

12th Sept., 1871. Peace under the Act. I only tender it to show that it is not merely for the purpose of delay that I am making the application to produce this witness. I may state, in regard to the man Hagan, that I have here a declaration by the Returning Officer, also in which he distinctly states that he put the question to Hagan: "Are you the person who appears as James Hagan on the electoral roll?" and that James Hagan answered, "Yes." Hagan denied having the question put to him. I mention this, in order to show that we were to a certain extent misled by testimony of this kind.

*Mr. Allan*: It only makes the case stronger against Hagan.

*Mr. Travers*: I am not going to ask for any evidence in the case of Hagan. I only wish to produce evidence to show that the man Tomlinson on the roll is the man who voted, and how the error occurred as to qualification.

The Committee having deliberated in private for a short time,

*The Chairman* said—The Committee, before deciding on the application for adjournment, would desire to hear Counsel on both sides, on the question as to whether a vote taken after 4 o'clock is valid or not.

*Mr. Allan*: I understand that the parties were in the polling booth before 4 o'clock.

*The Chairman*: Admitting, for the purpose of argument on a point of law, that the votes were allowed, the point to which the Committee wish you to direct yourselves is, whether a vote taken after 4 o'clock is valid or invalid.

*Mr. Travers*: I can only refer to the 36th section of the Act, which regulates the mode of conducting elections, and the polling:—"Every polling shall commence on the day appointed for the same at nine of the clock in the forenoon, and shall, unless lawfully adjourned, finally close at four of the clock in the afternoon of the same day; and shall be conducted in the manner hereinafter mentioned." I apprehend that the language of the Act is perfectly clear. If the poll is not finally to close at 4 o'clock, it might be kept open until 4 next morning. If time is to be disregarded to the extent of a single minute, then I know no limit to which it might not be disregarded by a Returning Officer in keeping the poll open. The case is on all-fours with the case of hiring a servant to commence *in futuro*, if the hiring is to commence *in futuro*, then a single hour or a single minute vitiates the contract, precisely as it would if it commenced at the end of a day, or a week, or a year. I should like to have the opportunity of calling the attention of the Committee to the decisions upon the point which probably would, in some degree, affect the decision of a case of this kind; but the language of the Act is as strong as possibly can be—that, unless lawfully adjourned, the polling shall finally close at 4 o'clock in the afternoon. The lawful adjournment is where the polling is interrupted by a riot or disturbance, in which case the Returning Officer will not "finally close the poll, but shall adjourn the taking of the poll at the polling place at which such interruption or obstruction shall have happened, to the following day." But mark, that notwithstanding an interruption of that kind, "the poll shall be kept open for seven hours in the whole, and no more;" showing clearly that the intention was that the poll should continue for seven hours only, and no more, if interrupted by any of the causes mentioned in the 63rd section of the Act; and that the final closing of the poll is to take place the moment the minute-hand of the clock indicated that the hour of 4 had arrived. That, I apprehend, to be the meaning of the Act. I can only submit to the Committee that, if the poll is to be kept open for a minute, or two or three minutes, after the hour of 4 o'clock, there is no reason why it should not be kept open for several hours. The final closing of the poll means that no vote can be taken after the minute-hand has reached the hour of 4 o'clock, even though the voter should have entered the polling booth before the hour had elapsed. But, taking the evidence before us, such as it is, assuming that the statements of the Returning Officer are correct, that the vote was not given until after 4 o'clock, I apprehend that the Legislature did not intend to entrust the Returning Officer with any discretion whatever, in regard to the admission of votes after the hour of 4 o'clock. I have only the language of the Act to submit to you, and that language is only susceptible of the meaning that, when the hour of 4 has arrived, no vote can be recorded at the election.

*Mr. Allan*: I submit that this vote would be properly received. In the first place, it is clear that the elector was there before 4 o'clock.

*Mr. Gillies*: That is not the question.

*Mr. Allan*: Well, in this case it does not appear that the poll was closed. The Returning Officer does not say that the hour had arrived.

*The Chairman*: That is a matter of fact; all the Committee wish you to address yourself to, is this: admitting that the clock had struck four, and that the elector tendered his vote after that hour, and it was received, was that valid or invalid?

*Mr. Allan*: If the poll had not been closed, it was for the Returning Officer to ascertain that the hour of 4 o'clock had arrived or not. If that hour has arrived, he closes the poll; and having done so, he can refuse to accept any vote after that time. It is evident, from the affidavit, that the poll had not been closed.

*The Chairman*: The Committee wish Counsel to confine themselves to the simple question—admitting that it was 4 o'clock—whether a vote tendered after that was valid or invalid.

*Mr. Allan*: I say, if the poll had not been closed, and the vote had been accepted, that the vote cannot be affected. If 4 o'clock has arrived, and the Returning Officer keeps the poll open, a vote given then is properly received.

*Mr. Gillies*: Do you contend that, supposing the Returning Officer had chosen to receive votes up to 6 o'clock, those votes would have been good?

*Mr. Allan*: I should say that they would be good; because the Returning Officer had not closed the poll.

*Mr. Gillies*: Have you any authority for that?

*Mr. Allan*: No authority. There is a case in one of the recent reports, where it was said that some objection had been taken, but nothing came of it. I do not think the reports are here.

*Mr. Travers*: I submit that the power of the Returning Officer to accept a vote has gone; he has no discretion whatever. The closing of the poll is not the shutting of the doors, or anything of that kind; but, *ipso facto*, his power to accept a vote after 4 o'clock is gone by Statute.