

*Mr. Travers.*

19th Sept., 1871.

the performance of a judicial duty, then, in the absence of any proof that he has not performed it duly and properly, we are to assume that it has been duly and properly performed. Now, Sir, I ask this Committee, what evidence have they that the vote of James Hagan was ever taken into computation in ascertaining the number of votes given for Sir David Monro? I find here a bundle of unused ballot papers; I find a bundle of papers set aside as incorrectly erased at the election; I find here a bundle of papers used at the election, no doubt containing the separate packages used at the various polling booths; and I ask the Committee, have they any evidence whatsoever that the Henry Tomlinson, who is alleged to be on the roll, did not vote at that election, and that the two papers were not set aside as duplicate votes? What evidence have we that those votes have not been rejected on the computation? Is the Committee possessed of a scintilla or tittle of evidence on that point? Why was not Henry Tomlinson, the true voter, called here to say that he did not vote. No, my friend did not call him. The probability is, that Henry Tomlinson would say that he had voted. The Committee have no proof that the papers had not been set aside as papers indicating duplicate votes. I submit to this Committee that there is not one scintilla of evidence before it, that either that one or the paper purporting to have been used by James Hagan, was ever taken into computation in ascertaining the number of votes given for Sir David Monro. My friend never ventured to ask that that paper should be produced from that bundle; he was content to allow the matter to be slurred over, in the hope that this Committee would assume, as a matter of course, that Tomlinson and Hagan's votes were taken into the computation of votes. I say the Committee have not a tittle of evidence before them that such was the case; not a tittle of evidence to show that the name was properly obliterated; that the paper was not set aside; that it is not among the papers rejected; not a tittle of evidence to show how the numbers arrived at by the Returning Officer when he went over the roll were ascertained. Although we called the Returning Officer, my friend never ventured to put the roll into his hand and ask him whether James Hagan was one of those who voted for Sir David Monro, and whether the vote was taken into computation when the number of votes was ascertained. The papers are sealed up now; not open to this Committee; not tendered in evidence. The evidence in this case is closed. Not a single scintilla of evidence has this Committee before it that these papers were used properly by the parties who pretended to vote; no evidence that these votes were ever taken into computation in ascertaining the majority. No question was submitted, and no evidence called to prove that fact. All that my friend was content with was, the declaration of James Hagan, that he went and voted for Sir David Monro. Whether his vote was properly recorded and taken into computation or not, we have no evidence. For aught we know, he might have obliterated the name of Sir David Monro, and the vote might have been counted for Mr. Parker. The Committee, then, have not before them the necessary evidence for deciding this question, and if a decision is arrived at adverse to my client, I submit that that decision must be arrived at upon a bare assumption, and in the absence of that evidence which the law has clearly and distinctly provided should be the evidence to be used, and which my friend ought to have used. He ought to have asked the Chairman to order those papers to be opened and placed before the Committee, in order that they might see with their own eyes, and not be compelled to rest on the mere assumption that the paper had been properly used, and that the vote had been actually taken into computation in determining the number of votes for Sir David Monro. We know that Henry Tomlinson deposited his paper, but we also know that he is an illiterate man, unable to read or write. We have no proof that any specific directions or instructions were given to him when he went to the poll. We have nothing whatsoever here now to show that he obliterated his paper in such a manner as that his vote should be so recorded.

I would ask this Committee to pause before coming to a conclusion in an inquiry of this kind, which not merely affects the seat of Sir David Monro, in itself a matter of importance, but which must necessarily establish a precedent for guidance in future cases. I am not going to draw any comparison whatever between two candidates. It is not my place to do so; it would be unbecoming on my part to attempt to draw any comparisons between the two gentlemen who contested that election; but nevertheless, I may say, it is a matter of importance, looking to the position which Sir David Monro has occupied in the Legislature of New Zealand for a large number of years, that his seat should not be declared void, unless upon clear and unmistakeable evidence, sufficient to satisfy the consciences and the oaths of the Members who constitute this Committee. Sir, I venture to assert to the Committee, that beyond a bare assumption, they have no evidence before them to indicate in the slightest degree that in the computation of the votes which were taken on that occasion, the votes of Hagan and Tomlinson were taken into account. It would have been very simple for my friend, when the Returning Officer was here, to have asked the Chairman to have open the bundle of papers and rolls used at the election, and to have asked the Returning Officer to verify the circumstances upon which he relied, by showing that the votes of Hagan and Tomlinson were taken into the computation on that occasion, and that the papers they used were not in the rejected papers in that parcel. But, I repeat, that the Committee had not before them one single tittle of evidence that these papers were ever used in the manner in which my friend wishes the Committee to assume that they were used; and I would respectfully submit, therefore, that the Committee have before them no evidence whatsoever that in this computation any one of these votes was taken into account. There is nothing to show that the Henry Tomlinson who does appear on the roll of Waimea West did not record his vote upon that occasion also, and that the two votes were not rejected as being duplicate votes. The onus of proving that lay with my friend. The fair inference is, that he dare not call before the Committee the Henry Tomlinson who is said to have been personated. He had the opportunity of calling him here to prove that he had not exercised the franchise on the occasion in question. No; my friend is a great deal too shrewd in these matters to be caught in a trap of that kind. He prefers to risk the charge of omission to the greater risk which he must have encountered had he brought the real man here, for in all probability he would have sworn that he too voted, and that the inference would necessarily be that the papers had been rejected. I submit to you that those papers may now be lying there, and the paper of Hagan may be lying there, as one insufficiently admitted.

Mr. Chairman and gentlemen, I do not wish to weary you by addressing you longer upon this point. If the position I have just taken be at all well founded, I apprehend the Committee, however