Neutral Citation Number: [2020] EWHC 676 (QB)

Petition No P366/19

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT
and
THE ELECTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/03/2020

Before:

MR JUSTICE ROBIN KNOWLES CBE
MR JUSTICE HOLGATE

Sitting as a Divisional Court and as the Election Court

- -

In the Matter of the Representation of the People Act 1983

And in the matter of a Parliamentary By-Election for the Peterborough Parliamentary Constituency held on 6 June 2019

Between :

MICHAEL GREENE	**Petitioner**
- and –	
LISA FORBES	**Respondent**

- -
- -

Francis Hoar (instructed by **Wedlake Bell LLP**) for the **Petitioner**
Gavin Millar QC and Sarah Sackman (instructed by **Edwards Duthie Shamash**) for the **Respondent**

Hearing date: 3 December 2019

Approved Judgment

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. On 6 June 2019 Ms Lisa Forbes, the Respondent, was declared elected to Parliament in the by-election for the Peterborough constituency. The Acting Returning Officer declared that she had received 10,484 votes.

2. Mr Michael Greene was a candidate in the by-election. The Acting Returning Officer declared that he had received 9,801 votes. On 26 June 2019 Mr Greene issued a parliamentary election petition ("the Petition") seeking, among other things, that it may be determined that Ms Forbes was not duly elected, and that the by-election be declared invalid.

3. Various procedural stages followed. Ultimately, on 17 October 2019 Mr Greene applied to withdraw the Petition. His application accepted that he would pay the costs of the Petition.

4. Election petitions being a matter of public interest, withdrawal of a petition requires the permission of the Court (see section 147 of the Representation of the People Act 1983: "the 1983 Act"). Directions were given by the Court on 25 October 2019 for a substantive hearing of the application to withdraw to take place on 3 December 2019 before a Divisional Court of the High Court, and to ensure notice and advertisement of the application in accordance with the Election Rules in the meantime. In this connection, the application notice was amended on 18 November 2019.

5. On 5 November 2019 Her Majesty the Queen dissolved Parliament ahead of the General Election held on 12 December 2019.

6. On 6 November 2019 Mr Greene issued an application for a declaration that on the dissolution of Parliament the Petition and his application to withdraw "stood abated". As a result, in contrast to his position on the application to withdraw (where he accepted that he would pay the costs of the Petition), he contends the court has no jurisdiction over the costs of the Petition and that security for those costs should be returned to him. He maintains the application to withdraw in the alternative.

7. On 3 December 2019 the Court heard argument on all matters. Given the compass of the applications the Court sat as an Election Court (see section 123 of the 1983 Act) and as a Divisional Court. Judgment was reserved.

The Petition

8. The Petition alleged, by paragraphs 5 and 6, as follows:

> " 5 That at the election the Respondent and/or her agents were guilty of:

(1) Electoral fraud in a variety of forms amounting to corrupt and/or illegal practices. These included, in particular:

(a) Personation contrary to ss 60-62 of the Representation of the People Act 1983 ("the 1983 Act");
(b) Applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person) contrary to s 62A(a) of the 1983 Act;
(c) Otherwise making a false statement in, or in connection with, an application for a postal or proxy vote, contrary to s 62A(b) of the 1983 Act;
(d) Inducing the registration officer or returning officer to send a postal ballot paper or any communication relation to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote, contrary to s 62A(c) of the 1983 Act;
(e) Causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient, contrary to s 62(d) of the 1983 Act;
(f) Casting votes, including postal votes, in the names of people not entitled to be on the electoral register, contrary to s 62A of the Representation of the People Act 1983;
(g) Making false statements in declarations or forms used for any of the purposes of Schedule 4 to the Representation of the People Act 2000 ("the 2000 Act") for the purpose of obtaining postal or proxy votes, contrary to paragraph 8 of Schedule 4 to the 2000 Act;
(h) Attesting to applications under paragraph 3 or 4 to Schedule 4 to the 2000 Act when not authorised to do so or knowing that such application/s contain/s a statement which is false, contrary to paragraph 8 of Schedule 4 to the 2000 Act;
(i) Acquiring the voting papers of electors, including those issued to postal voters, marking votes for the Respondent on those papers and then casting the resulting fraudulent votes; and
(j) Tampering with ballot papers, contrary to s 65 of the 1983 Act;

(2) The corrupt practice of bribery, contrary to s 113 of the 1983 Act; and

(3) The corrupt practice of undue influence, contrary to s 115 of the 1983 Act.

6 Further or in the alternative, that there were corrupt and/or illegal practices for the purpose of promoting or procuring the election of the Respondent at the election and the said corrupt and/or illegal practices so extensively prevailed that they may reasonably be supposed to have affected the result of the election."

9. These are wide-ranging allegations, levelled against Ms Forbes and her agents. What was the evidence on which they were based?

10. Mr Greene's evidence was that:

(a) A person who had been convicted and imprisoned for electoral fraud in 2008 had attended a secure area of the count at the by-election "reserved for candidates, their 'official' election agent, their guests and their official observers".

(b) Around 400 votes were rejected at the by-election (later clarified by Mr Greene - Ms Forbes disagrees - to be 372 postal votes disallowed on the basis of statements accompanying them containing an incorrect date of birth, an incorrect signature or no signature).

(c) Allegations had been made (but which Mr Greene did not attribute or particularise) that a large number of postal votes were delivered together, that some votes were photographed and that gifts or transport had been offered if individuals agreed to vote for a particular candidate.

11. Mr Greene has also served evidence to say he had never alleged that Ms Forbes was personally guilty of corrupt or illegal practices.

12. This evidence does not support the allegations made in the Petition against Ms Forbes personally. It does not support allegations made in the Petition against her agents, for example of tampering with ballot papers.

13. Mr Francis Hoar, for Mr Greene, explained that the reason why the Petition had been drafted with such wide-ranging allegations was because the statutory time limits (under sections 121 and 122 of the 1983 Act) were so short and that it was not realistic to expect that a petitioner would always be in a position to set out particulars in time.

14. The course taken was, with respect, not a satisfactory or permissible course. Allegations may only be made in an election petition where there is evidence to support them. This is not a question of degree of specificity or particularity, which was the subject of discussion by the Court in Erlam and Others v Rahman and Others [2015] 1 WLR 231 at [20] – [40]. It is a question of the entitlement to make the allegation at all. This is all the more important where the allegations are of misconduct or impropriety.

15. Even as regards particularity, rule 4(1)(d) of the Election Rules 1960 requires the petition to "set[] out with sufficient particularity the facts relied on but not the evidence by which they are to be proved". In the present case the Petition did not do that. It is another unsatisfactory feature that no response was given on behalf of Mr Greene to a request for particulars made on behalf of Ms Forbes on 25 July 2019.

16. In support of his application for permission to withdraw the petition Mr Greene explained that for two reasons it "would not be proportionate for him to expend the very substantial sums it would be necessary to incur in prosecuting the Petition to its conclusion and to risk being ordered to pay in the event the Petition was unsuccessful." One reason was the (then-anticipated, but now realised) general election. The other reason was "it has not been possible to establish to the high standard of proof required for an election petition to succeed, that corrupt and illegal practices were committed specifically by agents of [Ms Forbes] or that they so extensively prevailed as to affect the result of the Election". For her part Ms

Forbes has filed evidence that the person who had been convicted for electoral fraud was not involved in her campaign, and was not on the list of people that her campaign team provided to Peterborough City Council to be permitted to be given access to the count.

The dissolution of Parliament

17. In R (on the application of Miller) v The Prime Minister and Others [2019] UKSC 41; [2019] 3 WLR 589 at [4] the Supreme Court described the dissolution of Parliament as follows:

> "The dissolution of Parliament brings the current Parliament to an end. Members of the House of Commons cease to be Members of Parliament. A general election is then held to elect a new House of Commons. The Government remains in office but there are conventional constraints on what it can do during that period. These days, dissolution is usually preceded by a short period of prorogation."

As the Supreme Court made clear, dissolution is to be distinguished from the prorogation of Parliament, which brings to an end one of the sessions into which a Parliament is divided, and from a recess or adjournment.

18. Mr Hoar argues that authority for the proposition that election petitions "abate" or "drop" on the dissolution of Parliament is to be found in two decisions. These are nineteenth century decisions of the Court of Common Pleas, both of 1874 and reported in the same volume of the Law Reports. In both cases the constitution of the Court was led by the Chief Justice, Lord Coleridge.

19. The decisions are Re Exeter Election Petition; Carter v Mills (1874) L.R. 9 C.P. 117 and Re Taunton Election Petition; Marshall and Another v Sir Henry James (1874) L.R. 9 C.P. 702. It is necessary to examine them closely.

The 1868 Act

20. At the time, the applicable legislation was the Parliamentary Elections Act 1868 ("the 1868 Act"). This had made, from the next dissolution of Parliament, parliamentary election petitions the business of the Court of Common Pleas in England and in Ireland, and of either Division of the Inner House of the Court of Session in Scotland. Previously they had been the business of election committees of Parliament.

21. The 1868 Act provided expressly that the trial of an election petition would proceed notwithstanding the prorogation of Parliament or acceptance by a respondent of "an Office of Profit under the Crown" (sections 18 and 19). The 1868 Act also referred to the dissolution of Parliament (see section 5), but not in order to say whether and if so how dissolution would affect a pending election petition.

22. It will be recalled that in the present case Mr Greene contends that the petition abates, with the result that the court has no jurisdiction over the costs of the petition. In fact, in the one situation where the 1868 Act dealt with abatement (section 37, and see section 152 of the 1983 Act before its repeal in 2000 except in relation to petitions in respect of local government elections in Scotland), the legislation confined abatement to the death of the petitioner (not the respondent), made clear that abatement did not bring the petition to an end if the court substituted another eligible person as petitioner, and as to costs said:

> "The Abatement of a Petition shall not affect the Liability of the Petitioner to the Payment of Costs previously incurred".

Exeter

23. Section 26 of the 1868 Act provided:

> "Until Rules of Court have been made in pursuance of this Act, and so far as such Rules do not extend, the Principles, Practice, and Rules on which Committees of the House of Commons have heretofore acted in dealing with Election Petitions shall be observed so far as may be by the Court and Judge in the Case of Election Petitions under this Act."

24. Exeter was decided five and a half years after the enactment of the 1868 Act. Parliament had been dissolved after the issue of an election petition. An application was made for a return of the deposit made by the petitioner by way of security for costs. The Law Report records that Baron Bramwell at Chambers had referred the matter to the Court of Common Pleas "for their opinion as to the effect of the dissolution upon the petition".

25. The argument of the petitioner in Exeter was that the Act did not provide for the case of a dissolution of Parliament, that the petition simply "dropped" by operation of law on a dissolution, and that being so, that the petitioner was entitled to be paid out his deposit. The application for return of the deposit to the petitioner was consented to by the respondent.

26. Coleridge CJ gave this short opinion (at page 117):

> "The Queen having been pleased to dissolve Parliament, of which fact the Court must take judicial cognizance, a case has arisen not expressly provided for in the Act; and under these circumstances we must guide our proceedings by the old parliamentary practice on the subject. It is common knowledge, that according to the old practice the petition abated or dropped in such a case. We think the result is the same now, and that we therefore have authority, and ought to make an order for the return of the deposit."

Keating J said (at page 118) that he was of the same opinion. He stated that "[t]he effect of the dissolution, as it seems to me, is to cause the petition to drop". He noted the consent of the respondent. Denman J concurred.

27. The words of the Chief Justice in Exeter suggest that even if a petition "drops" the Court does have rather than does not have jurisdiction ("authority", in the language

of the Chief Justice), at least over what should happen to the deposit. In Exeter the Court determined that it should exercise the jurisdiction ("ought") to make an order for the return of the deposit.

Committees of Parliament

28. Mr Hoar however directs his argument to the purpose of a parliamentary election petition. He argues that the primary purpose of an election petition is to ensure that a person is not permitted to remain in elected office if improperly elected. This explains, he argues, why a parliamentary election petition should "drop" once that election is already in the past, as where Parliament is dissolved. The petition is only concerned with a particular election and its purpose is over, he argues.

29. Mr Hoar's argument cannot be reconciled with section 139(3) of the 1983 Act, which provides that the trial of a parliamentary election petition shall be proceeded with notwithstanding the acceptance by the respondent of an office vacating his seat in Parliament.

30. In any event, in my view the explanation for a parliamentary election petition "dropping" lies elsewhere.

31. In describing a recess or adjournment and a prorogation of a Parliament, the Supreme Court in Miller (at [2] and [6]) referred to the consequences for committees of Parliament:

> "During a recess, the House does not sit but Parliamentary business can otherwise continue as usual. Committees may meet, written Parliamentary questions can be asked and must be answered."

> "While Parliament is prorogued, neither House can meet, debate and pass legislation. Neither House can debate Government policy. Nor may members of either House ask written or oral questions of Ministers. They may not meet and take evidence in committees."

32. Committees of Parliament come to an end on a dissolution of Parliament. In times when parliamentary election petitions were the business of election committees of Parliament, the end of a committee would have obvious practical consequences for outstanding business. It is not obvious that those same consequences need apply when, by the 1868 Act, Parliament made the trial of parliamentary election petitions the business of the Courts. The High Court, and even the Election Court drawn from it, does not end with the end of a Parliament.

33. Section 139(3) of the 1983 Act, referred to above, also provides that the trial of a parliamentary election petition shall be proceeded with notwithstanding the prorogation of Parliament. The section, which is dealing with the trial of the petition rather than the petition itself, is silent on the position where Parliament is dissolved rather than prorogued. However an argument that by this silence the

section infers that the petition is automatically at a permanent end on a dissolution of Parliament is not realistic.

34. A parliamentary election petition is now presented to the High Court or to the Court of Session or to the High Court of Northern Ireland. Following through the case of a petition presented to the High Court, the prescribed officer (a Master or Masters of the Queen's Bench Division as determined by the Lord Chief Justice) is then required to enter the petition in a list of election petitions at issue (sections 138(1) and 157(4) of the 1983 Act). The petitions are "so far as convenient" to be tried in the order in which they stand in that list (section 138(2)). That trial will be by an Election Court (section 123(1), drawn from judges of the High Court: section 142(1) of the Senior Courts Act 1981) save that where "the case raised by the petition can be conveniently stated as special case" the High Court (on a motion to a Divisional Court: rule 11 of the Election Petition Rules) may direct it to be stated accordingly and that special case will be heard by the High Court (section 146). Where the petition is complaining that there has been no return to Parliament by the returning officer in respect of a parliamentary election, the High Court may deal with the matter itself by making an order compelling a return or it may allow the petition to be heard by an Election Court (section 120(2)).

35. There is nothing in this scheme to suggest that the dissolution of Parliament must affect the progress of what is now business before the High Court. Further, by giving responsibility for parliamentary election petitions to the Court, Parliament has made available the means by which what should become of a petition, where it is suggested that its purpose is at an end, is a question that can be examined on its merits in the individual case. One of those means is section 147 of the 1983 Act, dealing with withdrawal of a petition. The section requires the leave of the Court for the withdrawal of a petition, reinforcing the point that what becomes of a petition is a matter of some public importance.

36. The overall result is a coherent scheme provided by Parliament through legislation. The scheme is to be preferred to an analysis that would have the fate of a parliamentary election petition bound up with the end of a committee when a committee is no longer involved.

Taunton; Exeter revisited

37. The main elements of that scheme were present in the 1868 Act (see in particular sections 2, 5, 10-12, 35, 52 and 58). The considerations discussed above may explain why the Chief Justice approached the subject in the way he did when he returned to the decision in Exeter five months later in Taunton.

38. The remarkable chronology of Taunton was summarised by Coleridge CJ as follows (at pages 711-2):

> "The petition was filed on the 4th of November, 1873. The trial commenced on the 12th of January, 1874, and continued from day to day until Monday, the 26th, on the morning of which day at about half-past ten, as we are informed by [Grove J], judgment was pronounced by the learned judge dismissing the petition, with costs to be paid by the petitioners. He thereupon forthwith, as required by s. 11, subs. 13, of the Parliamentary

> Elections Act, 1868, certified his determination in writing as to the member whom he found to have been duly elected, and made his report as to the non-existence of corrupt practices at the election, and sent the same by post before noon of that day addressed to the Speaker of the House of Commons; and it reached its destination the same evening. … we have it on the authority of the Speaker of the present House of Commons (who was also Speaker of the former parliament) that the certificate was made and given before, but was not received by him until after the dissolution."

39. Speaking of Exeter the Chief Justice said (at page 715):

> "The ground of the decision [in Exeter] was, that, inasmuch as nothing had been done but merely lodging the petition at the time the dissolution of parliament took place, and nothing more could be done upon it, we thought, looking at s. 26 of the Parliamentary Elections Act, 1868, and at the general principles of election law as administered by election committees in a matter upon which the Rules of Court were silent, and as the Act contains a provision for the withdrawal of a petition with the consent of the Court, we were justified in saying that the petition dropped by reason of the dissolution of parliament, and consequently that the petitioner was entitled to have his deposit returned to him."

40. He further explained (at page 715):

> "[The decision in Exeter] in no degree conflicts with that which we arrive at here [in Taunton], which is, that, where a petition has been followed to its final end,—to judgment and certificate and an order for costs,—before the dissolution of parliament, nothing remaining to be done except the mere ministerial act of ascertaining the amount of the costs, the subsequent dissolution of parliament does not render void or ineffectual the judgment or the proceedings consequent upon it. That is all that I wish to be understood as deciding on the present occasion, and all that it is necessary to decide."

41. The Court of Common Pleas concluded that the respondent in Taunton was entitled to his costs as the Court had ordered.

42. Coleridge CJ expressly stated (at page 713) that the decision he reached in Taunton was made:

> "[w]ithout inquiring what would have been the result if the determination had been pronounced and the certificate made and given after the dissolution of parliament …".

It is notable that Coleridge CJ refrained from saying that because a petition dropped nothing more could happen. So too the qualified language of Brett J, in these passages (at pages 716 and 717):

> "It *may be* that [emphasis added] a dissolution taking place before trial may abate the petition. But in the case of the Exeter Election Petition, the Court held that, where parliament was dissolved before the day fixed for the

hearing of a petition, by analogy to the old practice of election committees the petition dropped. … I *doubt* [original emphasis, according to the Law Report] whether a certificate could be given after a dissolution of parliament. It is unnecessary to say more. …"

"A question has been raised whether, the decision having been pronounced before the dissolution of parliament, an order as to costs could properly be made after. I do not think it necessary to determine that upon the present occasion …"

43. In similar vein, the argument in Taunton had (at page 706) included the proposition that:

> "The committee had to report to the House; and it ceased to exist the moment parliament was dissolved, though its powers were only suspended upon a prorogation".

The response of the Chief Justice, admittedly only in the course of argument, suggested that in fact work might proceed:

> "If an election committee before a dissolution reported to the House that corrupt practices prevailed at the election, the new parliament would take up the proceedings."

44. In any event, the focus of the Court in Taunton, in contrast to Exeter, had already shifted towards the legislation rather than earlier practice or principles. Thus, per Coleridge CJ (at pages 715-6):

> "[If] costs are unhappily inflicted upon a candidate who has sought to impeach the validity of an election upon grounds which turn out to be unfounded, there is no reason why the mere accident of a dissolution of parliament taking place an hour or two afterwards should operate to relieve him from the penalty. At all events, all we have to do is to construe the Act of Parliament: and I am glad to think that the construction which we put upon it does not impose an unjust burthen upon the petitioners in this case."

Brett J said (at page 716) the issue "depends upon the construction of the Ballot Act, 1868."

Grove J, the third judge sitting in Taunton, and the Judge who had heard the trial, said (at page 719):

> "Here, the decision of the judge upon the petition was pronounced, the order for payment of costs by the petitioners was made, and the certificate signed and sent to the Speaker, while the parliament was in existence. Can a subsequent event undo all that and make it not a judicial proceeding? Clearly not. Both upon the construction of s. 41 and upon that of s. 11, subs. 13, I am of opinion that all was done to entitle the respondent to costs."

The Supreme Court of Canada

45. It was also argued by Mr Hoar that Exeter and Taunton were followed by the Supreme Court of Canada in Lush v Waldie (1891) (the Halton Controverted Election Case) (available at 1891 CanLII 72 (SCC)). The decision was of Patterson J in chambers, and concerned an appeal against a decision dismissing a petition. The Judge noted that by providing for an appeal the Canadian legislation differed from the English Act of 1868. The appeal had not been heard by the date of a dissolution of Parliament.

46. Patterson J said:

> "By the effect of the dissolution the petition dropped. The object of the contest had ceased to exist. If authority were required for that understanding, it is furnished by the cases cited to me, The Exeter Case, Carter v Mills and The Taunton Case, Marshall v James.
>
> On the 2nd of February the petition dropped. It did not abate in the technical sense of that word but the effect was quite as fatal."

As appears from the review above, Exeter and Taunton show that some process even under the 1868 Act might still follow a dissolution of Parliament. I do not consider that the decision in Lush and Waldie takes things further than Exeter and Taunton. It is not a sure guide to the position today in England and Wales under current legislation.

Further considerations

47. Mr Hoar's argument that an election petition is concerned with remedying a wrong in respect of an election in a particular Parliament does not, with respect, do justice to the point that the findings made on an election petition may be of continuing importance for a future Parliament. Quite apart from the candidate, the conduct of an agent may for example be in question.

48. The governing legislation today underlines this point further. Section 121(2) now provides that the petition may complain of the conduct of the returning officer. Mr Gavin Millar QC and Ms Sarah Sackman for Ms Forbes highlighted that the range of election offences under the 1983 Act (and the Representation of the People Act 2000) is now significantly wider and the consequences which may follow from a report can also be more extensive (for the consequences for other public or professional positions see sections 160ff. of the 1983 Act). Other examples might be given.

49. Additionally, today, the influence of the nineteenth century practice of election committees is further reduced by the Election Petition Rules. There is still a close parallel with section 26 of the 1868 Act in section 157(2) of the 1983 Act, but Rule 2(4) provides:

> "Subject to the provisions of the Act and these Rules, the practice and procedure of the High Court … shall apply to a petition under these Rules as if it were an ordinary claim within its jurisdiction, notwithstanding any different practice, principle or rule on which the committees of the House of Commons used to act in dealing with election petitions."

A "practice, principle or rule on which the committees of the House of Commons used to act in dealing with election petitions" not reflected in legislation or rules today takes only a "residual" place: see Ahmed v Kennedy [2003] 2 All ER 440 at [22]-[23] per Simon Brown LJ and at [56] per Clarke LJ.

Jurisdiction over costs

50. It is an additional feature of Taunton that all members of the Court separated out the jurisdiction of the Court in relation to costs from any question of jurisdiction in respect of the petition.

51. Coleridge CJ said in the course of argument (at page 708, and though in his judgment making quite clear the narrow basis of his decision despite wide-ranging argument):

> "The jurisdiction of the Court as to costs is quite independent of the dropping of the petition"

and (in a passage cited more than a hundred years later by Leveson LJ in R (Conservative and Unionist Party) v Election Commissioner [2010] EWCA Civ 1332; [2011] PTSR 416):

> "The 41st section [of the 1868 Act] gives the judge very large and elastic powers over costs and it seems to me to be quite immaterial at what time they are exercised by him."

Grove J said (at page 718-719):

> "… my strong impression is that, under s. 41 of [the 1868 Act], at all events, the power of making an order as to costs, which order is to have the force of a judgment, is quite independent of the certificate to be sent to the Speaker. That section gives the judge a plenary power over the costs, enabling him to make an order which forms no part of his judgment as to the seat, but is an independent judicial decision as to the person by whom the costs are to be borne."
>
> We have been pressed with certain analogies which do not strictly bear upon this matter, because the history of costs is the creature of statutes which give limited power to the Courts to deal with them. No costs could, as such, be given before the Statute of Gloucester. Therefore, in considering a question of costs under this statute, we cannot draw any analogy from the common law. It seems to me that the Act under consideration gives the judge power to make a valid order as to costs. It is conceded that it is not necessary to mention costs in the certificate sent to the Speaker, that being a matter which is altogether alio intuitu."

Brett J said:

> "It may be that after a petition has been once launched there might be interlocutory proceedings in respect of which costs may have been

awarded; and these in my opinion might be enforced notwithstanding the petition might afterwards drop, by a dissolution or otherwise, though no new steps on the petition could be taken."

52. Today section 154 of the 1983 Act provides:

> "(1) All costs of and incidental to the presentation of an election petition and the proceedings consequent on it, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the election court or High Court may determine.
>
> "(2) In particular —
> (a) any costs which in the opinion of the election court or High Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and
>
> (b) any needless expense incurred or caused on the part of the petitioner or respondent,
>
> may be ordered to be defrayed by the parties by whom it has been incurred or caused whether or not they are on the whole successful.
> …"

Conclusions

53. I draw the following conclusions:

(a) Exeter is authority for no more than the proposition that on dissolution of Parliament the Court has jurisdiction to make an order in relation to a deposit in respect of costs.

(b) The ratio of Taunton is that an order for costs made in respect of a parliamentary election petition before the dissolution of Parliament will be enforceable. The case specifically does not decide "what would have been the result if the determination had been pronounced and the certificate made and given after the dissolution of parliament …".

(c) There is no authority that, at least under current legislation, on a dissolution of Parliament a parliamentary election petition, which is a proceeding before the Court, "drops" or abates with the effect that it is automatically at end.

(d) There is no authority for the proposition that the Court's jurisdiction ends on the dissolution of Parliament in respect of a petition issued before the dissolution of Parliament. In fact, the authorities give instances, albeit limited, of what the Court may still do after dissolution rather than what it may not do.

(e) Specifically, there is no good foundation for a suggestion that the Court's jurisdiction in relation to costs, now provided by section 154 of the 1983 Act (and see also section 157(3), below) ends with the dissolution of Parliament.

54. It is unnecessary in the present case to go further. It is also undesirable. No full evidence had been filed or argument heard as to the practice of the committees that had the responsibility for dealing with these issues before they were, at the request of Parliament, taken on by the Courts. No representation or argument has been heard from the Speaker, or from the Director of Public Prosecutions. Of course there is Exeter, but that was not opposed, and the Chief Justice had more to say on the subject in Taunton and there emphasised that he wished to confine his decision.

55. The wider questions are moreover of general public importance. Take a case where cogent evidence had been heard of corrupt practices at the point when Parliament was dissolved and the respondent wished that evidence to be taken no further (and so to escape the provisions on the consequences of a finding by the Election Court of corrupt or illegal practice). Or take a case where a respondent was close to the point of being fully vindicated in respect of allegations of corrupt practices and the petitioner wished to avoid that outcome. It is important that the question whether and how a petition could proceed is left for determination on facts such as those.

56. All that is necessary to decide in the present case is whether the Court retains jurisdiction to deal with the costs of a parliamentary election petition and with an application to withdraw where that application to withdraw is made but not determined before dissolution. Exeter and Taunton do not decide this. In my view they lend support for the presence of that jurisdiction.

Abatement, and in other areas of law

57. Even in the nineteenth century "drops" and "abates" did not necessarily have the same meaning in the context of a parliamentary election petition. Today, Erskine May, Treatise on the law, privileges, proceedings and usage of Parliament, 25th edition (2019) does not appear to contain the term "abate" or a derivation. It also indicates that in at least some forms of parliamentary procedure that "drop" may be revived (see, for example, paragraphs 19.34, 19.35, 28.49 and 28.124).

58. Mr Hoar offered examples derived from authorities on (what he termed) abatement in other areas of law. I do not, with respect, consider these can assist with the argument in hand.

59. I take them briefly in turn. Mr Hoar referred to the effect on proceedings of the dissolution of a company, though any parallel would require the greatest caution and would need to include consideration of the restoration to the register of a dissolved company. He instanced the abatement on the death of a claimant of a cause of action in defamation, and of a particular claim to financial provision under inheritance legislation. However (as already noted) the 1868 Act allowed substitution on the death a petitioner in the case of a parliamentary election petition. He noted the effect of the bankruptcy of a sole claimant in litigation, yet properly acknowledged that there are circumstances where a trustee in bankruptcy may elect to continue the litigation.

60. It was argued by Mr Hoar that there is a common thread behind these examples and that is that "the question as to whether a cause of action has abated must be addressed by considering whether the object of the cause of action is rendered futile by the intervening act". The question may be useful, but in my judgment each

context requires close and individual study. In the context of parliamentary elections there is a particular statutory framework and a particular legal history. Even in that context it is the case that views have differed on whether the term abatement is appropriate. Moreover I do not accept that it will always be the case that the object of a parliamentary election petition is rendered futile by dissolution. When it is, the Court has ample powers to bring the petition to an end.

Withdrawal of the Petition

61. As mentioned, withdrawal of a petition is the subject of section 147 of the 1983 Act. The section is in these terms:

> "(1) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner and at the prescribed time and place.
>
> In the application of this subsection to a petition questioning an election of councillors in Scotland there shall be omitted the reference to the High Court.
>
> (2) The application shall not be made until the prescribed notice of the intention to make it has been given in the constituency or local government area to which the petition relates.
>
> (3) Where there are more petitioners than one, the application shall not be made except with the consent of all the petitioners.
>
> (4) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent."

62. In the present case the papers show that withdrawal is the proper course. The allegations in the Petition are not maintained. Some at least should not have been made. The application to withdraw is not opposed.

Costs

63. If a petition is withdrawn the petitioner is liable under section 147(4) of the 1983 Act to pay the costs of the respondent. Mr Greene accepted this liability when he made the application to withdraw. In the present case I would in any event have ordered him to pay the costs in the exercise of the Court's powers over costs under section 154 and 157(3) of the 1983 Act. Section s. 157(3) of the 1983 Act (see section 2 of the 1868 Act) retains for the High Court "the same powers, jurisdiction and authority with respect to an election petition and the proceedings on it as if the petition was an ordinary action within its jurisdiction".

Outcome

64. In the result, in my view the Court should:

a. decline to make the declaration sought;

b. exercise its statutory power to allow the withdrawal of the Petition;

c. order that the costs of the Petition (including the applications) are to be paid by the Petitioner, to be assessed on the standard basis if not agreed;

d. order that the deposit be released to the Respondent in part satisfaction of the costs.

Holgate J:

65. I agree.