



Neutral Citation Number: [2023] EWHC 2034 (KB)

Case No: M378/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT 1983
AND IN THE MATTER OF A LOCAL GOVERNMENT ELECTION FOR THE
MARSDEN WEST WARD OF NELSON TOWN COUNCIL HELD ON 4 MAY 2023

Royal Courts of Justice
Strand
London WC2A 2LL

Date: 03/08/2023

Before :

MRS JUSTICE JEFFORD DBE
MR JUSTICE SOOLE

B E T W E E N:

JULIE GREEN

Petitioner

-and-

(1) PATRICIA JOSEPHINE HANNAH-WOOD
(2) ROSE ROUSE

Respondents

Greg Callus (instructed by **Astraea Linskills**) for the **Petitioner**
Timothy Straker KC (instructed by **Sharpe Pritchard LLP**) for the **Second Respondent**

Hearing date: 13 July 2023

Judgment Approved by the court
for handing down
(subject to editorial corrections)

MRS JUSTICE JEFFORD:

Factual background: the election

1. On 4 May 2023, an election was held for the Town Council of Nelson in Lancashire. As the statement of the Second Respondent, the Returning Officer Ms Rouse, states, the Town Council is a parish council. The election on 4 May included election to represent the Marsden West Ward. The candidates were the Petitioner, Julie Green, standing for the Conservative Party and the First Respondent, Patricia Hannah-Wood, standing for the Labour Party.
2. It is not in dispute that Ms Green received 242 votes and Ms Hannah-Wood received 177 votes.
3. However, when the result was declared by the Returning Officer on 5 May 2023, the votes were transposed and it was declared that Ms Hannah-Wood had been elected and not Ms Green.
4. As Ms Rouse explained in her statement, the error arose because of the way in which the Count Supervisor recorded the votes. On the ballot paper Ms Green's name (Conservative) appeared first and Ms Hannah-Wood's name (Labour) appeared second. The Count Supervisor wrote the figures on a blank sheet of paper recording first the vote for Labour as 177 votes and then the vote for the Conservatives as 242. No names were given and this was in the opposite order from how they appeared on the ballot paper.
5. The results were then transposed on to the Declaration of Result of Poll which also gave Ms Green's name first and Ms Hannah-Wood's second. When the results were entered in the Declaration of Result of Poll, they were entered in the same order in which they appeared on the piece of paper. As a result, 177 votes was entered against Ms Green's name and 242 against Ms Hannah-Wood's.
6. The result was declared in accordance with the Declaration of Result of Poll. As the Returning Officer left the podium, the Count Supervisor informed her of the error. Legal advice was taken almost immediately and that advice was that the Returning Officer could not change what she had announced.

The petition

7. Section 127 of the Representation of the People Act 1983 provides the means by which a local election may be questioned. There is no issue that the election in this case fell within the definition of an election under "the local government Act" (which is a defined term in the Act).
8. Section 127 provides as follows:
"Method of questioning local election.
An election under the local government Act may be questioned on the ground that the person whose election is questioned—
(a) was at the time of the election disqualified, or
(b) was not duly elected,
or on the ground that the election was avoided by corrupt or illegal practices or on

the grounds provided by section 164 or section 165 below, and shall not be questioned on any of those grounds except by an election petition.”

9. It is only section 127(b) which is engaged in this case. In accordance with section 129(1), a petition questioning an election on such grounds shall be presented within 21 days of the date on which the election was held. On 23 May 2023 Ms Green filed a petition in the Election Petitions Office of the King’s Bench Division.
10. The petition sought relief including production and inspection of documents and a re-count but, in my view, principally, that:
“... it may be determined that Patricia Josephine Hannah-Wood was not duly elected and that Julie Green was duly elected and ought to have been returned, or in the alternative that the election was void.”
11. The petition alleged that there had been breaches of the statutory rules governing the conduct of elections, namely the Local Elections (Parishes and Communities) (England and Wales) Rules 2006/3055 and, specifically, of Rule 50, to which I refer further below. The petition alleged that:
 - (i) The Returning Officer did not declare to be elected the candidate to whom more votes had been given than to the other candidates in accordance with rule 50(1)(a).
 - (ii) The Returning Officer did not give notice of the name of such candidate to the proper officers of the Nelson Town Council and the proper officer of the district in which it is situated in accordance with rule 50(1)(b).
 - (iii) The Returning Officer did not give notice of the name of such candidate elected and of the total number of votes given for each candidate (whether elected or not) in accordance with rule 50(1)(c).

The resignation and events thereafter

12. On 2 June 2023, Ms Hannah-Wood resigned from her office of town councillor and she has taken no part in these proceedings.
13. It does not appear to be in dispute that, on 19 June 2023, notice was given, on the council’s website, of a casual vacancy.
14. Also on 19 June 2023, Ms Green applied for re-count and for the trial date to be fixed in accordance with the Rule 9 of the Election Petition Rules 1960 which requires the application to be made by the petitioner to a rota judge within 28 days of the date on which the petition is at issue. The rule makes provision for the respondent to apply, if the petitioner fails to do so, and, if no application is made, for the matter to be referred to a rota judge who shall fix a time and place for trial.
15. On 7 July, the period allowed for electors to seek an election to fill the casual vacancy expired. No request for an election was made and the possibility of co-option to the Council arose. To date no-one has been co-opted to the Council.
16. On 7 July 2023, the Petitioner made an application for summary judgment under CPR Part 24.

17. There was correspondence between the solicitors for the Petitioner and the Returning Officer in which, amongst other things, the Returning Officer contended that summary judgment was not a procedural route available in respect of an election petition. On 10 July 2023, the Returning Officer made an application for the petition to be stated as a special case pursuant to section 146 of the Representation of the People Act 1983.

The procedural issue

18. In advance of the hearing of the summary judgment application, an issue arose between the parties as to whether an application for summary judgment was a procedural route open to the Petitioner.
19. The Returning Officer's position was that it was not. As Mr Straker KC submitted, in his skeleton argument, Part III of the Representation of the People Act 1983 provides a comprehensive mechanism for dealing with all legal questions arising on or after an election.
20. I do not intend to set out the provisions of the Act at length. As set out above, section 127 makes provision for questioning a local government election by petition. Section 130 makes provision for the appointment of commissioners for such trials and for the holding of such trials within the relevant local authority area (although the High Court may, in special circumstances direct otherwise). Section 136 makes special provisions for the petitioner giving security for costs. Section 139 deals with the trial of the petition.
21. Section 145 provides what happens at the conclusion of the trial and provides:

“(1) At the conclusion of the trial of a petition questioning an election under the local government Act, the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and the determination so certified shall be final to all intents as to the matter at issue on the petition.

...”
22. Section 146 (Special case for determination of High Court) provides:

“(1) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears that the case raised by the petition can be conveniently stated as a special case, the High Court may direct it to be stated accordingly and the special case shall be heard before the High Court.

...”
23. The Election Petition Rules, rule 11, provide simply that an application for a special case to be stated, pursuant to section 146(1), shall be made by application notice to a Divisional Court.
24. The stating of a special case is a means of enabling the court to determine the petition where it turns on a point of law and no facts are in issue. The decision on the point of law is the determination of the petition and it seems to me self-evident, therefore, that what the court must do is the same as what it must do following a trial – in other words that the provisions of section 145 apply equally to the determination of the petition by special case as they do to the trial of the petition.

25. The statutory provisions, however, also include:

(i) Section 157(3) as follows:

“The High Court has, subject to the provisions of this Act, the same powers, jurisdiction and authority with respect to an election petition and the proceedings on it as if the petition were an ordinary action within its jurisdiction.”

(ii) Section 182 (Rules of procedure):

“(1) The authority having for the time being power to make rules of court for the Senior Courts may make rules for the purposes of Part II and this Part of this Act.

(2) In relation to the power conferred by subsection (1) above to make rules -

(a) that power shall be exercisable by statutory instrument, and be treated for the purposes of the Statutory Instruments Act 1946 as if conferred on a Minister of the Crown; and”

26. The Election Petition Rules 1960 made under the predecessor legislation are to be treated as having been made under section 182. 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,”

27. As I have said, the Returning Officer argues that the statutory provisions and the Election Petition Rules provide a complete code for the conduct of petitions. That argument is supported by the decision of the Court of Appeal in *Ahmed v Kennedy* [2002] EWCA Civ 1793 at [20] – [22]:

“20. In support of the petitioners’ argument Mr Fleming relies heavily upon subsections (2) and (3) of section 157 of the 1983 Act and what he describes as the “stark contrast of wording between [these] two adjacent subsections”. Whereas section 157(2) is made “subject to the provisions of this Act and of the rules made under it”, section 157(3) gives the High Court its powers under the CPR subject only to the provisions of the Act.

21. Mr Millar for the respondents submits to the contrary that Part III of the Act and the Rules made under it together comprise a discrete and purpose-built statutory scheme which covers the High Court’s role in the procedure and that where the legislation intends to provide for the softening of any mandatory requirement it expressly says so, as in rule 19.

22. I have no doubt that Mr Millar is right. I would analyse the legislation as follows. Section 157(2) is directing the High Court and election court to observe certain principles and rule on which House of Commons committees used to act subject only to the provisions of the 1983 Act and the 1960 Rules. It is saying that the High Court and the election court cannot use those earlier principles and rules if they are inconsistent with the 1983 Act and the 1960 Rules but otherwise they must. Section 157(3) by contrast is saying simply that the High Court has all its ordinary powers subject to the Act. Given, however, that section 182(1) expressly provides for rules of procedure for the purposes of Part III of the Act, it seems to me plain that these bespoke rules must inevitably prevail over any general rules in the CPR. That this is so, moreover, is borne out by rules 2(4) of the 1960 Rules which expressly makes the CPR “subject to the provisions of the Act and Rules”. In addition, of course, and consistently with section 157(2), rule 2(4) gives

the CPR priority over any different “practice, principle or rule” which the House of Commons committee used to observe.”

28. For the Petitioner who makes the application, Mr Callus relies on section 157(3) and rule 2(4) in support of his argument that summary judgment under Part 24 is an available procedural route. He submits that this court retains the normal powers of the High Court. There is nothing in the Act or the Election Petition Rules which specifically precludes an application under Part 24 nor is there anything in Part 24 that conflicts with the statute or the said Rules.
29. For the reasons explained below, I do not consider it necessary to decide this issue. However, I am inclined to agree with Mr Straker KC’s analysis for two principal reasons.
30. Firstly, the provisions of the Representation of the People Act 1983 relating to the trial of a petition contemplate a trial before commissioners sitting at a local level and, only in special circumstances, can the High Court direct otherwise. What lies behind those provisions is a clear intention that petitions questioning local government elections should be dealt with in open court in the relevant locality. There seems to me to be at the very least a potential conflict between that and the use of the summary judgment process in the High Court.
31. Secondly, where the petition raises no issues of fact and can be determined, it might be said summarily, on a point of law, Parliament has made specific provision for that in section 146. That is a bespoke procedure which ought to prevail over the Civil Procedure Rules.
32. In the present case, and as a means of resolving the procedural conundrum, the Returning Officer did make an application for a special case to be stated and, under cover of an e-mail dated 7 July 2023, provided to the Petitioner a draft (incomplete) special case. Having heard full argument on the substantive issue, I do not regard the gaps in the draft as material. The draft proposed that the question the court was asked to determine should be:

“Whether an effect of the resignation of Ms Hannah-Wood is to frustrate the relief sought in the petition and, if not, whether Ms Green was duly elected.”
33. We direct that a special case be stated in accordance with the draft and, having heard full argument, we will proceed to give our decision on the question as formulated.
34. For completeness, I note that there was at one point an argument advanced that in issuing the application for summary judgment and, in consequence, inviting the court not to fix a trial date, the petitioner had abandoned the request for a trial, so that the proper course was to hear the matter as a special case. The argument that the Petitioner had abandoned her request for a trial was plainly wrong – that cannot be the effect of an application for summary judgment. In any event, for the reasons explained below, it would not prevent the petition proceeding to trial. That argument was not seriously pursued but, for the avoidance of doubt, it is not the reason for hearing this matter as a special case.

The nature of the arguments in respect of the resignation

35. Were it not for the resignation of Ms Hannah-Wood, it is, in my judgment, clear that the outcome of this petition, whether by trial, summary judgment or special case, would be that this court would determine that Ms Hannah-Wood was not duly elected and Ms Green was duly elected.
36. The substantive dispute between the Petitioner and the Returning Officer is as to the effect of the resignation. In summary, Ms Green's position is that it is immaterial. Ms Hannah-Wood was not lawfully elected or declared elected. She, therefore, never held any office from which she could resign. It is accordingly open to this court to determine, in accordance with section 145 of the 1983 Act, both that Ms Hannah-Wood was not duly elected and that Ms Green was duly elected.
37. The Returning Officer's case, also in summary, is that once Ms Hannah-Wood was declared elected, she was elected, whether or not "duly elected". She was, therefore, capable of resigning. Her resignation created a casual vacancy to be filled by further election or co-option. This statutory process is mandatory and must be followed.
38. As set out in correspondence and in Mr Straker KC's skeleton argument, it was said that the effect of the resignation was that the petition served no purpose and should be dismissed. That was because, in light of the resignation and the process mandated to follow, it was not open to this court to determine that Ms Green was duly elected with the effect that she is now entitled to take up her seat on the Council.
39. By the conclusion of the hearing, Mr Straker KC had modified the Returning Officer's position to the extent that he accepted that it was open to this court to determine that Ms Hannah-Wood was not duly elected. He maintained, however, that it was no open to us to determine that Ms Green was duly elected. Two reasons were given for that limitation. Firstly, it was submitted, this court should not make any declaration that would displace the lawful steps taken thereafter – in this case, those steps were limited to the notice of a casual vacancy but in other cases could be a lawful election to fill that vacancy or a co-option to that seat. Secondly, it was said this court should recognise that it should not make any declaration that would have the effect of putting someone in Ms Hannah-Wood's place.
40. In order to understand and resolve this dispute, it is necessary to set out and address the statutory provisions more fully.

The legal framework

The petition

41. As I have already said, an election may be questioned under section 127 of the 1983 Act by an election petition and the procedure is set out in the Election Petition Rules 1960.
42. Section 139 deals with the trial of the petition in open court without a jury. Importantly, for present purposes, sub-section (3) provides:
“(3) The trial of a parliamentary petition shall be proceeded with notwithstanding the acceptance by the respondent of an office vacating his seat in Parliament and notwithstanding the prorogation of Parliament; and the trial of a petition questioning an election under the local government Act shall be proceeded with notwithstanding that

the respondent has ceased to hold the office his election to which is questioned by the petition.” (emphasis added)

43. The only exception to this requirement is provided for by section 147 which contemplates that a petitioner may withdraw the petition but provides:
“(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.
....
(4) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.”
44. Pursuant to the Election Petition Rules rule 12(1) “An application for leave to withdraw a petition shall be made by application notice to the election court or a Divisional Court at such time and place as the court may appoint.”

The election

45. The conduct of parliamentary and local elections themselves are governed by the provisions of the Representation of the People Act 1983. Section 36(1) provides that local elections in England shall be conducted in accordance with rules made by the Secretary of State. By section 36(2) such rules are to follow the equivalent Parliamentary Rules with such modifications as the Secretary of State thinks appropriate. The Local Elections (Parishes and Communities) (England & Wales) Rules 2006 (“the Local Election Rules”) are the applicable Rules in this case.
46. Part 4 of Schedules 2 and 3 to the Local Election Rules is entitled Final Proceedings in Contested and Uncontested Elections. Rule 50 in that Part in each case provides:
50.—(1) In a contested election, when the result of the poll has been ascertained, the returning officer must forthwith—
(a) declare to be elected the candidate or candidates to whom more votes have been given than to the other candidates, up to the number of councillors to be elected;
(b) give notice of the name of each candidate to whom sub-paragraph (a) applies to—
(i) the proper officer of the parish or community council, and
(ii) the proper officer of the council of the district in which the parish is situate or the county or county borough in which the community is situate; and
(c) give public notice of the name of each candidate elected and of the total number of votes given for each candidate (whether elected or not) together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.
47. As I have said, the petition alleges breaches of this Rule. In particular, the Returning Officer did not declare to be elected the candidate to whom the more votes had been given or, looked at another way, declared to be elected the candidate to whom the more votes had not been given.

The resignation

48. Section 83 of the Local Government Act 1972 makes various provisions for a person elected to particular offices to make a declaration of acceptance of the office. Section 84 provides that he or she may resign at any time as follows:

“(1) A person elected to any office under this Act may at any time resign his office by written notice delivered

(c) in the case of a parish or community councillor, to the chairman of the parish or community council

....

and his resignation shall take effect upon the receipt of the notice by the person or body to whom it is required to be delivered.”

A casual vacancy then arises on the same date (see section 87(1)(b)).

49. Section 89 then deals with the filling of a casual vacancy. Section 89(6) provides:
“A casual vacancy among parish or community councillors shall be filled by election or by the parish or community council in accordance with rules made under section 36 of the Representation of the People Act 1983 in the case of a parish council or, in the case of a community council, made under section 36A of the 1983 Act.”

50. Rule 5 of the Local Election (Parishes and Communities) (England & Wales) Rules deals with the filling of casual vacancies and provides as follows:

“(1) A request may be made in accordance with paragraph (2) for an election to fill a casual vacancy in the office of a parish or community councillor.

(2) Any request must be made—

(a) to the proper officer of the council of the district in which the parish is situate or the county or county borough in which the community is situate,

(b) by 10 persons who are named on the register in use at the time of the request as local government electors for the electoral area in which the vacancy has occurred, and

(c) within 14 days (computed in accordance with rule 2 of the elections rules in Schedule 2 to these Rules) after public notice of the vacancy has been given in accordance with section 87(2) of the Local Government Act 1972.

(3) An election must be held, if requested in accordance with paragraph (2), if the casual vacancy in the office of the parish or community councillor occurs other than within six months before the day on which that councillor would regularly have retired.

(4) Where a casual vacancy in any such office is required to be filled by election, the election must be held on a day appointed by the returning officer, being a day falling within the period of 60 days (so computed) beginning with the day on which public notice of the vacancy was given.

(5) Subject to paragraph (6) below, where a casual vacancy in any such office is not required to be filled by election, the parish or community council must, as soon as practicable after the expiry of the period of 14 days referred to in paragraph (2)(c), co-opt a person to fill the vacancy.

(6) In the case of a casual vacancy occurring in the office of a parish or community councillor within six months before the day on which that councillor would regularly have retired, paragraph (5) shall have effect with the substitution of the word “may” for “must”; and any vacancy not so filled must be filled at the next ordinary election.”

51. In the present case, no request for an election has been made and sub-rule (5) would, and on the Returning Officer's case does, apply.

The effect of the resignation

Submissions

52. The Returning Officer's case is that Ms Hannah-Wood's resignation was a resignation pursuant to section 84 because she had been elected to an office under the Act. It is inherent in that position that "elected" does not mean, or is not limited to, "duly elected" and, as it seems to me, it must be the Returning Officer's case that the declaration that Ms Hannah-Wood had been elected was sufficient to elect her even if that declaration was itself in breach of or did not comply with Rule 50(1)(a).
53. On the Returning Officer's case, the effect of the resignation, therefore, is to create a casual vacancy and section 89 mandates the filling of that vacancy in accordance with the Local Election Rules. That mandatory process, it is submitted, frustrates or supersedes any challenge to the lawfulness of the apparent election. Mr Straker KC emphasised that, where an election is requested to fill a casual vacancy, the Rules place obligations on the council to act within a fixed and short period. There is no statutory provision for suspending the process in the event of a petition having been issued in respect of the original election. It follows that, if an election is requested, the council has to follow the process and hold an election. If the questioning of the prior election somehow overrides the process for the filling of a casual vacancy, that would render the latter election pointless or create a position in which there were two persons duly elected to the same office.
54. The statutory provisions can be made to work together, it is submitted, only if the resignation and the process that follows is implemented and, in effect, takes precedence.
55. The principal difficulty with that argument arises from the provisions of section 139(3) of the Representation of the People Act 1983 as set out above.
56. The effect of section 139(3) is that the petition shall be proceeded with notwithstanding any resignation under section 84. The petitioner is given no option – proceeding with the petition is mandatory. Further, as I have already said, at the conclusion of the trial, the court "shall determine whether the person whose election is complained of, or any and what other person, was duly elected."
57. Accordingly, even if the person whose election is complained of has resigned, at the conclusion of a trial, the court is required to determine whether (i) the person whose election is complained of was duly elected and (ii) whether any and what other person was duly elected. The court is required to make those determinations irrespective of a resignation and any election to fill a casual vacancy that followed it. Yet, on the Returning Officer's case, those determinations are either of no practical effect or cannot be made.
58. For the Petitioner, Mr Callus submits that section 139(3) provides the answer to the Returning Officer's position.

59. It is not suggested in this case that Ms Hannah-Wood's resignation was anything other than in good faith. However, in his skeleton argument, Mr Callus offered three scenarios in which a person whose election was challenged, might resign (not in good faith) and, if the Returning Officer's argument were right, place the petitioner in a disadvantageous position, because the petitioner is required to continue with the petition in any event, and/or thwart the purpose of the legislation.
60. It is convenient simply to set out those three scenarios:
- (i) Scenario (1): Candidate X brings a petition against Candidate Y, who was declared to have won, alleging corrupt or illegal practices which, if proven, would prevent Y from holding office or running in future. On the Returning Officer's case, Y's resignation would foil the corrupt practices being exposed and allow Y to run again in the election to fill the casual vacancy he had created.
 - (ii) Scenario (2): Candidate X who is impecunious received the most votes but was wrongly declared to have lost. The wealthy candidate Z was wrongly declared to have won. Candidate X issues a petition and expends the last of his funds in providing security for costs. There is no suggestion of electoral wrong-doing on the part of Z but Z resigns. There is an election to fill the casual vacancy created by Z's resignation. Z has the wherewithal to stand again but X does not have the funds to do so. Z is elected, in effect, by default.
 - (iii) Scenario (3): Following Z's resignation, no election is called and the council co-opts Z or some other person who did not participate in the election.
61. It would, of course, be open to the petitioner, in the event of a resignation with the consequences the Returning Officer contends for, to apply to withdraw the petition. By that time, both the petitioner and the respondent may well have incurred significant costs and the effect of withdrawal is to make the petitioner liable to pay the respondent's costs. In any event, it does not necessarily follow that the court would allow the application. Although the scenario does not arise here, putting the petitioner in the position of withdrawing the petition, could have the effect of allowing a person involved in electoral malpractice to thwart the protections of the legislation simply by resigning. As Knowles J observed in *Green v Forbes* [2020] EWHC 676 (QB) at [35] the fact that the petition can only be withdrawn with the leave of the court reinforces the point that what becomes of a petition is a matter of some public importance.
62. The Petitioner, therefore, submits that Parliament cannot have intended the petitioner to be placed in such a position without the prospect of any remedy if the petitioner proceeds and, in a potentially thoroughly disadvantageous position, if the petition is withdrawn. On Mr Straker KC's modified position, the petitioner would be entitled to a partial remedy, namely a determination that the person whose election is questioned was not duly elected but not a determination as to who was duly elected.
63. It is perhaps because of the unattractiveness of the outcome of the first of Mr Callus' scenarios and the point made at paragraph 61 that the Returning Officer's position was modified in this way in the course of argument. However, the Returning Officer's submission stopped short of accepting that the court could determine that the petitioner had been duly elected and giving effect to that election and did not ameliorate the outcomes in Mr Callus' scenarios (2) and (3).

Discussion

64. In my judgment the argument that a person has been “elected” even if not “duly elected” is no more than semantic and meaningless. The rules provide for the Returning Officer to declare as elected the person who has received the most votes. The giving of notice of that person’s name follows from that, as must the ability to accept the office and resign from that office. The declaration and notification of the name of the person elected may represent the end of the proper and lawful process for election but, if the name of the wrong person is declared, there is a breach of the rules and the process has not been properly and lawfully concluded.
65. A person who did not receive the most votes may be declared to have been elected but they have not, in fact, been elected and nor have they been duly elected.
-
66. If a person has not been duly elected, that person cannot lawfully accept that office or resign from that office.
67. The Returning Officer’s argument places reliance on the fact that there is statutory provision to save, so to speak, acts of a person whose election is subsequently challenged. Paragraph 43 of Schedule 12 to the 1972 Act provides that: *“The proceedings of a local authority shall not be invalidated by any vacancy among their number or any defect in the election or qualifications of any member thereof.”*
68. It does not seem to me that this provision supports the Returning Officer’s argument. If the Returning Officer’s contention were right, any act of the person declared elected, and on this hypothesis elected, would be valid unless and until the Election Court declared otherwise and there would be no need for the saving provision. The existence of the provision, in my view, reinforces the point that a person who has not been properly elected is not elected but Parliament has pragmatically ensured that that would not unravel things done by a local authority in the meantime.
69. In effect, a person is presumed properly and lawfully elected unless and until their election is questioned and the election court has determined the petition. If they are determined not to have been duly elected, there is an express saving for the proceedings of the local authority. There is no express saving for their acts of acceptance of office and resignation from office.
70. Mr Straker KC submitted that if we found that the person declared elected was not elected (even if not duly elected), the court would be taking the remarkably bold course of stating that the declaration had no consequence. I do not accept that submission or that that would be the consequence of accepting the Petitioner’s submissions. It is quite clear that the person who has been declared elected can act as a councillor until it is determined that that person has not been duly elected and that the acts of the local authority will not be vitiated by such a determination. It is the Returning Officer’s submission that involves the bold proposition that the person declared elected is to be treated for all purposes as if elected even if later determined not to have been duly elected.
71. The Representation of the People Act 1983 provides the process for questioning a local election. As set out above, section 139(3) requires that process to be completed even if the person whose election is questioned resigns or purports to resign. In other words, the

section presupposes that a person can purport to resign, even if not properly elected, but that the election court will still proceed to determine that that person has not been duly elected and another person has been duly elected.

72. Until the election court has determined the petition, the council cannot know whether that person has ever properly held office, was able to resign from that office, and, therefore, whether the obligations under section 89 are engaged. In my judgment, that must have the effect of suspending the process under section 89(6) until the election court has determined the petition. Whilst on the facts of this case it is unnecessary to decide the point, I anticipate that the court would have the necessary jurisdiction to restrain a local authority from proceeding with the further electoral process pending determination of the petition. Whilst it would be unusual for the court to interfere with an election, the juxtaposition of a questioned election and, in effect, questioned resignation are themselves unusual. To restrain an election to fill a casual vacancy pending determination, in accordance with the Representation of the People Act 1983, as to whether there was a casual vacancy to be filled would be, in my judgment, in accordance with the legislation and not an interference with it.

MR JUSTICE SOOLE:

I agree. It would have been a troubling anomaly if the effect of the resignation were to frustrate the true and proper purpose of the petition. However, as my Lady explains, section 139(3) of the Representation of the People Act 1983 both defeats that consequence and provides a complete reconciliation between the two statutes.