

Laws are to be interpreted judicially. Where a long line of English authorities places a meaning on a phrase used in the English Representation of the Peoples Acts I prefer to place the same meaning on the same phrase when used in the Cayman Islands Elections Law.

In my opinion the statement alleged is one of opinion relating to the political views or conduct of the petitioner. It is in no sense derogatory of his personal conduct or character.

Paragraph 5 of the petition is to the effect that the second respondent, the returning officer, wrongly treated as spoiled or rejected ballot papers votes properly cast for the petitioner.

Rattray submitted that an election petition is the creature of Statute. A petition can only be founded on grounds permitted by the Statute -- that is, the Elections Law of these Islands.

Edwards replied that an election petition is in order if it merely complains of an undue election or return or questions an election. The law in the Cayman Islands differs from the law in England. In England the form of an election petition is prescribed by law. The Cayman Legislators decided that there shall be no prescribed form for a petition to take. They left it to the discretion of the judge, subject to the Judicature Law (Cap.74), to say what form it should take. He can order particulars to be given if the respondents do not know from reading the petition what irregularities are complained of.

Paragraph 6 of the petition relates to the Count. The law on how the Count is to be taken is contained in section 44 of the Elections Law.

Subsection (5) reads "The returning officer shall keep a record, on the special form printed in the poll book, of every objection made by any candidate or his Counting agent or any voter present, to any ballot paper found in a ballot box, and shall decide every question arising out of the objection. The decision of the returning officer shall be final, subject to reversal on petition under section 50 questioning the election or return; and every such objection shall be numbered and a corresponding number placed on the back of the ballot paper and initialled by the returning officer."

In my opinion subsection (5) means that when a count is taking place a candidate and the persons mentioned has the right to object. When objection is made the returning officer notes the objection and makes a decision to accept or reject the ballot paper. That decision is final subject to challenge on a petition.

Rattray quoted a passage from Rogers on Elections Vol.2 p116 "As a general rule it may be said that to whatever extent the provisions of an Act of Parliament are violated, even wilfully, which does not enact that the consequences of those acts avoid the election, the election shall not be invalidated."

The Grand Court is not a full Court of pleadings but it does require a statement of claim so as to inform the Court and defendant what the plaintiff is claiming. A petition is a pleading similar to a statement of claim. Every pleading must disclose a cause of action.

I quote from Rogers at page 167 from the judgment of Kennedy and Darling J.J. in Islington Election Petition 1901 "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 election,

where the court is satisfied that the election was, notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that 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."

I find that paragraph 6 of the petition fails to disclose a cause of action because

- (1) although it contains an allegation that the returning officer made a wrong decision relating to ballot papers it contains no allegation that the decision was objected to so as to form a basis on which an election petition can stand under section 44(5) of the Law and
- (2) there is no allegation that by reason of any decision of the returning officer the petitioner was deprived of votes that would have given him a majority.

My determination is that Benson C. Ebanks was duly returned and elected as a member of the Legislative Assembly for the First Electoral District of West Bay at the general election held on 22 November 1972.

Connolly and Maddington ask for costs to be taxed or agreed.
Costs agreed at \$50.00 to each respondent.

(Sgd) G.J. Horsfall

Judge.

17/1/73

Certified true copy to H.E. the Governor under section 54(2) of the Elections Law (Cap. 45).

G.J. Horsfall
Judge.

17/1/73