

ROYAL COURT

24th February, 1992 24A.

Before: The Bailiff and Jurats Vint, Bonn,
Orchard, Hamon, Gruchy, Herbert and Rumfitt

In the matter of the representation of Peter John Pearce
relating to the election for Centenier of St. Helier held
on the 17th July, 1991.

Mr. P. Pearce on his own behalf
The Solicitor General amicus curiae

JUDGMENT

BAILIFF: This matter has come before the Full Court and arises from a public election for the office of Centenier in the Parish of St. Helier which was held on the 17th July, 1991. On that day 419 votes were cast in favour of a Mr. Burrow and 393 votes were cast in favour of Mr. Pearce, who makes this representation.

The report of the Returning Officer, Jurat Mrs. Le Ruez, was presented to the Court on the 19th July, 1991, whereupon Mr. Pearce presented a representation to the Court praying that the Court should annul the election for the reasons set out in that representation. On that day also, Mr. Pearce declared on oath

that his representation contained no allegation on which, to his knowledge, was false. Accordingly, the Inferior Number deferred the swearing-in of Mr. Burrow until another day and ordered that the representation be referred to the Attorney General for investigation, and that the date of the hearing of the representation be fixed after the investigation had been completed.

Part of the allegations, in fact the main allegation, in the first representation - because there was a second representation, an amended one, which was produced in January 1992 - was that a number of people, who were eligible to vote, had presented themselves at the polling station but had been turned away. Accordingly, the Attorney General inserted a notice in the Jersey Gazette on the 22nd, 23rd, 24th and 25th July, 1991 asking any elector who had presented himself or herself at the polling station on the 17th July but was declared ineligible to vote, and therefore didn't vote, to notify the Attorney General in writing as soon as possible, but not later than Thursday, 25th July, 1991. On the 22nd July the "Jersey Evening Post" carried an article which reinforced the Attorney General's official notice.

On the 22nd July, the Acting Attorney General wrote to each of the "adjoints" asking them for their comments and he also wrote to the Returning Officer. On the 30th July, 1991, the "Jersey Evening Post" published a letter from Mr. Pearce expressing the hope that electors who had come to vote, but had been turned away, would write to the Attorney General and inviting any who were doubtful about doing so to contact him. As a result of the Attorney General's investigation, two people were found, a Mr. L'Ecrivain and a Mrs. Morel, who had been wrongly refused the right to vote.

The representation and the Acting Attorney General's report came before the Court again on the 10th January this year. At

that sitting Mr. Pearce had presented an amended, or an additional, representation which he wished to enter, and the Court agreed that the amended representation could be used to supplement his original representation.

In the second representation, which substantially repeated the first representation, Mr. Pearce made a further allegation. He said that on or about the 18th June, 1991, there had been sent out from the Town Hall an invitation to which was subscribed the type-written names of Deputy Mrs. Bailhache and Mr. William Mahoney to electors to attend a deputation which would wait upon Mr. Burrow. That letter was sent from the Town Hall with two official letters, one to members of the municipality to attend the branchage and the other in more general form inviting people to attend the St. Helier Pilgrimage. We were told, and the Court sees no reason to doubt it, that that insertion in the official envelope with the two official letters with official letter heads was an error, and was due to the wish of a young member of the staff to save postage. We were told that approximately under a hundred such invitations were sent out. That letter became public knowledge on the 25th June, 1991, when, according to an article in the "Jersey Evening Post", it was severely criticised and the Constable is reported as saying that all the three letters were put in the same envelope to save money and had he known that the deputation letter was included, he might have thought twice. A similar reservation was made in the same article by the St. Helier Greffier, Mr. Patrick Freeley.

The election, as I have said, was held on the 17th July, 1991, and Mr. Pearce wrote a letter, again, as I have said, to the "Jersey Evening Post" on the 30th July; nowhere in that letter is there any reference to the deputation letter. That was added, as I have said, to the representation in January of this year and we allowed Mr. Pearce to join it to his original one.

What Mr. Pearce is saying is that there were a number of irregularities at the poll. Although they cannot be substantiated by direct evidence, he invites us to find that the failure to register sixteen people who were thus omitted from the electoral roll, and therefore from the list of those entitled to vote, as well as the turning away quite wrongly of two people who were on the roll means that the Court cannot place any reliance either on the electoral roll itself or on the conduct, in general terms, of the poll on the 17th July.

As has been said in the case of the Attorney General -v- Foster (20th January, 1992) Jersey Unreported, which is a Court of Appeal case, where in general terms our law is similar to the English law, it is proper (and I am paraphrasing what was said from the two cases cited in that judgment: La Cloche -v- La Cloche (1870) 16 Eng. Rep 770 & (1872) 17 Eng Rep. 446 and Vaudin -v- Hamon, (1974) A.C. 569), to look at the English law. You must first of all, of course, look at the Jersey law. After looking at the Jersey law, the Solicitor General has drawn our attention to the fact that Article 28 of the "Loi (1897) sur les élections publiques" has a proviso which deals with null and void elections and the proviso, although it is in French, is almost a word for word translation of the English Ballot Act of 1872. Therefore the Solicitor General says, and we accept his argument, it is proper for us to take into account what the English law is on the subject of null elections. The proviso is at s.13 of the English Act and is in the following words:

"No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal.." (it is the same word that we have got in our law "tribunal") "...having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election".

Our 1897 law is slightly different but very nearly the same. It is in French and I cite it in French at Article 28:

"Si, cependant, le Tribunal qui est saisi de la question est d'opinion que l'élection a été conduite conformément à l'esprit et à l'intention de cette Loi, et que l'omission fortuite de certaines des formalités prescrites par la présente Loi n'a pu en modifier le résultat, l'élection sera confirmée".

Mr. Pearce says that the formalities required by the present law were not complied with.

The English law on the subject - how the English Courts look at the question of irregularity in elections, and after all the democratic process is common to both England and ourselves - is set out in a number of cases but encapsulated more particularly in the case of Morgan & ors. -v- Simpson & anor. (1974) 3 All E.R.; at page 728, Lord Denning, says this (he has examined previously the earlier cases):

"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 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. That 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. That is shown by the Islington case where 14 ballot papers were issued after 8 p.m. (3) But, even though the election was conducted substantially 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 where the mistake in not stamping 102 ballot papers did affect the result".

Therefore the Court, when it retired, looked at that passage and examined each of those propositions carefully. So far as the conduct of the election is concerned the Court is satisfied that the Autorisé conducted it in a proper manner.

Some criticism was levelled at her by Mr. Pearce because she invited a number of persons from the country parishes to assist her as adjoints. Her reason for doing so is quite clear; it is because of the suggestion, in a leading article in the "Jersey Evening Post" of the 26th June, 1991. In order to be quite sure that there would be no criticism or possibility of partisanship the Returning Officer, Jurat Mrs. Le Ruez, invited, and in our opinion quite properly, and fully within the spirit and indeed within the letter of the law, a number of persons to assist her. It is said by Mr. Pearce that the omission of sixteen persons from the electoral roll might place doubts in the mind of this Court whether that roll could be relied upon but he does not go so far as to say that that omission invalidates the electoral roll *per se*. We don't have to rule on that, it is not a matter we are asked to make decision about but if we had been we would have found that it did not invalidate the electoral roll. The electoral roll is compiled by the Constable and Mr. Pearce suggests that because part of the roll was drawn up by district where the law requires each roll to be drawn up by Vingtaine, that invalidated it. We cannot accept that argument. It might make it a little more difficult for the elector's name to be found but his name was there substantially as the law required. Furthermore we should say this, that although it is the Constable's duty by law to prepare the electoral roll, it is equally the citizen's duty to ensure that his or her name is on it. So far as the sixteen who were omitted from the list is concerned, we have no indication that they are blaming the Constable or the parochial authorities for their failure to be on it.

Mr. Pearce suggests that because two people were wrongly, and it is admitted, wrongly excluded from voting, that must cast doubt on the whole of the proceedings. We disagree. It was unfortunate that these two people were omitted but looking at the case I have just cited of *Morgan & Ors -v- Simpson & Anor.* can it be said that their omission, - even if we added in the

er sixteen, and it is by no means certain, even if they were on the list they would have voted for Mr. Pearce - that that would have made any difference to the result.

Therefore so far as the first part of the representation is concerned, we are not satisfied that there were the kind of irregularities which Lord Denning had in mind which would have substantially vitiated the election. We are satisfied that the election was conducted substantially in accordance with the law as to elections and that what happened by the exclusion of two persons did not affect the result of the election, we would go so far as to say even with the addition of the further sixteen, although that is an inference which we draw but don't put too strong a point on it. But even if you did take the most favourable view of the representation, again Mr. Burrow would still have had a majority.

We come to the second point of Mr. Pearce's complaint, the letter. In 1817, on the 26th April, there was an Order in Council which declared a judgment of the Royal Court of the 23rd September, 1814, null and void. That Order in Council ordered that a clause in the Charter of King Henry VII dated the 7th June, 1495, be held and construed to be applicable to the election of Centeniers in the same manner as if the word "Centeniers" had been originally inserted therein. And the original clause set out in the Order in Council is as follows

"Item que les Connetables de chacune Paroisse de la dite Isle soient franchement esleus et choisis par la plus ancienne partie des Gens de la dite Paroisse sans aucune recommandation du Capitaine ou desdits Jurés en cette Isle."

There is nothing in that Order in Council to prevent the Constable taking part in the electoral process, but that is not entirely the end of it. If he does take part, then, it might be argued, as Mr. Pearce argued, that Mr. Clarke, so to speak, gave his *aegis* to the deputation letter. The evidence we heard

suggests - if we accept the evidence of Mrs. Bailhache - that she was telephoned by Mr. Clarke who read the wording of the deputation letter to her. He doesn't recall doing that, and he did agree that it would not be normal for such a letter to be sent out in an official envelope from the Parish. Be that as it may, the important point about that letter in law is whether it could be said to have had an undue influence on those to whom it was sent. Mr. Pearce suggests that the eighty or so, or perhaps a few more, persons to whom it was addressed would be influenced by it as well as their immediate relations, and taking into account the small poll of under nine hundred that would have been a considerable influence. On the other hand, as the Solicitor General has pointed out, Deputy Syvret who took great exception to receiving that letter, would certainly vote the other way as a matter of principle having received it, so it is a two edged weapon.

On the question of undue influence there is, as it happens, a Privy Council case, which is indeed commonly called the Westaway case although it is called Baudains -v- Richardson, (1906) A.C. at page 184; at the bottom of that page there is a reference to an English case and the judgment goes on: "**to be undue influence in the eye of the law..**" says the learned President "**.. there must be, to sum it up in a word, coercion**". And, further down: "**..it is only when the will of the person who becomes a testator is coerced into doing that which he or she does not desire to do that it is undue influence**". Of course that case concerns a testator and a very common kind of case where a person leaves his property to somebody other than a relative or his family and the family can contest it and allege that the testator was under the undue influence of the person to whom he had left his property. We think the same principle can apply here and we do not think undue influence was in fact exercised in the manner suggested by Mr. Pearce. The letter was not signed by the Deputy or by Mr. Mahoney, nor was it signed by the Constable, nor was it sent out

an official letter head. Had it been signed by the Constable, had it gone on the official letter head, Mr. Pearce's argument might have been that much stronger.

Therefore we have come to the conclusion that the whole of the election conformed to the spirit and intention of the law and accordingly we reject, as we are bound to do having reached that conclusion, the request of Mr. Pearce that we declare the election a nullity. Having said that, the Court desires me to say that the Constable is in a special position and although the Solicitor General is quite right as to the law in this matter, and although it is common practice for the Constables to be called in as the senior adjoint of a Jurat in a contested election, and indeed sometimes to be the Autorisé himself if there are insufficient Jurats or other officials to go round, we think it undesirable that the Constable should in any way concern himself with political matters, even to the extent of allowing a letter of this sort to go out. We do not express any view as to whether the Constable can be said to have allowed the letter to go out, if we accept his evidence that he was not aware that it was going out at the time and we see no reason to doubt his explanation to the paper given very shortly after the event itself. But, we say that such a practice (and we don't find the Constable was party to it,) but such a practice by any Constable would in our view be highly undesirable.

Therefore, Mr. Solicitor, Mr. Pearce, we confirm the election and we ask Mr. Burrow to present himself here on Friday at 10 o'clock to be sworn in.

Authorities

Ballot Act 1872: s.13

Loi (1897) sur les Elections Publiques: Article 28.

The Franchise (Jersey) Law, 1968: Article 5 (5).

Foster -v- The Attorney General (20th January, 1992) Jersey Unreported. (C. of. A.)

La Cloche -v- La Cloche (1870) 16 Eng. Rep. 770; (1872) 17 Eng. Rep.446.

Vaudin -v- Hamon (1974) A.C. 569.

Morgan & Ors -v- Simpson & Anor (1974) 3 All ER at p. 728.

Order in Council of 26th April, 1817 (1817) Ordres du Conseil Vol.5.

Baudains -v- Richardson (1906) A.C. at p. 184.