

Mr. Travers.  
19th Sept., 1871.

they may be satisfied that James Hagan is not the James Hagan who voted, and was not upon the electoral roll; however, they may be satisfied that one Henry Tomlinson who voted was not upon the electoral roll; they have not before them that sufficient evidence which could enable them, consistently with the provisions of the law, to decide in what manner the majority of votes was made up. They have not a tittle of evidence to show that the votes which these men stated they recorded were so recorded, or that they were taken into computation by the Returning Officer when he made up the total number of votes. It must be borne in mind that the Returning Officer only makes up these votes from the electoral rolls produced by the Deputy Returning Officers. He does not examine the papers; he has no cognizance of the number of papers rejected at all. All he can do is to take the return presented to him by the Deputy Returning Officers, who each seals up his own individual packet. The Returning Officer does not look at these papers; he takes the numbers given to him. The Deputy Returning Officer makes up the separate bundles, and the Returning Officer merely checks the number of persons who appear to have voted upon the roll. He does not inquire whether the vote of A. B. or C. was rejected; all he satisfies himself of is that so many votes at each booth had been given or rejected, so that my friend ought, in order to complete his case, to have called all persons connected with that election, to show that in making the computation these particular votes of which he complains were improperly taken into account. It does not even appear that the Returning Officer, by whom these papers were sent, performed his duty in sending these packages sealed, as the law requires. I would, therefore, respectfully submit that in this case, the petitioner has entirely failed in doing more than establishing a *prima facie* case that Henry Tomlinson and James Hagan were persons who, in strict law, were not entitled to vote. He has not shown in any degree that their votes, although they swore that they did vote for Sir David Monro, were so recorded as to be taken into computation in determining the majority at the recent election.

*The Chairman*: Why can the Committee not open these papers?

*Mr. Travers*: I submit that the Committee has no power whatever to do so. The case is now closed, as regards the evidence; and the Committee would be violating every rule relating to evidence, if they now, at the close of the case, were to allow my friend to supplement the evidence, because I have pointed out a grave mistake in his case. The Committee would not be justified in opening these papers; they have not been transmitted according to law.

*Mr. Allan*: They are put in evidence and received.

*The Chairman*: I want to understand your objection, Mr. Travers; I want a specific answer to the question: what is it that prevents the Committee from opening these bundles?

*Mr. Travers*: The objection is this: The Committee has no power whatsoever to do so; the Act does not authorize the Committee to open any bundle at all. The Act specifies that the bundles are to be transmitted to the Clerk of the House of Representatives, and they are only to be opened by command of a competent Court. Section 62 of the Act says: "If any person shall knowingly and wilfully break the seal of or open any such sealed parcel or sealed packet as aforesaid unless he be by the lawful command of some competent Court or other tribunal required so to do or called upon to produce some portion of the contents of such parcel or packet he shall be guilty of a misdemeanour."

*Mr. Bunny*: Read section 61.

*Mr. Travers*: That section only provides that the papers are to be evidence when properly taken from the bundles and endorsed. The Committee have no power to take them. All the Committee can do is to order the Clerk of the House of Representatives to open the papers. He is the person who should open the papers. The remaining portion of clause 62, is: "Provided always that as to any parcel or packet containing ballot papers set aside or selected and set aside under the provisions of this Act it shall be lawful for the Court to direct any person to open any such packet or parcel and extract any ballot paper therefrom." All the Committee, as a judicial tribunal, can do is to order the Clerk of the House of Representatives to open the papers. I apprehend that the papers should have remained in the custody of the Clerk of the House of Representatives throughout this inquiry, under section 60 of the Act. The Committee has no power to take them out of his custody. They might call the Clerk before them, when they required the papers to be produced, and order him to abstract from the bundles any special papers which may be duly called for. And when it is abstracted, what is to be done? That paper cannot be used until the Clerk has endorsed upon it, under his hand, a certificate that the strict requirement of the Statute, in regard to the transmission of the papers, has been complied with. The paper itself is not evidence until that endorsement has been made by the Clerk of the House of Representatives.

*The Chairman*: When the papers are handed over to this Committee, the Clerk of the Committee is the proper custodian of them.

*Mr. Gillies*: No; that is not the case.

*Mr. Travers*: The papers are to be sealed and to be in the possession of the Clerk of the House of Representatives for a period of two years. The Court or Committee may order that the papers be opened, but it will not look at any one of those papers unless it has indorsed upon the certificate, under the hand of the Clerk of the House of Representatives, that the requirements of the Statute have been complied with. The bundles are there, as bundles in evidence, of what? Of the facts indorsed upon them, and nothing more; not a single paper is here in evidence before the Committee; nor has the Committee any power whatsoever to open those papers, or to look at a single one of them as evidence in this case. They are only evidence when the following provisions of the law have been complied with: "Any ballot paper and any copy of a roll, and any book purporting to be taken from any such parcel as aforesaid, and having written thereon respectively under the hand of the Clerk of the House of Representatives for the time being a certificate of the several particulars hereby required to be indorsed upon such a parcel, and that the same was so taken from such parcel, shall be evidence in any Court of justice, or before any Committee of the House of Representatives that the same was so taken." Therefore, until the requirements of the Statute have been complied with, not a single document in those parcels can be looked at by this Committee; and it would be going beyond all the rules applicable to the decision of cases, for the Committee to attempt to supplement the evidence of my friend, when he