25.6.96 C/5

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C 689/96

In the matter of The Elections Law (1995 Revision), as amended

And in the matter of the Election for the Electoral District of George Town held on the 20th day of November, 1996

BETWEEN:	BERNA LAVONNE THOMPSON-MURPHY	FIRST PETITIONER
AND:	ALFRED LAWRENCE THOMPSON	SECOND PETITIONER
AND:	LINFORD A. PIERSON	RESPONDENT

For the Petitioners - Mr. Pierre Lamontagne, Q.C.
Mr. Orren Merren

For the Respondent - Mr. Richard Mafood, Q.C.
Mr. Alden McLaughlin

RULING

S 29 of the Evidence Law reads as follows -

"The parties in civil proceedings in or before any court and their spouses are both competent and compellable to give evidence on behalf of either or any of the parties thereto unless specifically

excepted by this or any other law."

That is the statutory basis on which the subpoena directed to Mr. Pierson has been issued. If Mr. Pierson was not a compellable witness the arguments which I have heard would not have been presented.

So it is wrong in my view to say that I would be rewriting the law if I set aside the subpoena. The argument is not that it was unlawfully issued but that it is unreasonable, oppressive and an abuse of the process of the Court.

It is not in itself oppressive or an abuse of process for a party to issue and serve a subpoena on his opponent.

He may testify in cases where criminal prosecution might be brought, but he may refuse to answer questions on the ground that they may tend to incriminate him.

If the respondent gives evidence at trial there will be an opportunity at that time to elicit all related evidence both in evidence in chief and in

cross-examination. To request at this stage of the case that the respondent should be required by subpoena to give evidence for the petitioner in the face of what may be his own wish to give evidence on his own behalf in accordance with normal process would be oppressive and overreaching. Most importantly, it will cause procedural confusion and will be unnecessary if the respondent intends to give evidence on his own behalf. If that should change, what I shall in a moment say will address that situation.

The issue in relation to the document required to be produced has, I am told, been resolved. The Court must always be concerned to see that the parties do not abuse the power of summoning witnesses.

Any order setting aside a subpoena is without prejudice to the power of the judge at the trial to order a witness to attend if he thinks his presence is necessary.

This trial has already begun. I do think that the presence of Mr. Pierson is necessary throughout the trial. I would be surprised if he or his

advisers differ from that view. However, I now order that he should be present and on that basis set aside the subpoena.

This reflects my view that the procedural aspects of this very unusual case should be in the hands of the court. If Mr. Pierson is in Court any application which may be appropriate as to the time and manner in which he gives his evidence can be made in the light of the stage which the proceedings have reached.

26th February 1997

G.E. Harre

Chief Justice

GRAND COURT CAYMAN ISLANDS