

had it in his power to give that evidence himself, by now opening these papers, and I submit that it would be entirely inconsistent with the provisions of the law.

*Mr. Allan* : Sir, I am here in support of the petition, and I propose to address but a few words to the Committee in reply. The Committee of the House of Representatives have been addressed as if they were a common jury, and a common jury not of the highest class—

*Mr. Allan.*

19th Sept., 1871.

*Mr. Travers* : My friend has no right to assume that I have acted in a manner—

*Mr. Allan* : I assume nothing.

*Mr. Travers* : If I addressed the Committee in the manner characterized by my friend I should be open to rebuke ; but my friend has no right to assume that I have addressed the Committee, as Members of the House of Representatives, in the manner or character of a jury of a low class. I must ask, Mr. Chairman, that you will be good enough to protect me upon that point. If I have acted so it was unintentional.

*The Chairman* : There was nothing whatever objectionable to the Committee.

*Mr. Allan* : If my friend considers it a reproach, I may say that I did not make any reproach at all. I contend that the Committee of the House of Representatives have been addressed as if a man was being tried for an offence which was a statutory offence. They have been addressed as if James Hagan and Henry Tomlinson were upon their trial for personation, and the questions at issue were, whether the words of the Act had been strictly pursued in the framing of the indictment, and the crime charged had been strictly proved. But I maintain that those are not the questions before this Committee. The investigation is whether, so to speak, the privileges of the House have been impugned ; that is : whether the votes of certain persons who have come here, and upon their own statements have declared to you that they have no right to vote, are to be allowed, and whether the sitting Member is to claim the seat on suffrages which he had no right to receive. That is the only question the Committee have to determine. It is not as if a man was being tried, and an objection was taken to the wording of the indictment ; but it is : has Sir David Monro any right to these two votes which have been admitted to have been recorded for him and taken into consideration—

*Mr. Travers* : No.

*The Chairman* : I think Mr. Travers' point was, that you have not shown that they were taken into consideration ; that they were rejected.

*Mr. Allan* : That has been admitted throughout.

*Mr. Travers* : I most distinctly state that I never admitted anything of the kind.

*Mr. Allan* : I applied at the time to have the parcels opened, and it was said that it was unnecessary.

*The Chairman* : It is admitted that they voted for Sir David Monro.

*Mr. Allan* : When interrupted, I was stating that the question the Committee had to consider was, whether these votes had been given, and whether we have shown that the votes were improperly allowed. In the first place, we have in the Election Petitions Act a statement to the effect that every petition must be tried according to its merits, and upon its merits the case is to stand or fall. In the Regulation of Elections Act there is a provision to the effect that if any person shall personate an elector he shall be deemed to be guilty of misdemeanour. In Committees of the House of Commons there has always been a distinction taken, and admitted, between a statutory offence and an offence as against the privileges of the House, or the offence of a man voting for a person who has no right to vote. Now, what is the evidence before you ? The evidence of both Hagan and Tomlinson is, that they had no right to vote. Hagan tells you that he knew it was his father's qualification ; that he had no qualification himself, and that he never applied to have his name put on the roll. Tomlinson tells you that he had never the qualification on the roll on which he voted. It is clear, therefore, that Hagan knew that he had no right to vote ; and it is also clear, from his own statement, that he voted in the name of a person who was on the roll, and whose vote he had no right to assume. Now, take the case of Tomlinson. He says that he voted, and that he discovered afterwards that he had no right to vote, and that he was not the Henry Tomlinson on the roll. You have two clear cases of persons voting in the name of others, when they had no right to vote. I say, therefore, that upon the petition these votes should be disallowed. The petition alleges, "That numerous persons, not being registered electors or qualified to vote at the said election, illegally voted for the said Sir David Monro. That at the said 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, number 363, and did falsely assume to vote, and did tender his vote as such James Hagan, and did vote as such James Hagan for the said Sir David Monro." The two cases cited by my friend were not cases before the Imperial Parliament ; one was an action for penalties under a Borough Statute, and was therefore a proceeding in the nature of a penal action, and the Court of Queen's Bench had to decide whether the offence came clearly within the words of the Act which made it a penal offence ; they decided that it did not, the defendant therefore was not liable, and could not be mulcted in the penalty. Even assuming that the same strict construction is to be applied in the present instance, the words in our Statute are "personating an elector ;" and therefore, whether the man knowingly intended to personate or not, if he does personate, that would be a statutory offence, and would be punishable. The petition says that Hagan and Tomlinson did knowingly personate and pretend to be the persons of the same name on the roll. The evidence in support of that allegation ought certainly to be admitted, as establishing the charge of personation. Personation, in a Parliamentary sense, is a case where a man votes in the name of another. There may be certain ingredients which may not make it a statutory offence, rendering him liable to punishment, but which would be sufficient to justify the vote being struck out as illegal. To show that he is not the voter on the electoral roll is quite sufficient. It is not essential that you should give particulars in your petition. That has been recently decided in a case in England. You may afterwards state your particulars. It has been shown that Tomlinson illegally voted ; that is, he personated an elector ; and, although it might not appear that he knew at the time that he was not the Henry