

Mr. Travers.
19th. Sept., 1871.

case it would amount to an absurdity if this Committee should decide that the fifth allegation in the petition had been proved.

There is another case to which I will call attention, and which comes very much nearer to, and is indeed very much like, the case now under investigation,—it is the case of *Regina v. Goodman* (vol. i., F. and F. Reports, p. 502): “This was an indictment for untruly answering one of the questions put to voters at a municipal election, under section 34 of the Municipal Corporation Act. The defendant’s father, William Goodman, had been a burgess of St. Albans, and those names remained upon the overseer’s lists; but he had been absent from home for a considerable time. The son, the defendant, was also named William, resided at the same house, and paid the parish rates, &c. At a municipal election, the defendant offered to vote, and being asked, ‘Are you the person whose name appears as William Goodman on the burgess roll now in force?’ answered ‘Yes.’ There was only one ‘William Goodman,’ on the roll. Ballantine, Serjt., objected that there was no case; and Wightman, J., so held and directed, that the defendant should be acquitted.”

There we have William Goodman who never claimed to be on the list answering the question that he was the William Goodman whose name appeared upon the roll, and yet it was decided that there was no case of personation made out against him, and he was accordingly acquitted. Now, that case is in that respect, on all fours with the case before the Committee; for although James Hagan did, in his evidence, distinctly state that, at the time he exercised the franchise, both at this election and at other elections, he knew that he was voting in respect of his father’s name placed upon the roll, he also swore that he fully believed that he was entitled to do so, and that the vote had descended to him, or passed to him in right of the portion of the property which had been devised for his benefit. He appears to have acted, as I submit to the Committee, with perfect *bona fides*, and was not knowingly, unlawfully, and fraudulently—for it must amount to that, personating his father; but that he *bona fide* voted under the impression that he had a right to do so. But whether he did or not, whether it was *bona fide* or not, it is perfectly clear that in the eye of the law, and within the terms of the penal section of the Statute under which this charge is made in the petition, James Hagan was not guilty of the offence of personation—that he would be entitled upon the facts to be at once acquitted if placed upon his trial; and I submit that, upon the same facts, this Committee ought not to decide that the allegation of the petition is proved; for, as I before remarked to the Committee, this is not one of the cases referred to at all in any words in those Acts which relate specially to controverted elections, but comes within a certain class of offences in the same category as that for which William Goodman was placed upon his trial before Mr. Justice Whiteman. The language of our Act is exactly the same. (Quotes section 50 of “The Regulation of Elections Act, 1870.”) The charge here made, is one which is joined with a number of other charges, and could not possibly affect the result of the election; it is merely included as one amongst many in a penal section of the statute, not having special reference to questions to be raised before a Committee upon a controverted election.

I will now refer to the fourth allegation in the petition:—“That numerous persons, not being registered electors, or qualified to vote at the said election, illegally voted for the said Sir David Monro.” Now, Sir, I apprehend that is a very general and vague allegation; and the whole of the evidence of Hagan, and the whole of the evidence in connection with Tomlinson, would point to cases of personation, and not to this allegation at all. Incidentally, of course, it appeared that Hagan and Tomlinson, not being on the roll, had given their votes; but there is nothing in that allegation of so specific a nature as would give us notice that the votes were to be objected to upon that ground. I submit to the Committee that there is no such specific allegation here as would justify my friend in applying the evidence given to the particular allegation (No. 4) in the petition. This allegation is simply referable to the prayer of the petition, demanding a scrutiny, which, of course, this Committee has no power to make. The 11th section of the petition is: “That, by reason of the premises, and other irregularities and illegal proceedings, the said Sir David Monro obtained the said apparent and colourable majority over your petitioner, whereas the majority of legal votes was in favour of your petitioner; and the said return is illegal and erroneous, and ought to be corrected and amended, or the said election declared void.” In addressing myself specially to these two sections of the petition—sections 4 and 11—which refer to alleged illegally given votes, and to the circumstance that an “apparent and colourable majority” was obtained by Sir David Monro, whilst the real majority was in favour of the petitioner, I propose to call attention to a variety of clauses in “The Regulation of Elections Act, 1870,” relating to the mode in which the election is to be conducted, and the mode in which the majority of votes is to be ascertained. In the first place, the mode in which the voting is carried out is regulated by section 26, which declares that “after a poll shall stand appointed for any election, the Returning Officer shall cause ballot papers to be printed,” and so forth, and declares that “the directions in the said Schedule shall be of the same force as if they had been provisions contained in this Act.” Among the directions in the Schedule, we find that the voter must be careful not to leave uncancelled the names of more than the number of members to be returned, or the ballot paper will be invalid. I apprehend that the true meaning of the words, “or this paper will be invalid,” is, that the vote given must be rejected; that the paper would not be treated as a paper properly used at the election. The 45th section of the Act provides that, if any elector records more than the legal number of votes at any election, his vote is to be rejected. Moreover, if on going over the electoral rolls which have been used at the various polling booths, the Returning Officer finds that more than one vote has been recorded in the name of any particular elector, the papers upon which those votes are recorded are to be selected and set aside, and those votes are not to be taken into account. None of the votes given under the foregoing circumstances are to be taken into account in computing the number of votes given for any particular candidate. We have, then, several contingencies which could lead to the rejection of the voting papers. The contingency of the name not being properly obliterated; the contingency of a duplicate vote; the contingency of more than one vote being recorded for a candidate by the same individual, that is to say, going to several booths and voting again, or personating an elector who also votes, or improperly striking out the name; and there may be a variety of other contingencies which, upon scrutiny, would induce the Returning Officer to reject any particular votes which may have been so recorded. The maxim of law is, that where an individual is intrusted with