

election, a person of the name of James Hagan, not being a registered elector, and not qualified to vote at the said election for the said district, did knowingly personate and pretend to be the James Hagan on the electoral roll for the said district, No. 363, and did falsely assume to vote, and did tender his vote, as such James Hagan, and did vote as such James Hagen, for the said Sir David Monro." In order that the Committee may clearly understand the absolute interest and meaning of that allegation, it will be necessary for me to refer them to the particular Statute under the provisions of which that allegation is inserted into the petition. The Committee will observe that the prohibition is not to be found in the Corrupt Practices Prevention Act at all, but is to be found in a penal clause in "The Regulation of Elections Act, 1870." It is not, I say, one of the causes enumerated in the Corrupt Practices Prevention Act in reference to which a petition may be presented against the return of a Member, but occurs in what is strictly a penal section introduced into the Regulation of Elections Act, and which, as I submit to the Committee, can only affect the individual who commits a breach of that section, and who thereby becomes guilty of an offence within its terms and meaning. The section in question enumerates a number of offences for which severe penalties are imposed, and amongst them is the offence of personating an elector. It is coupled, for example, with the falsely answering any question put to a voter, or falsely making a declaration on any matter connected with the election. It would hardly for one moment be contended that a false declaration, or falsely answering questions put by a Returning Officer, would affect the return of a Member; it would affect the individual who gave the false answer or who made the false declaration, because it subjects him to extremely severe penal consequences—the penal consequences which usually follow upon a conviction for perjury. Personating an elector is placed precisely in the same category.

I will now call the attention of the Committee to the express words used, because they are extremely important in connection with this inquiry—extremely important when they are taken in connection with the duties of this Committee as defined by the Statute;—namely, to inquire into and determine upon the truth of the specific allegations contained in the petition, and upon no other ground whatsoever. The language of the 50th section of "The Regulation of Elections Act, 1870," in connection with the charge in the petition, is as follows:—"or shall personate any elector for the purpose of voting at any election." Now, the meaning of the word "elector" is to be found in the 35th section of "The Registration of Electors Act, 1866," which is as follows:—"The said copy so to be signed and kept by the Returning Officer for his own use shall be the electoral roll of persons entitled to vote at any election." The elector, therefore, whose name appears upon the roll is defined to be "a person entitled to vote at any election;" and that is the same definition which is given in the English Statutes upon the subject. That definition is somewhat important in connection with the present charge; for the charge is that one James Hagan "did knowingly personate and pretend to be the James Hagan on the electoral roll," "and did falsely assume to vote" as such James Hagan, "and did vote as such James Hagan." Now, the circumstances, as shown by the evidence, do not constitute a case of personation at all; and it is, as I humbly submit to the Committee, purely a charge of personation which they are now investigating in connection with the vote of James Hagan. Had the petitioner charged that one James Hagan, not being a duly qualified elector, had voted at the said election, then the allegation might have been sustained; but the allegation is not that; the charge made is a distinct charge—distinct, as the law requires that it should be distinct—specific, as the law requires that it should be specific—that he knowingly personated and pretended to be James Hagan, *an elector*. Now, I apprehend that this Committee will not, although they are by no means bound by the views taken by the most eminent Judges of England; upon a point of this kind altogether ignore the opinion of the men who occupy the bench in England, and although, as it will seem on looking into the cases to which I intend to refer, they may be found to have been decided upon the narrow ground of the language of the Statutes, yet I apprehend that this Committee will not ignore them. Indeed, I submit that this Committee has no more power or authority to alter the meaning of the language used by the Legislature than the Judges to whom is delegated the duty of interpreting those Statutes in their judicial capacity. Now, a case involving the very point in question was argued before the Court of Queen's Bench in the year 1868, and is reported in the Law Journal Reports, vol. xxxviii.—the case of *Whiteley v. Chappell*. It was a case of personation, and the language of the Statute giving rise to that case was almost the same as that of the New Zealand Statute:—"By 14 and 15 Vict. c. 105, s. 3, if any person, pending or after the election of any guardian, shall wilfully, fraudulently, and with intent to affect the results of such election personate any person entitled to vote at such election, he shall be liable on conviction by two Justices to three months' imprisonment:—Held, that the section makes no provision against the offence of personating a voter who is dead at the time of the election, as the offender cannot be convicted of personating any one 'entitled to vote' at the election.

The language of Mr. Justice Lush, in giving judgment on the case, is this: "I am of opinion that we cannot, without straining the words of the Act to a point further than we are justified in going, bring this case within the penal section. It may be that the framers of the Act would have done well to have extended it so as to have included an offence like the present one. But we are bound to apply the words of the Statute, which are these, "that if any one shall personate any person entitled to vote at such election, or falsely assume to act in the name or on behalf of any person so entitled to vote," he shall be liable to the penalty. Now, these words must mean a person entitled to vote at the time of the election, and here the voter personated was dead at the time of the election and could not be considered a person "entitled to vote." In the case of the *King v. Martin*, the words of the Act were, "entitled or supposed to be entitled;" and the case seems to have entirely proceeded upon the words "supposed to be entitled," which are not in the Statute before us, so that the case has really no application. The language of our section is nearly the same; and I submit to this Committee that it would involve one of the gravest possible absurdities if this Committee were to decide that the fifth allegation had been proved, containing, as it does, a distinct charge that James Hagan did wilfully and falsely personate an elector when that person is proved to have been dead some years previously. If James Hagan had been indicted for the commission of that offence he would necessarily have been acquitted upon the language of the Statute, and I submit that in such a