hurricane, flood, fire, outbreak of pestilence or other calamity, the presiding officer shall adjourn the proceedings till the following day and shall forthwith give notice to the returning officer.
>
> (2) (a) the hours of polling on the day to which it is adjourned shall be the same as for the original day....."

At page 605 Donnelly, J said:

> "The city clerk may well have considered and believed that because the emergency commenced before the polls opened, and continued until after they closed on December 2, that he was authorised to direct that they be opened the following day. However, it may be that on a strict reading of the section, it will be found to have no application to the type of emergency that faces the city on that day..... We are of the opinion that there was a genuine endeavour on the part of the clerk to carry out the intention of the Act and that the election was conducted in accordance with the principles of the Act.
>
> There were certain other infringements of the Act..... No evidence was led to show that any of these acts of non-compliance affected the result, and the question arises as to the effect of such non-compliance in light of such lack of evidence."

Learned Counsel, Mr. McKay submitted that this judgement was not based on the clerk taking action under s. 67. This judgement was bases on the city clerk doing his best, without a corrupt motive, to ensure that the elections were conducted substantially in accordance with the electoral provision; that by the judgement the provision for opening and closing of the poll must have been considered to be directory only.

It should be observed in the *Re Mullings Case* the court was not saying that it was not a breach to postpone the election from 2nd and 3rd December. What the court said was that in relation to the other irregularities discovered, that "no evidence was led to show that any of these acts of non-compliance affected the result.....".

Mr McKay submitted that the Supervisor of Elections in the instant case, like the city clerk in *Re Mullings,* was using his judgement endeavouring to do his best without a corrupt motive; that by the provision of s.3 of the Antigua Act, the Supervisor of Elections had the authority to extend the hours of voting.

S. 3 reads as follows:

> "3. The Governor [now Governor-General] shall by notice published in the Gazette appoint a Supervisor of Elections who shall –
>
> (a) exercise general discretion and supervision over the administrative conduct of elections and enforce on the part of election officers, fairness, impartiality and in compliance with the provisions of this Act; and

(b) issue to election officers such instructions as from time to time he may deem necessary to ensure the effective execution of the provisions of this Act."

Could it be said that if voting hours are lost, the Supervisor of Elections, in order to be fair to all the candidates, in order to make up for lost time, extend the voting hours? I find it very difficult to appreciate that s.3 gives him that power.

In my view, the language of s. 3(a) is very clear and unambiguous. It says that the Supervisor of Elections must enforce on all election officers impartiality and compliance with the Act. It means that the Supervisor of Elections must ensure that officials comply with the provisions of the Act. They must not favour one candidate over the other. They must observe the rules of fair play in the conduct of the election. It is difficult to find within the meaning of these words that power is given to the Supervisor of Elections to change the election rules. Neither do I find in the words of s. 3(b) of the Act that power is given to the Supervisor of Elections to change anything in the Election Rules.

Mr. Phillips submitted that this Court decided in *Walter* v *Humphreys,* No.30 of 1980 that the election rules and regulations are directory only. At page 22 of the judgement, Robotham, J (now Chief Justice) said:

> "Mr. Hosein in his reply to the submission on behalf of the Petitioner that the election ought to be avoided under Section 12 (3) of the Act, pointed out that 12(2) of the Act requires the returning officer to do all such things as may be necessary for effectively conducting the election in the manner provided by the election rules. Section 12(3) makes it possible for an election to be avoided if there are breaches of the election rules. These rules have from time immemorial been held to be directory only. *Levers* v *Morris* [1971] 3 AII ER page 1304, there is no provision he submitted in section 12(3) or in any other part of the Act, Rules or Regulations which provides for an election to be avoided for a breach of the registration regulations. It has always been a general rule that to whatever extent the provisions of an Act of Parliament are violated, even wilfully which do not enact that the consequences of these Acts avoids the election, the election will not be invalidated.
>
> That being the case and there being no such provisions, the petitioner, he submits, cannot succeed on the basis that breaches by the Supervisor of Elections of any of the Registration Regulations, if indeed there were any, affected the results of the election. With this submission I am in complete agreement."

From this passage, the Learned Trial Judge, in my view, was agreeing with the submission that breaches by the Supervisor of Elections of any Registration Regulation cannaot affect the results

of the election. He was not saying or agreeing with the submission that the election rules have from time immemorial been held to be directory only.

Learned Counsel also referred to the case of *Latham and Others* v *The Corporation of Glasgow and Others* p 694, "The Whiteinch Case" at page 795 where Lord Ashmore said:

> "On the legal aspect of the question, I begin by referring to the statutory provision contained in Regulation 17 of the Statutory Rules and Orders relative to the Temperance Act. It reads as follows – 'the poll shall be opened from 8.00 a.m. to 8.00 p.m.' In the Election (Hours of Poll) Act 1885.... which applies to Parliamentary and Municipal Elections, the provisions is that 'the poll shall commence at 8 o'clock in the forenoon and be kept open till 8 o'clock in the afternoon of the same day and no longer'. But although the words 'and no longer' do not appear in the regulation applicable to the case, I am of the opinion that the hours in the regulation must be literally observed as regards the duration and the closing of the poll."

Learned Counsel asked me to reject that as being the law of Antigua and Barbuda, because that is at variance with the English case, the Canadian cases and the New Zealand case.

In the *Akaroa Case* at page 160 Williams, J said:

> "The provision as to the hours of polling was not however, contained in the Schedule, nor was it in the body of the Act, but it had been enacted by a separate statute, the present English Statute on the subject being 48 Victoria C. 10. S.1. In New Zealand the enactment as to hours of polling are contained in the body of a statute and there is no provision in our legislation similar to section 13 of the English Ballot Act. Section 13 is stated by the Court of Common Pleas, in *Woodward* v *Sarsons* to be 'an enactment ex abundanti cautela, declaring that to be the law applicable to elections under the Ballot Act which would have been the law to be applied if this section had not existed.' An Election Court in England, however, in determining whether or not an election had been invalidated by closing the poll prematurely, would not be affected by section 13, as the premature closing is not a non-compliance with the rule in the Schedule. Although, therefore in England as here, the laws of polling are positively fixed by statute, yet there can be no doubt that election tribunals in England have frequently declined to declare an election invalid on the mere ground that the provisions on the statute in this particular had not been complied with."

In *Montreal Street Railway* v *Normandin [1917]* A.C. 170 at page 174 Sir Arthur Cannell said:

> "The question whether provisions in a statute are directory or imperative has very frequently arisen in this context. It has been said that no general rule can be laid down and that in every case, the object of the statute must be looked at."

What is the object of Rule 1 of the Representation of the People Act? Is it to provide 12 hours daylight voting for the electors, as Dr. Ramsahoye contended, or is it simply to provide 12 hours in voting, in other words, to give the voters sufficient time in which to poll their votes? I hold the view that the latter view is to be preferred.

In *Levers* v *Morris* [1971] 3 AII ER 1300 at page 1303, Walter, J said:

> "In *Woodward* v *Sarsons* the election court had to consider whether under the old law an elelction had to be declared void by reason of non-observance or non-compliance with the rules which were contained in the schedule to the Ballot Act 1872. Lord Coleridge, C J said 'In order to determine this part of the case it is necessary to consider and determine the construction of the Ballot Act. Now, first the Act is divided into the principal part, which contains certain sections and two Schedules which contains certain rules and forms, and by s. 28 the Schedules and the notes thereto and directions therein shall be construed and have effect as part of this Act. 'The rules and forms are therefore, to be construed as part of the Act, but are spoken of as containing "directions". Comparing the sections and the rules, it will be seen that for the most part, if not invariably, the rules pointed out the mode or manner of doing what the sections enact shall be done. And in Schedule 2, the first note states that, "the forms contained in the Schedule or forms are nearly resembling the same as circumstances will admit, shall be used." And on the ballot paper as given in the Schedule, is directions as to printing ballot paper and "form of directions for guidance of voters in voting" etc. These observations lead us to the conclusion that the enactment as to the rules in the first Schedule and the forms in the second are directory enactments as distinguished from the absolute enactments in the sections of the body of the Act. And in such cases, in order to determine the preliminary question, which is, whether there has been a material breach of the Act ' and which must be determined before determining what effect such breach has upon a vote or on the election – the general rule is that an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

In the Antigua Act – the Representation of the People Act 1975 – the rules are outside of the body of the Act. There is no provision as in s. 28 of the English Act which states that:

> "the Schedules to this Act, and the notes thereto and directions therein shall be construed and have effect as part of this Act."

In the *Islington Case,* the provision as to voting is contained in the body of the Act and by s.1 of the Elections (Hours of Poll) Act, 1885 it is stated that the poll 'shall commence at 8 o'clock in the forenoon and be kept open till 8 o'clock in the forenoon and be kept open till 8 o'clock in the afternoon of the same day and no longer'.

It is decided that voting after 8.p.m. was a breach of the law.

In Antigua by the Representation of the People Act 1975, Rule 1 states as follows:

> "The proceedings at the election shall be conducted in accordance with the following table... In the case of a general election between the hours of 6 a.m. and 6 p.m."

In New Zealand, the enactments as to the hours of polling are contained in the body of a statute per Williams, J (*Akaroa Case,* p. 166).

In *Re Mullings,* the provision as to voting is not clearly stated in the judgement. All that is stated is, "the election was to be held on December 2, with the polls opening at 11.00 a.m. and remaining open until 8.00 p.m." In my view, it is difficult to determine whether that provision is couched in mandatory or directory terms.

In *Latham* v *Glasgow Corporation* [1921] S.C. 692 the provision in relation to the hours of poll is in the following terms:

> "The poll shall be open from 8.00 a.m. to 8.00 p.m. of the same day."

The court interpreted that provision as mandatory. Lord Ashmore at page 705 said:

> "I am of the opinion that the hours stated in the regulation must be literally observed as regards the duration and the opening and closing of the polls."

In *Phillips* v *Goff [1886] 17 K.B. 805,* Lord Colridge said:

> "Where the object of a statute is clear and contains absolute and mandatory enactment, the terms of the enactment must be strictly followed. But in *Woodward* v *Sarsons,* the court held that a different principle applied to the schedules of the Ballot Act which contained rules and regulations for carrying out the object of the statute in the body of the Act."

The provision as to voting is in the first Schedule to the Antigua Act.

While I cannot agree with Mr Phillips' submission that *Walter* v *Humphreys* decided that the election rules have from time immemorial been held to be directory only, I accept that it was there decided that breaches by the Supervisor of Elections of the Registration Regulations did not affect the results of the election and that the Registration Regultons were directory.

The registration regulations are contained in the Schedule to the Act. It is therefore in keeping with the view expressed by Lord Colridge in *Phillips* v *Goff* that a different principle of interpretation applied to the schedules of the Act.

In *Dyck* v *Ell*, the provision as to the hours of voting was construed as directory. The provision is s. 54 of the Municipal District Act R.S.A. 1942 Ch. 151 which reads as follows:

> "When a poll is required, it shall be held upon the fourth Saturday following the day of nomination from nine o'clock a.m. to five o'clock p.m."

This provision seems to have been contained in the body of the Act, yet the Court construed it as directory only.

Having regard to the foregoing, I hold that the rules and regulations in the Representation of the People Act are directory only. Mr. Phillips submitted that if I accept that the rules as to the opening and closing of the polls and the provision of ballot papers are directory only, then it is not a breach of these provisions if there is substantial compliance with the law as to elections. I am in total agreement with the submission that the rule as to the opening and closing is directory and it is not a breach if there is substantial compliance with that rule.

The meaning of s. 12(3) in its positive form in my opinion is that an election would be avoided if there is a substantial breach of the election rule and the result is affected.

Section 12 (3) reads as follows:

> "(3) No election shall be declared invalid by reason of any act or omission by the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the Election Rules if it appears to the Election Court having cognizance of the question that the election was so conducted as to be substantially in accordance with the law as to elections, and that the act or omission did not affect the result."

Levers v *Morris* at page 1303 Waller, J said:

> ".....The general rule is, that an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

Was there substantial compliance with the rule as to the hours of voting or, to put it is another way, was the election conducted substantially in accordance with the law as to elections?

Dr. Ramsahoye submitted that the loss of 7 hours or more out of 12 hours and that the extension of voting from 6 p.m. to 9 p.m. are separately or cumulatively grave breaches of the law as to elections and therefore the election was void.

What is substantial in my view, must be a matter of degree. Even hours of non-voting plus three hours of voting outside of the statutory hours must be considered, in my view, as substantial. In my judgement, therefore, there was substantial non-compliance with the rule as to the hours of voting.

I now consider the order made by the trial judge granting the extension of time from 6.00 p.m. to 9.00 p.m.

Dr. Ramsahoye submitted that the order is unprecedented; that there was no cause of action between parties. An *ex parte* application was made without any action in being and therefore the order could not bind anyone (See *Re Wycham Terrace* 1974 3 WLR 649 at 653–4 & 657–9). There was no adversarial proceedings under the Representation of the People Act 1975 which would give the High Court jurisdiction. The order was of no effect. I agree with this submission. It is therefore my view that the order for extension of time was of no effect.

In determining whether the result was affected it is necessary to analyse the votes cast between 6.p.m. and 9 p.m.

Mr. McKay said in his submission:

> "I agree with him (Dr. Ramsahoye) the pivotal issue in this case is that area between 6.p.m. and 9.p.m."

Before determining that issue, there are two issues I wish to dispose of:

1. whether there was acquiescence by the Petitioner in the Supervisor of Elections extending the time of voting; and

2. whether the Petitioner can rely on paragraph 3(f) of the Petition or whether he can rely on breaches which were discovered during the hearing of the Petition, that is, breaches which he did not allege in his petition.

I accept the evidence of the Supervisor of Elections that the Petitioner had requested an extension of time for voting because at the time he did so two and one half hours were lost. That is from 6.00 a.m. to 8.30 a.m. I also accept the evidence of Barrymore Stevens to the effect that there

was a heated discussion between him and the Petitioner that, he, the Petitioner, was trying to convince him that the Supervisor of Elections had the power to extend the time for voting.

The important question however, is does this amount to acquiescence? The fact that the Petitioner was agreeing with or suggesting to the Supervisor of Elections that he should extend the time for voting.

Mr. McKay submitted that that amounts to an acquiescence by the Petitioner. He refers to a number of authorities in support of his submission. Among the authorities are: *Radix* v *Gairy [1978] 25 WLR 553 at 556, Eastern Division of the Country of Clare 19 OM & H* at p 156 and *Dyck* v *ELL 9 WWR* at page 161.

In *Dyck* v *ELL*, the election court upheld the election to be valid notwithstanding that there was a breach in regard to the hours of opening of the polls.

At page 167 the Learned Judge said:

> "He was not wilfully and purposely avoiding the provisions of the Act as in the *Oakland Case.* He was acting consciously and in what he considered were the interest of the elections and the candidates. The candidate who complains acquiesced in wht the D.R.O. did."

It is seen from the reports that what the candidate acquiesced in was in the late opening of the polls because of a blizzard on election day. The D. R. O. and his clerk made the suggestion that they should go a distance of about 12 miles to telephone the Municipal Office for instructions. The candidate thought it was a good idea. This resulted in the further delay in the opening of the polls.

This situation, to my mind, is different from the instant case. It is important, in my view, to analyse the judge's reasoning in that case. Immediately after saying that the candidate acquiesced, he went on to say:

> "I do not think that, under the circumstances, I should adjudge the election to be invalid if I can properly adjudge it to be valid."

In my view it is quite obvious that the judge was calling in aid his discretionary power.

As I said above, the Canada cases must be looked at against the background that the statute gives the judge a discretionary power to declare an election valid or invalid whereas under the Antigua Law there is no such power.

In the *Radix* v *Gairy* case the list of voters was published. The Petitioner did not challenge the accuracy of the list. An election was held and he lost. He then challenged the validity of the list.

Morris, C J said at page 556:

> ".... I cannot accept that the legal position is the candidate who went as a contestant on an existing list of electors, may be allowed to accept the list as valid if he wins but would be allowed to argue that the list is invalid if he loses."

In the *County of Clare Case,* the returning officer made a mistake in appointing the polling day less than two clear days after nomination day. The Petitioner noticed the error but made no complaint.

Mr. Justice O'Brien at page 165 said:

> "It is clear that the notice was not the proper one on account of it having been overlooked that Sunday was excluded from the computation of time under the Act.... the petitioner said on the day of nomination that the notice was insufficient..... and stated that he would make no objection to it, as it was in his interest to have it as it was. The petitioner now insists upon a defect which he not only acquiesced in but directly conveyed a suggestion that for his own advantage it should be left as it was... I do not at all admit as certain the doctrine that the law of estoppel does not apply to such a case, mainly on the ground that the matter is one in which the public are concerned or because it may happen that a person who is not affected as for instance one of the public at large."

It is quite clear that the extension of voting hours was obtained after the Supervisor of Elections took legal advice. It is my view that acquiescence is not applicable.

I now turn to consider paragraph 3(f) of the Petition. During the course of the hearing of the Petition, certain matters surfaced which the Petitioner argued that he should be able to rely on as evidence of irregularity. It was discovered that the Presiding Officer voted for persons whom he said were nervous.

Dr. Ramsahoye submitted that nervousness not being a form of physical incapacity within the meaning of the Election Rules and therefore the Presiding Officer could not properly vote for such persons, the secrecy of the ballot was therefore violated. That alone should be enough to avoid the election.

Mr Phillips submitted that if the Petitioner is allowed to rely on evidence given at the trial under his sub-paragraph 3(f), the Court in effect will be allowing the Petitioner to rely on new facts as if he had been allowed an amendment; that the Court was not allowed to grant an amendment

after 21 days. Learned Counsel referred to a number of authorities including *Norwich Case – Borebecks* v *Boland (1886)* 2 Times Law Reports.

Paragraph 3(f) of the Petition contains no particulars. I agree entirely with Mr. Phillips' submission. The Petitioner therefore cannot rely on new matters which arose during the course of the hearing.

I now consider whether the result was affected by the breach of the law. As I have said above, it is a reasonable assumption that 1,000 ballots were cast between 8.30 a.m. and 1.00 p.m. But unfortunately it cannot be determined which of the candidates received what votes up to 1.00 p.m. It is a reasonable assumption that 561 votes were cast between 5.30 p.m. when voting resumed and 9.00 p.m. when the polls were closed because the total number of votes cast in the St. John's City West constituency was 1561.

Bearing in mind that the Petitioner got 611 votes, the Respondent got 874, the other candidate, Alister Thomas, received 67 votes. It is impossible to say what proportion of the votes went to each candidate by 1.00 p.m. Neither can it be ascertained when the 9 rejected ballots were cast.

Having decided that voting from 6.00 p.m. to 9.00 p.m. was irregular voting, in breach of Rule 1, on the principle of the cases, *Morgan* v *Simpson* and *Islington Case* is it possible to calculate how many votes were cast between 6.00 p.m. and 9.00 p.m.? Because if it is, and if that number of votes does not exceed the margin by which the Respondent won, then clearly the result would not have been affected.

Mr McKay submitted that theCourt can ascertain on a reaonable probability, on the evidence, the number of votes which were case before 6.00 p.m. He submitted as follows:

> " The evidence of Mary Clare Hurst was that there were about 45 people in each of the three lines and those votes were cast before 6.00 p.m. That is at Villa..... 135 cast before 6.00 p.m. So we deduct those from 561 leaving 426. I must remind the Court at this stage also that that is the barest minimum on the evidence because the evidence of the Gene Gould was to the effect that about 60 in one line had gone through..... Gene Gould had said that he could not see all three lines. He could only see one.
>
> Then there is the evidence of Hendy Simon in respect of Pilgrim. I think he said about 45 or 50 had voted before 6.
>
> So whatever, taking the barest minimum of either of these witnesses so 90 from 426 would leave 336. I bear in mind that the majority is 263, notwithstanding that the remaining number of votes which were cast after 6.00 p.m. were in

> excess. This Court can still hold that if there was a breach it did not affect the result."

In fact Gene Gould said from about 5.15 to 6.00 p.m. about 60 persons had voted in his section. He could not see the other sections from where he was.

These figures are only estimates, but even accepting Mr. McKay's calculation, about 225 persons would have voted before 6.00 p.m. This would mean that 336 persons would have voted after 6.00 p.m. On the principle of the authority referred to above, if the 336 votes are given to the Petitioner, the result would have been affected. But Mr. McKay relies on the case of *James* v *Davis 76 L. G. R. 184.*

I now analyse in detail this case.

On 5th May, 1977 an election was held for two candidates for electoral division of G. County Council. Four candidates stood for the election. Notices were displayed, one to the effect that if the voters voted for more than one candidate his vote would be void. The other to the effect that the voters may vote for not more than two candidates. The total number of ballot papers counted was 3,366, which could have contained a total of 6,732 votes. The total number of votes case was 6,367 thus 3,365 votes were unused. Peter Davis received 1,675 votes; Noel Francis Trigg 1,666; Kenneth Samuel James received 1,585; Michael John Lewis received 1,441 votes. Peter Davis and Noel Francis Trigg were declared to be duly elected. The number of votes separating Peter Davis and Michael John Lewis was 234 votes. The number of votes separating Noel Francis Trigg and Michael John Lewis was 225 votes.

The number of votes separating Noel Francis Trigg and Kenneth Samuel was 81. It is clear that if the 365 votes were given to Samuel or Lewis the result would have been different. But the Court decided that Peter Davis and Noel Francis Trigg were duly elected because the election was so conducted as to be substantially in accordance with the law and that on the evidence it was impossible to find that there was any real likelihood of the result being affected by the discrepancy in the notice.

At page 193 Nield, J. said:

> "The court takes the view that the real issue here, and the more difficult one, is the second, namely whether the act or omission which is admitted did or did not affect the result of the election. We have looked at the cases including *Morgan* v *Simpson* and in particular to the observations of Lord Denning M.r.....??? It is plain that we cannot be certain as to answer to this but must look wholly at the evidence and say whether being fair to everyone, there is a real likelihood that the result of the election was affected as to require the court to declare this election invalid."

The Court then analysed the evidence and accepted among other things that about 90 per cent of the voters going to vote did not read the notices. The court also considered the election addresses by the candidates who urged the voters to vote for two candidates.

The Court had no difficulty in coming to the conclusion that it would be really impossible to find that ..... there was a real likelihood of the result of the election being affected by the admitted discrepancy."

This case is different in my view from the instant case because on the basis of the calculations, if I am correct that there was substantial non-compliance with the voting hours and that in particular the voting from 6.00 – 9.00 p.m., I find it impossible to say definitely that the result was affected, or would not have been affected by the irregularity.

I have analysed all the authorities carefully, thereby sacrificing brevity (I apologise) with the hope that in the end I would have been able to save this election. I realise the seriousness of declaring an election invalid. I realise that a lot of tax-payers' money would have been spent on the election. I realise that a lot of valuable time and effort would have been spent.

Finally, I realise it is not the Court's function to say who should win or lose. The Court's function is to declare on the basis of the evidence and the law whether the result was affected or might have been affected by the irregularity.

Having regard to the foregoing, I hereby declare the election of St. John's City West constituency held on the 9th March, 1989 to be invalid.

Costs fit for counsel and two juniors to be taxed if not agreed.

.....
Albert J. Redhead
Puisne Judge