

REPORT

OF

THE SELECT COMMITTEE

ON

THE MOTUEKA ELECTION PETITION;

TOGETHER WITH

MINUTES OF PROCEEDINGS AND EVIDENCE.

REPORT BROUGHT UP 20TH SEPTEMBER, 1871, AND ORDERED TO BE PRINTED.

WELLINGTON.

—
1871.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, THE 23RD DAY OF AUGUST, 1871.

Ordered, That the Motueka Election Committee have leave to adjourn till the 5th of September next, for the purpose of enabling the petitioner to obtain material witnesses from the Province of Nelson.

A true extract.

(On motion of Mr. Brandon.)

F. E. CAMPBELL, Clerk of House of Representatives.

TUESDAY, THE 5TH DAY OF SEPTEMBER, 1871.

Ordered, That the Motueka Election Committee be allowed to adjourn till Thursday, the 7th instant, at 10.30 a.m.

A true extract.

(On the motion of Mr. Brandon.)

F. E. CAMPBELL, Clerk of House of Representatives.

TUESDAY, THE 11TH DAY OF SEPTEMBER, 1871.

Ordered, That leave be given to the Motueka Election Petition to adjourn until the 18th instant.

A true extract.

(On the motion of Mr. Brandon.)

F. E. CAMPBELL, Clerk to House of Representatives.

REPORT OF THE MOTUEKA ELECTION COMMITTEE.

THE Committee to whom the Petition of Charles Parker against the return of Sir David Monro as Member for the District of Motueka, in the Province of Nelson, was referred, beg to report as follows :—

- (1.) That Sir David Monro was not duly elected as Member for the District of Motueka.
- (2.) That Charles Parker, Esquire, was duly elected and ought to have been returned as Member for the District of Motueka.

A. DE B. BRANDON,
Chairman.

20th September, 1871.

PROCEEDINGS OF THE COMMITTEE.

MONDAY, 23RD AUGUST, 1871.

The Committee met pursuant to order at 10 o'clock a.m.

PRESENT :

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,

Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

The petition was read.

Mr. Allan, counsel for petitioner, being asked by the Chairman on what allegations in petition he proposed producing evidence, stated, that he should confine himself to the cases of personation by Hagan and Tomlinson, and the bribery and treating.

Mr. Travers objected to the jurisdiction of the Committee, and submitted that the Committee is not legally constituted, and referred to clauses 19 to 25, both inclusive, of "The Electoral Petitions Act, 1858."

Mr. Allan then asked for an adjournment until 5th September next, for the purpose of obtaining necessary witnesses from the Province of Nelson in support of the petition.

Mr. Gillies moved, That the Chairman do apply to the House for leave to adjourn the Committee until 5th September next, for the purpose of enabling petitioner to obtain material witnesses from the Province of Nelson.

Agreed to.

The Committee then adjourned till 2 o'clock p.m., to-morrow.

THURSDAY, 24TH AUGUST, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Hon. Mr. Fitzherbert,
Mr. Pearce,

Mr. Studholme.

Mr. Brandon in the Chair.

The Chairman reported that he had applied to the House for leave to adjourn the Committee until 5th September next, in accordance with the resolution passed yesterday by the Committee, and that the House had granted leave.

The Committee then adjourned till Tuesday, 5th September next, at 10 o'clock a.m.

TUESDAY, 5TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

Mr. Allan handed in a list of voters intended to be objected to, with grounds of objections.

Mr. Ollivier appeared before the Committee, and on behalf of Mr. Travers, counsel for Sir D. Monro, applied for a further adjournment, on the grounds that Mr. Travers could not attend, being engaged in a trial for murder at the Supreme Court, nor would he be able to attend till Thursday.

Mr. Allan offered no objection to application, but would ask that, if his client was put to extra expense by detention of his witnesses, it be borne by the other side.

The Counsel and others withdrew, and the Committee proceeded to consider the application of Mr. Ollivier.

Question put, Whether the Committee assent to the application.

On the question, Committee divided.

*For, 4.*Mr. Brandon,
Mr. Gillies,
Mr. McGillivray
Mr. Pearce.*Against, 3.*Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Studholme.

The question was therefore carried.

The Committee having assented to the application, subject to the leave of the House, the Chairman was directed to apply for leave from the House to adjourn till Thursday next, at half-past 10 o'clock.

The parties having been called in, they were informed by the Chairman that the Committee had agreed to accede to the application of Mr. Ollivier, subject to the leave of the House being obtained.

The Committee then adjourned till half-past 10 to-morrow, subject to the leave of the House being obtained for further adjournment till half-past 10 o'clock on Thursday.

THURSDAY, 7TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

The Chairman informed the Committee that the leave of the House had been obtained for the adjournment, as agreed on at last meeting.

The Chairman suggested the adoption of the following rules for the guidance of the Committee, which were agreed to :—

1. That Counsel shall not be allowed to go into matters not referred to in their opening statement without a special application to the Committee for permission to do so.

2. That if costs be demanded by either party under 11 and 12 Vict. c. 98, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.

3. That the Committee expect that, with respect to cases of bribery, or offers or promises of money, or other valuable consideration, which it is intended to bring home to the sitting Member or his agents, the Counsel for the petitioner will now state the name of the elector bribed, or to whom such offers were so made, and those of the persons who actually gave the bribes or offered to do so.

4. The Committee, however, reserve to themselves a power, upon the special application of Counsel, to proceed with any case which tends to inculcate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, with the circumstances of which the parties could not reasonably be supposed to have been previously cognizant.

5. That with respect to treating, the Committee will expect Counsel to state the times and places where such treating is alleged to have taken place.

6. That no person shall be examined as a witness who shall have been in the room during any of the proceedings with the exception of the agents, the sitting Member, and the petitioner, without the special leave of the Committee.

7. That the Committee will only allow one Counsel to address them on opening the case, and one counsel on the summing up.

8. That if any point of law should arise requiring argument, the Committee reserve to themselves the power of only hearing the Counsel on each side.

9. That if the leading Counsel are not prepared to sum up the case on either side when the evidence is terminated, the Committee will not protract the proceedings for the convenience of Counsel who may be absent.

10. That with respect to objected votes the Committee expect Counsel to exhaust one class of objections before proceeding to another.

Mr. Allan appeared on behalf of the petitioner, and requested that the Clerk of the House of Representatives produce all papers in his possession connected with the late election for the District of Motueka.

Major Campbell, Clerk to the House of Representatives, handed in to the Committee four packages, which were marked A, B, C, and D, respectively, and signed by the Chairman, and stated they were received from the Returning Officer at Motueka.

The Chairman: Did you receive those packages in the usual manner?—Yes. I received them through the Post Office.

Are these packets in precisely the same condition as when you received them?—Yes; the packets are precisely in the same condition as when I received them, on the 3rd March, 1871.

Major Campbell here stated that he had observed in one of the morning papers a report of last meeting, in which Mr. Allan was reported as saying that "he had found difficulty in getting those papers from the unwillingness of the Clerk of the House to produce them." Major Campbell further stated that, as Clerk of the House, he could not furnish the papers without being summoned to do so by competent authority, and that otherwise he had no possible personal feeling in the retention or delivery of the papers.

Mr. Allan here explained that what he meant by his remarks to the Chairman at the last meeting was, that without the summons he applied for, the officers in charge of the papers could not deliver them up.

The Committee expressed themselves as perfectly satisfied that there was no unwillingness on the part of Major Campbell to produce the papers asked for, and that he had only acted in accordance with his duty.

Major Campbell then withdrew.

Mr. Allan addressed the Committee in support of the petition.

Mr. Allan called Mr. G. S. Cooper, Clerk of the Writs, who appeared before the Committee, and produced the writ of election, with the return indorsed thereon. This officer also complained of the remarks of Mr. Allan at the late meeting, as reported.

The Committee expressed themselves as satisfied with the course pursued by Mr. Cooper.

Mr. Cooper retired.

Mr. Allan called the petitioner, Mr. Parker, who was sworn by the Chairman, and being questioned by Mr. Allan, stated: I am the person whose name appears on the roll of the Electoral District of Motueka, No. 178. I was one of two candidates for election for the District of Motueka at the last election. Sir David Monro was the other candidate. There were 193 votes for each, and the Returning Officer gave his casting vote in favour of Sir David Monro. I voted for myself.

Mr. Allan then called Mr. William Bell, who was examined by Mr. Allan, and cross-examined by Mr. Travers, after being sworn by the Chairman, and duly cautioned that he was not bound to state anything that might tend to criminate himself.

This witness's evidence was taken down and ordered to be attached to the proceedings.

The Committee adjourned until to-morrow.

FRIDAY, 8TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT:

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,

Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

A short-hand writer attended, and took down the proceedings at length.

Mr. Allan called Diedrich Bosselmann, who was duly sworn and examined.

During the examination of this witness the room was cleared, for the purpose of enabling the Committee to consider in private what evidence was to be admitted before them.

The Committee deliberated, and agreed that the Counsel should confine themselves to strict rules of evidence, and any question outside those rules should, if necessary, be put by the Chairman.

The parties were called in, and Counsel being informed of the decision arrived at by the Committee, Diedrich Bosselmann's examination was continued.

This witness withdrew.

Mr. Allan called Frederick Ducker, who, being duly sworn, was examined through an interpreter. This witness withdrew.

Mr. Travers addressed the Committee, and submitted that no *prima facie* case had been made out.

Mr. Allan opposed this, and addressed the Committee in support of petitioner's case.

The room was again cleared, for the purpose of deliberating on the proceedings.

The Committee deliberated, and adjourned till 10:30 a.m. to-morrow.

SATURDAY, 9TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT:

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,

Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

A short-hand writer attended.

The examination of witnesses was continued.

Johann Henry Sixtus appeared before the Committee, was duly sworn by the Chairman, and after being examined by Mr. Allan, and cross-examined by Mr. Travers, withdrew.

The Committee here adjourned for a quarter of an hour.

When the Committee resumed, Frederick Ducker appeared before it, and was examined on his former oath by Mr. Allan.

After being cross-examined by Mr. Travers this witness withdrew.

William Bosselmann was then called by Mr. Allan, and examined by him, and cross-examined by Mr. Travers.

At the conclusion of this witness's examination, the Committee adjourned till half-past 10 on Monday next, the 11th instant.

MONDAY, 11TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,

Mr. McGillivray,
Mr. Pearce,
Mr. Studholme,

Mr. Brandon in the Chair.

A short-hand writer attended.

James Hagan appeared before the Committee, and, being sworn, was examined by Mr. Allan.

During the examination of this witness the room was cleared, to enable the Committee to deliberate on an objection raised by Mr. Travers to the following question being put:—"Did you ever make any claim to vote before 31st March, 1871?"

It being proposed that the question be allowed, the Committee divided.

For, 6.

Mr. Brandon,
Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Against, 1.

Mr. Gillies.

It was therefore agreed that the question should be put.

The parties were called in and informed by the Chairman that the Committee had decided that the question be put to witness. The examination of James Hagan was continued, and after being cross-examined by Mr. Travers this witness withdrew.

Henry Tomlinson was called, and, being duly sworn, was examined by Mr. Allan.

The parties then withdrew, and the Committee proceeded to deliberate on the evidence adduced in support of the petition.

Moved by Mr. Gillies, and seconded by the Hon. Mr. Fitzherbert, That it has not been proved that the sitting Member has been, either by himself or his agents, guilty of bribery, treating, or undue influence.

This was carried unanimously.

The Committee further agreed that in the cases of personation by James Hagan and Henry Tomlinson a sufficiently strong case had been made out to call on Mr. Travers to bring evidence to rebut that adduced on behalf of the petitioner.

The parties were called in and informed by the Chairman of the decision arrived at both with regard to the bribery and treating and the personation.

The Committee then adjourned till half-past 10 o'clock to-morrow.

TUESDAY, 12TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,

Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

Mr. Travers addressed the Committee, and asked for adjournment, for the purpose of procuring evidence from Nelson.

The parties then withdrew, and the Committee proceeded to consider whether Mr. Travers' application for an adjournment should be granted.

It being proposed that Counsel should be requested, before the decision on the application for adjournment, to address the Committee as to whether a vote taken after 4 o'clock is valid or invalid, it was resolved unanimously, that Counsel be requested to address the Committee on that point.

The parties were then called in, and Counsel informed of the resolution passed by the Committee.

After both Counsel had addressed the Committee, the room was again cleared.

The Committee divided as to whether the application for adjournment be granted, subject to the leave of the House being obtained.

For, 5.

Mr. Brandon,
Mr. Gillies,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Against, 2.

Mr. Bunny,
Hon. Mr. Fitzherbert.

It was therefore resolved that the application for adjournment be granted to the 18th September, 1871, at 10.30 a.m., subject to the leave of the House.

The Chairman was directed to ask leave of the House for the proposed adjournment.

The parties were called in, and informed that the application had been granted, subject to the leave of the House.

The Committee then adjourned, subject to the leave of the House, till 10.30 a.m., on Monday, the 18th September, 1871.

MONDAY, 18TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Mr. Bunny,	Mr. McGillivray,
Hon. Mr. Fitzherbert,	Mr. Pearce,
Mr. Gillies,	Mr. Studholme.

Mr. Brandon in the Chair.

A short-hand writer attended.

Mr. Travers read and handed in an affidavit from Mr. Pitt, of Nelson, stating the reason for non-attendance of a witness.

Mr. A. Le Grand Campbell, Registration Officer for the Electoral District of Motueka, appeared before the Committee, and, being duly sworn, Mr. Travers was proceeding to examine him, when Mr. Allan, on behalf of the petitioner, objected to this evidence being received.

The room was cleared, and after deliberation the Committee decided to receive the evidence.

The parties were called in, and Counsel informed of the decision arrived at by the Committee.

Mr. Travers then continued his examination of Mr. Campbell.

After cross-examination by Mr. Allan, this witness withdrew.

Mr. Travers called Mr. Robson, schoolmaster at Lower Moutere, who, being duly sworn, was examined; and after cross-examination by Mr. Allan, this witness withdrew.

Mr. Travers called Mr. William Giblin, who, being sworn, was examined; and after cross-examination by Mr. Allan, this witness withdrew.

Mr. Allan stated he had to call some witnesses, and the room was cleared, that the Committee might consider the necessity of hearing further evidence on this point.

Moved by Mr. Bunny, That the Committee consider that, under the circumstances stated, the vote of Starns ought not to be struck off, and therefore it is unnecessary for the petitioner to call evidence on this point.

Mr. Gillies moved by way of amendment, That the Committee consider that the vote of Starns, appearing from the evidence adduced to have been taken after 4 o'clock, the petitioner should have an opportunity of showing that it was not taken after that hour.

On this amendment the Committee divided.

<i>For, 2.</i>	<i>Against, 5.</i>
Mr. Gillies.	Mr. Brandon.
Mr. McGillivray.	Mr. Bunny.
	Hon. Mr. Fitzherbert.
	Mr. Pearce.
	Mr. Studholme.

The amendment was therefore lost.

The Committee then divided on the original motion.

<i>For, 5.</i>	<i>Against 2.</i>
Mr. Brandon,	Mr. Gillies,
Mr. Bunny,	Mr. McGillivray.
Hon. Mr. Fitzherbert,	
Mr. Pearce,	
Mr. Studholme.	

The motion was therefore agreed to.

The parties were called in and informed of the decision of the Committee.

Mr. Travers then applied for a further adjournment.

The room was again cleared, and the Committee proceeded to consider the application.

The Committee, after deliberating, called in the parties, who were informed by the Chairman that the Committee consider that they have sufficient evidence with regard to Tomlinson to satisfy them that he did not knowingly personate and pretend to be any other person than himself.

The Committee then adjourned till half-past 10 o'clock to-morrow.

TUESDAY, 19TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT :

Mr. Bunny,	Mr. McGillivray,
Hon. Mr. Fitzherbert,	Mr. Pearce,
Mr. Gillies,	Mr. Studholme.

Mr. Brandon in the Chair.

A short-hand writer attended.

Mr. Travers addressed the Committee on behalf of the sitting Member.

When Mr. Travers had concluded, Mr. Allan addressed the Committee on behalf of the petitioner.

When Mr. Allan had closed his address, the room was cleared for the purpose of enabling the Committee to deliberate upon the whole of the proceedings.

Question put, That the Committee resolve, in order to ascertain whether the votes objected to—viz., No. 363, James Hagan, and No. 501, Henry Tomlinson—are among the 193 votes received and recorded in favour of Sir David Monro, that the Clerk of the House of Representatives be summoned to open the bundle of ballot papers set aside as incorrectly erased at the election.

Mr. Gillies moved as an amendment, That, inasmuch as the case has been closed on both sides, this Committee is bound to decide upon the evidence already adduced, and has no power to order the packets of ballot papers to be opened in order to obtain evidence not yet laid before the Committee.

On this amendment the Committee divided.

For, 1.

Mr. Gillies.

Against, 6.

Mr. Brandon,
Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

The amendment was therefore lost.

The Committee then divided on the former question.

For, 6.

Mr. Bunny,
Mr. Brandon,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Against, 1.

Mr. Gillies.

The question was therefore carried.

On the question being raised, whether the bundle of ballot papers should be opened before the Committee only, or in the presence of the parties, it was resolved, That the bundle should be opened in the presence of the Committee alone—the Chairman and Mr. Gillies objecting.

The Committee then adjourned till a quarter to 2 o'clock.

At a quarter to 2 o'clock the Committee reassembled, all the members being present.

Major Campbell, Clerk to the House of Representatives, appeared before the Committee, and opened the two sealed packets of selected and disallowed ballot papers, as requested by the Chairman, which were enclosed in a tied wrapper that was not sealed.

Question by the Chairman:—

Q. Are the ballot papers numbered 363 and 501 in either of these packages?

A. No.

Major Campbell then withdrew, and all the packages of voting papers produced by the Clerk of the House were then returned to his custody.

It being half-past 2 o'clock, the Committee adjourned till 11 o'clock to-morrow.

WEDNESDAY, 20TH SEPTEMBER, 1871.

The Committee met pursuant to adjournment.

PRESENT:

Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. Gillies,

Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Mr. Brandon in the Chair.

The deliberation was continued with closed doors.

Moved by the Hon. Mr. Fitzherbert, That James Hagan, not being a duly registered elector, voted, as admitted by him, in the name of his father, whose name had not been removed from the electoral roll since his death, and that the vote of James Hagan ought therefore to be struck off.

On this motion the Committee divided.

For, 6.

Mr. Brandon,
Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme,

Against, 1.

Mr. Gillies.

The motion was therefore carried.

Moved by Mr. Bunny, That the vote of Henry Tomlinson be struck off.

On this motion the Committee divided.

For, 3.
Mr. Bunny,
Mr. Pearce,
Mr. Studholme.

Against, 4.
Mr. Brandon,
Hon. Mr. Fitzherbert,
Mr. Gillies,
Mr. McGillivray.

The motion was therefore lost.

Moved by Mr. Gillies, That the evidence and resolution of the Committee in reference to the vote of Starns be reported to the House, for the decision of the House thereon.

On this motion, the Committee divided.

For, 1.
Mr. Gillies.

Against, 6.
Mr. Brandon,
Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

The motion was therefore lost.

It being moved, That Sir David Monro was not duly elected as Member for the District of Motueka, the Committee divided.

For, 6.
Mr. Brandon,
Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Against, 1.
Mr. Gillies.

And it was therefore decided in the affirmative.

The following resolution was put: That Charles Parker, Esq., was duly elected as Member for the District of Motueka, and ought to have been returned.

The Committee divided.

For, 6.
Mr. Brandon,
Mr. Bunny,
Hon. Mr. Fitzherbert,
Mr. McGillivray,
Mr. Pearce,
Mr. Studholme.

Against, 1.
Mr. Gillies.

The resolution was therefore agreed to.

The question of costs being raised, was discussed, and it was unanimously resolved that each party should bear his own costs.

The parties were then called in and informed of the decision of the Committee.

The Committee then adjourned till a quarter past 2 o'clock.

At a quarter past 2 o'clock the Committee again met, and all being present, confirmed the minutes, and read and approved the draft Report.

A. DE B. BRANDON,
Chairman.

MINUTES OF EVIDENCE.

WEDNESDAY, 23RD AUGUST.

23rd Aug., 1871.

The Committee met at 10 o'clock this morning.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker, and *Mr. Travers* for Sir David Monro, the sitting member.

The Clerk read the Petition.

Mr. Allan: The two points I intend to submit, on behalf of the petitioner, will be the personation by James Hagan and Henry Tomlinson, and the case of bribery and treating.

Mr. Travers: I propose to take an objection to the jurisdiction of the Committee. I had offered to waive any irregularity upon that point, but I see by the newspapers this morning that the matter was brought under the consideration of the House by the Speaker. My only reason for raising an objection to the jurisdiction of the Committee is, that the House declined to accept the waiver I offered. If my waiver had been accepted, I should have been precluded from going into any question relating to the jurisdiction of the Committee; but as it was declined, I feel myself bound to go into that question. I will call the attention of the Committee to the fact that they are a judicial body appointed for the express purpose of hearing and determining all questions as between the petitioner, on the one side, and the sitting member, on the other; and, like any other judicial body, they must be legally and formally created, in order to have jurisdiction over the matters submitted to them. I submit that this Committee was not legally created. The election of the Committee depends upon the construction of "The Election Petitions Act, 1858;" and the clauses which relate to the question I am now about to submit to the Committee are clauses 19 to 25, both inclusive. Before specifically referring to these clauses, I may state that in the year 1770, Mr. George Grenville, then a Member of the House of Commons, which had felt the inconvenience of submitting questions relating to elections to the House as a whole, which had gradually become to be treated purely as party questions, brought in an Act for the purpose of regulating the mode of deciding election petitions. Under the provisions of the Act then passed, election petitions were directed to be referred to a Committee, to be formed by the House in the manner provided by the Act. I find in a work of authority on the subject of elections—"The Law and Practice of Legislative Assemblies," by Cushing (an American work)—that the details of the course of procedure in cases of election petitions are noted. The course of procedure which was adopted by the House of Commons under the provisions of Mr. Grenville's Act is precisely similar to that provided for under "The Election Petitions Act, 1858," of this Colony.

The Chairman: I do not think we are competent to decide the question you now put to us. The Speaker informed the House yesterday, that on a previous occasion he had referred to the authority of Cushing; but had afterwards found that his ruling had been incorrect, on referring to a debate in *Hansard* on the subject.

Mr. Travers: I am not aware of that; but I apprehend, that nevertheless the objection was taken. The House was not the judge. The whole matter was relegated to the Committee, and the House has nothing further to do with a petition which has been relegated to the Committee. The decision of the Committee is to be final and conclusive, and I submit that this Committee alone is now the judge of the matter; and that if this Committee is not legally constituted, its judgment cannot be of any value whatever.

Mr. Gillies: How can we have jurisdiction to determine whether we have jurisdiction?

Mr. Travers: Of course, if you are satisfied that you have jurisdiction you will proceed with the case; if not satisfied, you will probably take some steps to ascertain the fact and act upon it accordingly. I apprehend when an objection is taken to the jurisdiction of a Court—as I have seen it taken to the jurisdiction of the Court of Appeal, and it has to determine whether it possesses jurisdiction in the matter or not; if it decides that it has no jurisdiction, it does not deal with the matter.

Mr. Gillies: You are using the term jurisdiction in a different sense from that which we should consider it to mean.

Mr. Travers: I object in this case to the jurisdiction, on the ground that the Court is not legally constituted. I will illustrate it in this way: Some short time ago a bull belonging to the Hon. Mr. Robinson strayed across the Hurunui River; no cattle were suffered to pass across that river, and the owner of cattle crossing it was subjected to a penalty. This was under the provisions of the Diseased Cattle Act, and the Governor had the power, by warrant under his own hand, to delegate to the Superintendents of Provinces the authority to make regulations. The Superintendent in the exercise of the authority so delegated, made regulations, under which regulations an information was laid against the Hon. Mr. Robinson for the straying of this animal.

Mr. Gillies: Whether we have jurisdiction or not, we must proceed as the House has directed.

Mr. Travers: A precisely similar question was raised in connection with the proceedings of an Election Committee very recently in England, and it was decided in the Exchequer Chamber that the Election Committee, not being duly created, was incompetent to deal with the question before them. I am in a position to give an authority on the point I am now raising, namely, whether the Committee, not having been legally created by the House, and being in the character of a judicial body, shall take upon itself the functions of deciding any question relegated to it. I take the objection formally, and it may be discussed at a future time.

Mr. Allan : I presume the Committee will not require me now to answer the objection raised. 23rd Aug., 1871.

The Chairman : I think not.

Mr. Fitzherbert : The question has already been raised by the Speaker, and the House has confirmed his views. It seems to me that it would be a mere waste of time for us to enter upon the merits of that question. It is not as if we had been appointed without the question being raised; the question was raised, and the Committee subsequently appointed, so that any action taken must be through the Speaker. I would suggest whether it would not be better to take advantage of the suggestion made by the Speaker—that although very large powers were given to this Committee, in the case of any difficulty arising, the Committee could refer it to the House.

Mr. Gillies : The point has been raised and determined by the House.

The Chairman : The Speaker referred to Cushing and showed by reference to a report in *Hansard* that Cushing was not correct in the conclusions he had arrived at.

Mr. Travers : If you will make a note of the objection, it is all I require.

The Chairman : I will do so.

Mr. Allan : I propose, with the permission of the Committee, to ask for an adjournment. There are certain witnesses whose attendance we shall require. I shall furnish you with a list of the witnesses. There are two witnesses who can be obtained at once to prove the formal parts of the petition; but the material and essential witnesses to prove the cases we shall set up live within the Electoral District of Motueka, and we have been unable as yet to secure their attendance. As this is the first occasion upon which such a Committee of the General Assembly of New Zealand has been appointed, the practice is of course, entirely new. We did not know on what day the Committee would sit, or whether it was necessary to get the Speaker's warrant, or the warrant of the Chairman of the Committee; I wish, therefore, to apply to the Committee for an adjournment, in order to enable me to obtain the Chairman's warrant for the summoning of the witnesses. Although the 28th section of the Act limits the time of adjournment to thirty hours, yet, if sufficient reasons are shown, a motion might be made to the House for a longer adjournment. Having stated that it is essential we should have the attendance of those witnesses, and that we have been unable to procure them without a special warrant, I apprehend the Committee will consent to an adjournment for a certain time, subject to the approval of the House. The witnesses could not all be here before the 3rd of September.

Mr. Fitzherbert : It is not possible for us to go into the evidence piecemeal on the one side or the other, and we had better wait until such time as the whole of the evidence could be produced.

Mr. Travers : It would be necessary for the sitting Member to know the statements of the witnesses on the other side before he could be called upon to refute them; it would be impossible for him to conjecture what the witnesses were going to prove.

The Chairman : It will be necessary for the petitioner, not only to furnish the names of witnesses to the opposite party, but the particular cases upon which they would be examined.

Mr. Allan : Of course the Committee have a right to order that I should give as explicit particulars as they may think necessary. I have drawn up a list of persons whose cases we purpose inquiring into, in respect of personation, bribery, and treating. [Reads the names.]

Mr. Gillies : A statement of the specific acts of treating or bribery complained of should also be furnished.

Mr. Travers : My friend should lay before the Committee an affidavit of the fact that these are necessary witnesses, and that he is unable to proceed in their absence. That is the usual course to adopt in applying for an adjournment.

Mr. Bunny : We are not bound by the same strict rules as are observed in Courts of Justice.

The Chairman : The Committee will be satisfied with the assurance of the petitioner's agent.

Mr. Gillies : Are the Committee to understand that these are all the witnesses the petitioner wishes to call?

Mr. Allan : It may be possible that we shall have to call more witnesses.

The Chairman : The Committee may call any witnesses they please. The summons must be issued under my hand.

Mr. Gillies : I think the Committee, before agreeing to the adjournment, had better take into consideration another matter with regard to the witnesses. Under clause 35 of the Act, the Committee has power to receive affidavits, and they might consider whether they should not save the parties the large expense of attending before them by accepting their affidavits.

Mr. Allan : There will be one affidavit which I wish to submit.

The Chairman : We would receive an affidavit of service; but if a witness gave evidence as to the merits of the case, he should be placed in the position of being cross-examined by the other side. We could not receive such affidavits unless notice were given to the other side.

Mr. Gillies : The clause states that it shall be competent for the Committee to receive affidavits as to any matters referred to it.

The Chairman : I do not think such affidavits should be received, unless the other side had an opportunity of cross-examining the witnesses.

Mr. Travers : The Justice of the Peace has merely the power of administering the oath; he had no power to put questions on the matters to which it related. If he did put questions, the parties making the affidavit would be under no legal obligation or penalty if the answers given were false. The opportunity of cross-examining the witnesses as to the statements contained in the affidavits was the important point to be considered.

Mr. Allan : I propose to submit the affidavit of the mother of James Hagan as to his identity and the date of his birth. I do not think an affidavit of that description would be objected to.

The Chairman : We would require to receive the assent of both parties.

Mr. Allan : If the Committee will not receive the affidavit of Mrs. Hagan as to the age of her son, I must get the order of the Chairman requiring her attendance.

The Chairman : The other side would not object to an affidavit of Mrs. Hagan, stating the age of her son, being received by the Committee.

23rd Aug., 1871.

Mr. Travers : The proper mode would be to produce the certificate of birth, verified in the usual way.

The Chairman : The Committee will receive the affidavit of Mrs. Hagan to the effect that the person named in it is her son.

Mr. Bunny : We are not bound by legal forms. The 5th clause of the amended Act gives us the power of regulating the form and manner of our proceedings.

Mr. Travers : The Committee would not receive the evidence of Mrs. Hagan that her son was the son of James Hagan, whose name is on the electoral roll; she might state that he was the son of her husband, and give the date of his birth. I shall not offer any objection to the affidavit if it is put in the ordinary form of pedigree proof.

On the motion of Mr. Gillies, *Ordered*, That the Chairman do apply to the House for leave to adjourn the Committee till 5th September, for the purpose of obtaining material witnesses from the Province of Nelson.

Resolved, That the Committee do now adjourn till 2 o'clock p.m. to-morrow.

The Committee then adjourned.

5th Sept., 1871.

TUESDAY, 5TH SEPTEMBER, 1871.

The Committee met at 10 o'clock this morning.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and *Mr. Ollivier* for Sir David Monro, the sitting Member.

Minutes of last meeting read and confirmed.

Mr. Ollivier : I appear to-day on behalf of Mr. Travers, counsel for Sir David Monro, and have been instructed to apply for an adjournment on the ground that Mr. Travers is engaged as counsel in a case of importance in the Supreme Court, which will probably occupy two days, as there are a number of witnesses to be examined. Mr. Travers quite overlooked the fact that this morning was appointed for proceeding with the case. The adjournment I ask for would not in any way prejudice the petitioner, as there would be no opportunity for his witnesses returning to Nelson until this day week, 12th September. I would therefore ask the Committee to adjourn this inquiry, if possible, until Thursday morning, at 10 o'clock.

The Chairman : The Committee cannot adjourn until that time. If you tell us that you will not be able to proceed until that time, the Committee will take the necessary steps to obtain the adjournment asked for, unless there be some valid objection to it.

Mr. Ollivier : Of course I apply to the Committee for an adjournment as a matter of grace. Mr. Travers is engaged in an important case in the Supreme Court, and will not be able to attend before Thursday next. Of course it is a matter of importance to Sir David Monro that he should be represented on such an inquiry as this by Mr. Travers, the counsel who has hitherto taken this matter entirely under his own charge. I therefore ask the Committee to take such steps as are necessary to obtain an adjournment of the Committee until the day I have mentioned.

Mr. Allan : Of course I am entirely in the hands of the Committee. On the part of the petitioner, I do not wish to throw any obstacle in the way of Sir David Monro being properly represented here, and his case being conducted with all the ability and judgment of my friend Mr. Travers, and therefore I shall make no objection to the Committee adjourning the inquiry if they should think fit to do so. The only thing is that we have several witnesses, and it is essential that those witnesses should be sent away by the 12th of this month, or upon the first opportunity. The Committee will understand that if we are put to any loss or inconvenience by the witnesses being kept here beyond that time, we must not, of course, suffer from that delay. If the case comes on on Thursday, and the Committee sits from day to day, we should be able to finish our case before the 12th.

Mr. Fitzherbert : I think the application for adjournment most unreasonable, and contrary to the spirit which should guide the conduct of our proceedings. We are here charged with the duty of seeing who is really to represent the Electoral District of Motueka in the House of Representatives, and all these delays arising from causes outside are inconvenient to all parties, and interfere with the progress of the investigation.

Mr. Pearce : I understand the case Mr. Travers has in charge is one of a very serious nature, and probably some indulgence should be granted on that score. The trial is upon a matter of life and death, and therefore it is of more importance than an ordinary case.

The Chairman : We should consider that the original adjournment was granted on an application from the other side.

Mr. Allan : I think that in courtesy I should consent to the application, the only condition being that, if our witnesses are kept here beyond a reasonable time, it should be considered by the Committee.

Mr. Bunny : The question is whether we could not go on with the case? Mr. Allan might open his case to the Committee.

Mr. Allan : I may remark that the last adjournment was not so much our fault as the practice was entirely new. We could not summon witnesses to attend without an order, and no person could give that order but the Committee. The Speaker could not summon any witnesses to attend until after the Committee had met, so that really it was not our fault.

The Chairman : There was no fault on your part, for until the Committee had met, you could not have got a summons for the attendance of witnesses.

Mr. Fitzherbert : I have an additional reason to urge against the adjournment, on the ground of the expenses that parties would be put to. This is an inquiry which we should deal with, simply as a matter of conscience only; and it would be a monstrous thing if success should depend upon the man who has got the largest pocket. That is why I consider these delays to be unjust and injurious.

The Chairman : This is a question which will be better discussed by ourselves.

The persons present then retired, in order that the Committee might discuss the question of adjournment with closed doors, and after the lapse of half an hour they were summoned to return. 5th Sept., 1871.

The Chairman (addressing Mr. Ollivier): The Committee have decided to assent to your application, if the House gives permission to do so, to adjourn until Thursday morning at half-past 10 o'clock. I shall make the application on the meeting of the House to-day; and if it does not assent to the adjournment, we must meet to-morrow morning at half-past 10 o'clock, and proceed with the inquiry.

Mr. Allan: Then I understand that if the House does not grant the adjournment till Thursday, the Committee will stand adjourned until to-morrow morning at half-past 10 o'clock.

The Chairman: Yes, that is the conclusion to which the Committee have arrived.

The Committee then adjourned.

THURSDAY, 7TH SEPTEMBER, 1871.

The Committee met at half-past 10 o'clock.

7th Sept., 1871.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and *Mr. Travers* for the sitting Member, Sir David Monro.

Minutes of last sitting read and confirmed.

The Chairman: Before proceeding with the case, I would suggest to the Committee that we adopt certain rules which are generally adopted in Parliamentary Committees at home. [Reads the *Vide Proceedings* rules.]

The Committee decided to adopt the rules.

Mr. Travers: I have not as yet received a copy of the list of objected voters.

The Chairman: I understood that you had been furnished with the list.

Mr. Allan: I thought the list had been sent in; it will be sent in during the day.

Mr. Travers: I do not understand it.

Mr. Allan: I directed a copy to be made out and given to my learned friend.

The Chairman: Application ought to have been made for the names. It would be convenient for Major Campbell to get away as early as possible. Will you call upon him, Mr. Allan, to produce what documents you want?

Mr. Allan: We want the papers which were referred to in the various clauses of the Act of last year, establishing the ballot and regulating the way in which the ballot is to be proceeded with.

The Chairman: Do you mean the books?

Mr. Allan: I mean the books and parcels made up after the election by the Returning Officer, as required by clauses 53 and 54 of the Act and clause 60, which provides that the parcels should be sent by the Returning Officer to the Clerk of the House of Representatives. We want Major Campbell to produce the books and papers that have been forwarded to him by the Returning Officer for the Electoral District of Motueka, in reference to the election of a Member to serve in the present Parliament.

Mr. Travers: You want produced the sealed packets; of what good are they?

Mr. Allan: They are of use as evidence.

Major F. E. Campbell, Clerk of the House of Representatives, examined.

Major Campbell.

Major Campbell: I am Clerk of the House of Representatives. I produce the papers received from the Returning Officer for the Motueka Electoral District. 7th Sept., 1871.

By Mr. Allan: You received those papers in due course from the Returning Officer?—I received them through the post from the Returning Officer.

By Mr. Travers: Do you know that he was the Returning Officer?—I received them through the post from a person signing himself as the Returning Officer.

The Chairman indorsed the four packets produced, which were marked A, B, C, D, respectively.

Major Campbell: I would like to be allowed to make a statement to the Committee. I saw in one of the newspapers published here that Counsel had stated that I was unwilling to produce the documents. I addressed a letter to that gentleman, who did not deny the printed statement. I wish to state that I have never, in any way or by any word that I have spoken, given the slightest colouring or pretext for such a statement as that. I may also say that myself and the other officers of the House are always ready to appear before any Committee when required to do so.

Mr. Allan: If that is intended to apply to me, I may state that I never charged any person with unwillingness. The words I used were that I understood the officials would not come before the Committee without a subpoena, and that is why I applied for the subpoena.

Major Campbell: I could not, under the Act, produce the documents without first receiving an order to do so.

Mr. Fitzherbert: That statement should be taken down, so as to protect the Clerk of the House against any charge of that sort.

The Chairman: The Committee are perfectly satisfied that there was no unwillingness whatever on the part of Major Campbell to produce the documents.

Mr. Allan: If it is any satisfaction to Major Campbell, I may say that I never made any imputation against him or any one else; I simply stated that the officials would not come without subpoenas, and therefore I applied for them.

The Chairman: I saw the report, and it gave another and quite a different version of what took place.

Mr. Allan: I never intended to impute motives or anything else. I said that in due course I would have to apply to the Chairman for subpoenas, as I understood those gentlemen would not come without subpoenas. I was obliged to do so.

7th Sept., 1871.

*Major Campbell.**Mr. Fitzherbert* : That does not constitute unwillingness at all.*The Chairman* : I do not see how Major Campbell could attend without receiving an order.*Major Campbell* : I should be happy to attend before any Committee on receiving notice. I am precluded by law from producing those documents without an order to do so.*The Chairman* : The Committee entirely absolve Major Campbell from any charge of unwillingness to attend before this Committee.*Mr. Gillies* : I would wish to ask Major Campbell a question. Are these packets in precisely the condition in which you received them from the Returning Officer?—Were they sealed, as I see by law they are required to be sealed?—They do not appear to be sealed now, and I want to know if they are precisely in the condition in which you received them; I see that one of the most important packages is not sealed.*Major Campbell* : I took a note in a book of the condition of all the packages at the time I received them. I ask the permission of the Committee to go and get that book. (Leave granted.)*Mr. Travers* : When my friend proposes to open those packages I shall object, as the law has not been complied with in respect to them. The requirements of the Statute have not been complied with.*The Chairman* : That objection you propose to take should it become necessary to open the packages.*Mr. Travers* : Yes; it is not necessary to take the objection now.*Mr. Allan* : The witness must be examined as to how he received them.*Mr. Travers* : On the face of the packages they do not purport to be transmitted in the condition required by law, and I shall object if any use is to be made of them.*The Chairman* : All Major Campbell can state is, that that is the condition in which the papers were received from the Returning Officer.*Mr. Travers* : There are other objections also which I shall urge.*Major Campbell* : I produce the book; it contains the counterfoil of the receipt which I supplied to the Returning Officer. These packets are in precisely the same condition in which I received them. In many cases the packages were somewhat loosely put up, and unsealed.*By Mr. Gillies* : Some of these packages were unsealed?—They were tied together, and some of them were not sealed.*Mr. Travers* : The date of transmission is to be proved. There is no proof of the date they were transmitted, and no proof that the person transmitting them was the Returning Officer.*The Chairman* : Would it not be better to reserve those points until it became necessary to raise them?*Major Campbell* : I received the packages on the 3rd March, 1871.*By Mr. Allan* : Was a letter sent with them?—No, not in this case.*By Mr. Travers* : I understand that you noticed that some of packages were not sealed. Were they all sealed?—No, not in this case.*The Chairman* : Would it not be sufficient for him to state that the packets now produced are in the same state in which he received them?*Mr. Travers* : Yes, he has stated so.*Major Campbell* : They were tied together as one parcel, and addressed to the Clerk of the House. The packages were in the same condition as they are in now.*The Chairman* : You do not require Major Campbell any longer?*Mr. Allan* : No, I do not want him just now; I may require his attendance at some future stage of the proceedings.*Major Campbell* : I shall be in attendance when required.

Witness then withdrew.

Mr. Allan : I appear before the Committee on behalf of one of the candidates—the unsuccessful candidate, Mr. Charles Parker—in support of the petition presented to the House of Representatives against the return of Sir David Monro to serve for the Electoral District of Motueka in the present Parliament. The petition prays that a scrutiny be made into the votes taken at the said election, and that the names of all persons found not entitled to vote, or who shall be found to have voted from any corrupt causes, be struck off; and that the election of Sir David Monro be declared null and void, and that his name may be erased from the return, and the name of the petitioner, Mr. Charles Parker, be substituted; and prays for such further or other relief as the House, on the recommendation of the Committee, should deem meet. The Committee will gather from that the nature of the objection which I shall have to take and go into, more in detail. It seems that the nomination took place on the 27th of January, and that the polling took place on the 10th of February. The result of the polling was that 193 votes were given for each side, and that the Returning Officer gave his casting vote, which ended in the election of Sir David Monro. We object to that return on two grounds, or probably two general grounds.*The Chairman* : The prayer of your petition is, that a scrutiny be made into the votes taken at the said election. Can you do that now?*Mr. Travers* : I submit not clearly.*Mr. Allan* : Oh, certainly, sir, you have a right to inquire into the votes given. If a person votes from any corrupt motives, you have clearly the power to make the scrutiny, and also if a person personates a voter.*The Chairman* : That is a different thing. On the one hand you allege bribery and corruption against particular voters, and on the other you speak of personation; but that is a different thing from a scrutiny into the votes, which you pray for in the petition.*Mr. Allan* : We say that we are entitled to do that.*The Chairman* : Do you mean to open the ballot papers and examine them?*Mr. Allan* : Yes; how else can you do it?*The Chairman* : If you rely in your case upon that, I think it is a very important point to settle first.

Mr. Allan : How possibly can it be discovered afterwards how a person voted unless by the ballot papers. Power is given under the Act to ascertain that. 7th Sept., 1871.

The Chairman : Yes, if you name a particular party and show that he voted and was bribed ; it matters not for whom he voted if you show that he was bribed.

Mr. Allan : You must look at the electoral roll and papers to see how he voted.

The Chairman : I do not think it signifies ; if the voter has been bribed, it upsets the election.

Mr. Allan : I go further, and say that if I show he was bribed and had voted for so and so, I have a right to have the vote taken off.

The Chairman : I think not—not to defeat the other party.

Mr. Travers : It is provided by the Act that the scrutiny is to take place immediately after the poll, and is taken to be final.

Mr. Allan : Clearly we cannot interfere with the power of the House ; but if it were discovered that any person had personated another individual wrongly, the House has power to inquire into it.

The Chairman : I do not say that you have no right to open the packet and take out any particular number that you may require for the purpose of supporting the allegation of bribery, corruption, or personation. I do not say that we have not the power to do that ; but we have no power to scrutinize the votes, and reject this or the other elector.

Mr. Travers : It is perfectly immaterial for whom a person voted, if it can be shown that a bribe was given to him. There can be no scrutiny such as my friend asks for.

Mr. Allan : I do not understand your point to be this : whether this Committee or whether the House would have the right to open those papers and look at every vote to ascertain how that person voted. I never contended that for a moment.

The Chairman : In your petition you pray that a scrutiny may be made into the votes taken at the election, and that the names of all persons found not entitled to vote, or who shall have been found to have voted from any corrupt causes, be struck off. That goes a long way.

Mr. Allan : It means that we have specified in our petition the persons who we say have been bribed and who voted from a corrupt motive, and also the persons who have been guilty of personation.

What I mean by scrutiny is that the Committee should inquire into those votes. I never supposed that the Committee of the House would open the ballot papers and examine every vote, unless I gave a good reason for requiring the ballot papers to be opened. You understand what I mean ?

The Chairman : I quite understand it.

Mr. Fitzherbert : The prayer of the petition is evidently loosely drawn.

Mr. Allan : The scrutiny would be confined to the particular votes objected to.

The Chairman : There is a scrutiny immediately after the poll is taken.

Mr. Allan : As I was saying, we complain of this election on two grounds, or two grounds which probably may include others. First of all, we say that at that election the persons whose names we have given in the petition, were bribed ; and on the second ground—that of personation—we say that a person of the name of James Hagan and a person of the name of Henry Tomlinson personated voters on the electoral roll. Now, Sir, of course, in order to establish bribery to affect the seat of the sitting Member, it will be necessary on my part to show agency—to show that it was done by himself, or, if not by himself, that it was done by some recognized agent.

Mr. Travers : By his authority ?

Mr. Allan : No ; it is to be shown that it was done by some recognized agent. If we produce before the Committee evidence sufficient in their minds to enable them to arrive at a conclusion that the person who made the promises to bribe, or did bribe, was acting as an agent at that election, then we are entitled to have the election annulled, and to have those votes struck off. The question of agency has been before Committees of the House of Commons on numerous occasions. Some Committees have ruled one way and some the other, as to particular kinds of agency. Of course it must be for us to establish, in the opinion of the Committee, that the party was an agent. It is not necessary that there should be actual or written authority ; you gather it from the acts of the two parties interested—the principal and the agent—in reference to the proceedings at the election. If the Committee came to that conclusion, then anything that agent does will vitiate the election. It is clearly laid down that the principles that apply to courts of justice are never held to apply before Committees, as they take a much broader view ; and unless they did that, bribery would be practised, and the persons guilty of the offence would escape from the consequences of their acts. In this case, therefore, we state that those persons whose names I have given were paid moneys under conditions which would be held to be bribery ; that there were promises of money made ; that part of the money was paid by a person of the name of William Bell. I shall be able to prove before you that Mr. William Bell, who is a farmer at Waimea West, was a person who would clearly be considered, according to the rules which apply to agency in Parliamentary matters, as the agent for the sitting Member ; that he was one of his most active supporters ; that he was the person who in fact suggested to Sir David Monro to come and stand for the district ; that he was one of his Committee ; that he was chairman of his Committee ; that communications passed between them ; that further, he sent in claims for expenses to the sitting Member ; that the sitting Member recognized the claim of £1 a day for his services, and directed him to apply to Mr. Elliott for its payment. I believe Mr. Elliott paid him. If I establish that, I think that in any Court, or before any Court of law, it would be conceded that Mr. Bell was at that time acting as Sir David Monro's agent, and that Sir David Monro was liable for his acts. It has been constantly held in Committees that the principal is liable for even the illegal acts of his agent ; that if an electoral agent gives bribes, or acts against the provisions of the Corrupt Practices Act, the person on whose behalf he may have done those acts will be held responsible, although it might not be brought to his knowledge or cognizance, or he might not know that there was any intention to bribe. I will further prove to you that the men alleged to be bribed were labourers, were asked by a person named David Kerr to come down and vote ; that they said they could not vote, and must be paid for coming down ; that they were promised their

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expenses; that after they came down they saw a person of the name of Dreyer, who was also an agent of Sir David Monro, to whom they stated that they must have their expenses paid. They insisted upon being paid. However, they were referred to Bell. Henry Bosselmann was deputed on their part to see Bell. He thereupon told Bell that they would not vote—that they required to be paid, and that the amount of payment should be 8s. a day for two days. Bell demurred to that at first; he said he did not know whether he could do it, or ought to do it. It was suggested that they should go in and have dinner, which was paid for, but not by them; it was paid for by some one acting for Sir David Monro. Then Bell said that he would give them on his own account, or would take the risk of giving them £2, which was all he could command at that time; that he would endeavour to procure the balance and send it after them. This was stated to Henry Bosselmann, and I think others heard it too. It ended in Henry Bosselmann receiving that day £2, which was distributed by him among his comrades. So that we have the actual sum of £2 paid, and a promise to obtain the balance by Bell. That was on the following day; and I believe it will be shown before you that after the money was paid, and the promise made, that they did vote. I think that will be proved to you by several of them; and if the Committee come to examine the ballot papers, unless I am misinformed, they will find that these men did vote for Sir David Monro. I may state that, whatever feeling may be entertained towards the Germans, the sitting Member should consider that they had done him some service—that the charge of those Germans completely routed the forces of Mr. Parker, and contributed very much towards swelling the numbers which placed Sir David Monro in the majority. Shortly after, the balance promised was duly paid. The case when proved will be, therefore, that these men were paid expenses for two days, at the rate of 8s. a day for voting. If I establish these facts, I say I establish, in the first place, a clear case of agency; and I cannot see how my friend can venture to dispute it even before a court of law and before the Committee.

Mr. Travers: But I dispute it entirely.

Mr. Allan: I dare say you do, as you dispute many other things. I say this, that I think even before a court of law, there could be no doubt that a jury would find that Mr. Bell was an agent of Sir David Monro; and when before a Committee who are to decide according to the broad and general view of the case, who are not to be governed by strict rules of evidence, who are to search and find out for themselves what is true, and whether purity of election prevailed or not, there would be little doubt that a similar conclusion would be arrived at; and I can say, if the Committee should think that these men were paid, and received 8s. a day in order to vote, they would find that the case came within the 1st section of "The Corrupt Practices Prevention Act, 1858," which says:—"Every person who shall directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce any elector to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such elector having voted or refrained from voting at any election."—Therefore, if we establish the agency, that affects the seat.

The Chairman: You allege that Kerr is also an agent?

Mr. Allan: We propose to show that Bell is an agent as well as Dreyer. If we show that, it will affect the seat. If we show that these men received this money, it will affect their votes, and entitle us to have those votes struck off the list of votes. Then, as to the question of personation, I will be able to show that there were two persons who were guilty of personation, or at any rate who voted in the names of others, and had no right to vote. Those persons were James Hagan and Henry Tomlinson. The facts connected with Hagan are these: He voted in the name of a James Hagan, whose name appears on the electoral roll for Waimea West. This James Hagan had no right to vote; he never made any application to vote.

Mr. Travers: I object to this statement, unless my friend can show that he can open that question at all. I submit he has no right to open that question at all. I put it to my friend whether the name of James Hagan on the roll is conclusive evidence that he is the proper person. It is quite immaterial how he got there if he is there. The putting him on the electoral roll is a judicial act, and has been so decided. The revision of the Revising Officer is a judicial act, which is not controverted. The House of Commons does not open the registry, unless under special Act of Parliament.

The Chairman: Although there was the name of James Hagan on the roll who had the right to vote, yet it is alleged that the one who had voted was not that James Hagan.

Mr. Travers: That is a different question. Before my friend states that any claim was made, I wish to show that he has no right to go into that point. He may show in any way he pleases that James Hagan who is on the roll is not the same James Hagan who voted; but he cannot show that the James Hagan who voted never made a claim to be on the roll.

Mr. Allan: I have a right to adduce facts. I am not disputing that there is a James Hagan, of Waimea West, on the roll; but I have a right to show that the James Hagan who voted was not the James Hagan on the roll, and I have seen more of the practice of the House of Commons than you have.

Mr. Gillies: It is not right to speak in that way. Counsel are to address the Committee, and not each other in that way.

Mr. Allan: I think I have a right to show that although there is a James Hagan on the roll, that the James Hagan who voted was not the person whose name was on the roll.

Mr. Travers: Not by showing that this James Hagan never made a claim; that is a different matter.

Mr. Allan: I say that is one of the facts of the case; and I contend that I am entitled to use every fact that will go to support my allegation that this James Hagan was not qualified to vote. I will show the Committee that he knew himself that he had no right to vote—that he was told that he had no property there at the time, or at least no legal interest in it, and that he said, that in as much as James Hagan was on the roll, that he had a right to vote. Therefore, if I establish that before you, I would have the right to have his name also struck off. So also is the case of Henry Tomlinson, who

voted in the name of Henry Tomlinson, who was on the roll for a household qualification upon Section 133. I will prove to you that that Henry Tomlinson was really the cousin of the Henry Tomlinson on the roll; that he has no property on Section 133; that he never claimed a vote as a householder on Section 133; and upon that proof, I shall also have the right to have that name struck off. 7th Sept., 1871.

The Chairman: You mean that this Henry Tomlinson had no qualification at all: that he was not the man and had no qualification?

Mr. Allan: I should show that he is not on the roll, and that he has not that qualification on the roll.

The Chairman: That is what I understand you mean: that he has not the qualification on the roll, and that he is not the person entitled to vote.

Mr. Allan: Yes, I think these are the short facts which I shall proceed to prove before you; and if I prove them, I shall have established my case. I propose to call the Clerk of the Writs to produce the writ.

G. S. Cooper, Esq., Clerk of the Writs, examined.

G. S. Cooper, Esq.

Mr. George Sisson Cooper: Before producing this document, I was about to make a similar statement to that made by Major Campbell regarding the imputation cast upon us; but after having heard the explanation given by Mr. Allan, I do not desire to say anything more about it. 7th Sept., 1871.

Mr. Allan: I am very sorry that it should be supposed that I made any imputation against Major Campbell or Mr. Cooper.

Mr. Cooper: The statement that appeared in the newspaper is contrary to the facts of the case. I thought it only right that I should mention the matter.

The Chairman: The Committee are perfectly satisfied that there was no unwillingness on your part or on the part of Major Campbell to attend here.

Mr. Cooper: I produce the writ of election for Motueka, and the envelope covering it. It is the writ that was issued and returned to me.

By Mr. Travers: What time did you receive that?—I think it was on the 17th February. The date is marked on the corner of the writ, 17th February, 1871.

Witness then withdrew.

Charles Parker sworn and examined.

C. Parker, Esq.

By Mr. Allan: What is your name, Mr. Parker?—Charles Parker.

You are a registered elector?

Mr. Travers: I object; that must be otherwise proved in proper form.

The Chairman: We are not bound by strict rules.

Mr. Travers: No doubt.

Mr. Fitzherbert: Mr. Parker could not become a candidate without being an elector.

Mr. Travers: Mr. Parker might have good reason for believing himself to be on the roll and at the same time not be there. There is that possibility. We have two persons charged with personation, who might have believed themselves to be entitled to vote. The electoral roll is in itself evidence, and therefore, if produced, would prove the matter at once.

The electoral roll was here produced.

By the Chairman: You are the party that is on the roll?—I am the party who is on the roll, No. 178.

By Mr. Allan: Were you one of the candidates?—I was.

A candidate for Motueka at the last election?—I was.

Were you and Sir David Monro proposed separately as candidates?—Yes.

Were you the only candidates?—We were the only candidates.

And the polling took place on the 10th February?—Yes, it did.

When was the result of the election declared, do you remember?—On the 13th; I believe it was on the 13th.

Did you hear the number of votes declared?—Yes; I understood that there were 193 each, and that the Returning Officer gave the casting vote in favour of Sir David Monro.

You are the petitioner in this case?—I am the petitioner in this case.

By Mr. Travers: Did you vote yourself on that occasion, Mr. Parker?—I did.

And for yourself?—That is my own business.

Nevertheless, I would ask you the question?—I voted under the ballot.

Mr. Travers: You are bound to declare whether you voted for yourself.

Mr. Parker: I do not think I am, but I will ask the Committee whether I should answer the question.

Mr. Fitzherbert: It is an important question.

Mr. Parker: Then I say that I voted for myself. Having seen Sir David Monro going to vote, I thought I would go.

You cannot say who he voted for?—I cannot say, but I should think he voted for himself.

Mr. Travers: I have no further questions to put to you.

Mr. Allan: I proposed to go into the question of personation, but perhaps it would be as well to go into the case of bribery first. I propose to call Mr. William Bell.

William Bell in attendance, and sworn.

Mr. Bell.

Mr. Travers: As my friend, in his opening statement, stated that Mr. Bell was implicated in the charge of bribery, and the party actually committing it, probably he would consider it necessary to give the ordinary caution to the witness in reference to the answering of any question that might tend to criminate himself. There is a special provision in the law in England, exempting witnesses from the consequences of any evidence given by them that otherwise might tend to criminate them. 7th Sept., 1871.

Mr. Fitzherbert: That is a recent law.

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Mr. Travers : There is no provision in the law of New Zealand to that effect.

The Chairman read some remarks of Lord Brougham on the question, and the impression to be drawn in case of refusal to answer.

Mr. Travers : I do not wish in any degree to mislead the Committee. I will state that one of the standing orders of the House of Representatives bears upon this question, but I would submit that that standing order cannot have any effect upon the criminal law of New Zealand. I would call my friend's attention to it at once, as I do not wish to mislead the Committee in the slightest degree. Standing Order No. 219 says:—"All witnesses examined before this House, or any Committee thereof, are entitled to the protection of this House, in respect of anything that may be said by them in their evidence." That is a matter of privilege in the House, and does not exempt witnesses against any criminal proceedings.

Mr. Allan : The point was raised in England; and it was held that the witness could claim protection—that the objection should come from the witness, and not from counsel in the case.

Mr. Travers : If it was to establish agency, it would be a different matter; but this is a case of bribery and personation.

Mr. Allan : Of course, the Chairman and the Committee will use their discretion with respect to cases in which they would think it proper to caution witnesses.

Mr. Bunny : I would suggest that the evidence be taken, and if the witness objects to answer any question, we can deal with the objection.

Mr. Allan : The witness must assign some cause for the objection.

The Chairman : The Committee themselves have to judge of the validity of the objection.

Mr. Allan : That is really what I have stated to the Committee—that it is entirely within the discretion of the Committee what course they shall pursue; and further, that it is time enough when the witness objects.

The Chairman : I think we should proceed with the examination; and if the witness objects to answer any question that he thinks may criminate himself, he is subject to the inference mentioned by Lord Brougham.

William Bell examined by Mr. Allan.

I believe you are a farmer, residing at Waimea West, in the Province of Nelson?—Yes.

I believe you are an elector upon the electoral roll?—Yes.

For the Electoral District of Motueka?—Yes.

You know Sir David Monro?—Yes, Sir.

You remember, I suppose, the election at Motueka in February last?—Yes, Sir, perfectly.

Well now, before the election took place—before the nomination took place—had you any communication with Sir David Monro?—Yes, I had.

Well now, what was that?—The first and only communication I had was a letter from Sir David Monro; that was the only written communication.

Have you got that letter?—No, Sir, I have not.

I am not speaking of any written communication you had after the nomination, but before Sir David Monro was nominated, and before he came down as a candidate; had you any personal or written communication with him before he became a candidate?—I had some personal conversation with Sir David Monro.

Do you know a gentleman named Charles Elliott?—Yes.

Does he live in Nelson?—He lives in Nelson.

Was he a supporter of Sir David Monro or not?—I believe he was a supporter of Sir David Monro.

Well, before the nomination, and before Sir David Monro came forward as a candidate, had you any communication with Mr. Elliott in reference to Sir David Monro?—Yes, I had.

What was that?

Mr. Travers : I object to that. Although the Committee is not bound by strict rules of evidence, still it would be manifestly inconvenient to take the statement of a third person in reference to any matter, not made in the presence of the person to be affected by it. If you did so, the rule might be extended indefinitely.

The Chairman : It would be for the purpose of proving agency, I presume.

Mr. Allan : It might lead up to that, of course.

Mr. Travers : Even so. I apprehend the Committee would not force the rules of evidence to that extent.

The Chairman : It would be a sub-agency.

Mr. Travers : Before the communication, whatever it is, is revealed to the Committee, they ought, at all events, be shown that Mr. Elliott was acting in the character of an agent; otherwise it cannot be constituted a sub-agency.

Mr. Allan : I will show that he was an agent.

Mr. Bunny : I think, for the present, we may take the evidence.

The Chairman : Upon the understanding that that is the purport.

Mr. Travers : And that my friend undertakes to prove the agency of Elliott.

The Chairman : Yes.

Mr. Allan : I understand that the Committee are not to be bound by strictly legal evidence. Indeed that is the purport of the clause in the Act regulating the proceedings.

Mr. Travers : It must be evident that if the connection of the party to be affected by the statement of a third person is not established, the statement is not evidence of any kind whatever.

The Chairman : If the agency of Elliott is not established, the evidence may be worth nothing.

Mr. Travers : If my friend undertakes that it is given specially to prove the agency of Elliott, then all right.

Mr. Allan : I undertake to do that.

Examination by Mr. Allan continued.

Well, you saw Mr. Elliott before the nomination?—I did.

Had you any conversation with him, or did you make any proposal to him with reference to Sir David Monro?—Yes, I did.

When was that, do you remember, Mr. Bell?—I cannot tell you the date; it was some weeks previous to the nomination.

Where was that—was it in Nelson?—It was in Nelson.

What part of Nelson was it?—It was in the street at his office; in front of his office in Trafalgar-street, an auctioneer's office; he was an auctioneer at the time.

Will you tell us what was said between you? What conversation took place between you?—As far as I can recollect, I asked him if he knew where Sir David Monro was—that I wished to see him, as there were a number of Sir David Monro's friends in Waimea West who wished him to stand for the House of Representatives. He told me that Sir David Monro was at the Wairau.

By Mr. Travers: Sir David Munro was not a candidate at that time at all?—No.

By Mr. Allan: What did you say to him upon that?—He also said that he did not know whether Sir David Monro would stand, but if I wished it he would send a telegram to the Wairau to know whether Sir David Monro would stand if brought forward. That was all I knew from Mr. Elliott that day, no more than I understood that he sent the telegram that day.

The Chairman: Do not tell us what you understood.

By Mr. Allan: Did you hear that day from Mr. Elliott that he had sent a telegram?—No, not that day; I did not.

When did you see Elliott again?—I do not think I saw Mr. Elliott again till after the nomination.

Well now, had you any communication with Sir David Monro after this? When did you see Sir David Monro next?—The next time I saw him was when he came to address the electors at Waimea West.

You say you saw him; was that before he addressed the electors?—Yes, I saw him before he addressed the electors; I saw him and spoke to him.

Tell us what you said to him, and what he said to you?—There was nothing said then that I can recollect, except that Sir David shook hands with me and asked me how I was. The hour was nearly up for holding the meeting, and we walked into the meeting. It was merely an ordinary greeting.

There was a meeting of his supporters, and he addressed them I suppose?—Yes.

Were you in the chair?—No.

Did you speak at the meeting at all?—I do not know that I did.

Well, had you a conversation after the meeting was over?—We had a conversation after the meeting was over, in the schoolhouse where the meeting had been held.

What was that conversation; what did he say to you or you say to him?—Well, I asked Sir David if he thought it would be advisable to have a Committee to further his interests in the election. He said it was an ordinary thing to do so; we could please ourselves.

Was it agreed then that there should be a committee?—No, it was not agreed to.

Did you see Sir David Monro at Palmer's?—Yes.

Who is Palmer; does he keep a public-house?—Yes, he keeps a public-house.

When you saw him at Palmer's, was anything more said about the committee?—Yes.

By Mr. Travers: Was that the same day?—Yes.

By Mr. Allan: Well, was it agreed then to form a Committee?—No, it was not; it was again spoken of but not agreed to.

Well, when was it agreed that a Committee should be formed?—I dare say it was quite a week afterwards.

Well, now, who composed that Committee?

Mr. Travers: Ask him was it agreed to with Sir David Monro.

By Mr. Allan: Was it agreed with Sir David Monro that you should form that Committee after the week had elapsed?—No; I do not think Sir David Monro knew that there was a Committee.

When was the Committee formed?—It was about a week after the meeting.

And who composed that Committee?—John Dron, Lawrence Dron, James Arnold, Thomas Eden, and myself.

Who was Chairman of the Committee?—They appointed me as Chairman of the Committee.

Well, before you appointed that Committee, had you received any letter from Sir David Monro? Yes, I had.

Of what date was that letter? Do you know what became of that letter?—No.

Did you look for it?—I did look for it, and I could not find it.

You do not remember the exact date?—Was it before the Committee was formed?—It was before the Committee was formed.

Can you from memory tell the Committee the contents of that letter?—I think I can.

Well will you have the goodness to do so?—I may not be able to state every word that was written, but I can recollect the meaning.

Well, give us the substance—Sir David Monro said in that letter that he was sorry to take any of my time from me just then, as every minute of my time would be precious to me, being the time of harvest. Whilst the other side were making strenuous efforts, if we wished him to be elected, we would require to do something in the matter. I have seen Mr. Redwood, senr., he has kindly offered the use of his waggon on the day of election; and if you will see to having two traps, or the engagement of two traps, I cannot recollect the words—I will see that they are paid for. I think in addition he said: If you see that two traps are engaged for the conveyance of voters; I intend to be in Motueka to-morrow night, to address the electors there, and probably will not see you again till after the election.

Is that what was in the letter?—As near as I can recollect.

After the receipt of that letter was the Committee formed that you are speaking of?—Yes.

When he speaks in the letter of getting two traps, did he say for the convenience of voters or for his voters?—I don't think he said his voters. I have stated as nearly as I can recollect.

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By the Chairman: Was it for the convenience of voters generally?—I did not understand it so.*By the Chairman:* Did he say for voters generally, or for those on the one side?—(No answer).*By Mr. Bunny:* Were the traps to be used for both candidates, or for the parties who supported Sir David Monro?—The way the Committee understood it was that the traps were for the friends of Sir David Monro. It was well known that Mr. Parker's friends rode in the traps that were paid for by Sir David Monro's Committee.*By Mr. Allan:* How often did the Committee sit during the election?—Twice before the election. Were you canvassing and getting votes for him?—Yes, I was doing my best for Sir David Monro.

You provided traps, I suppose?—I did.

Do you remember whose traps you hired?—My own trap, and the man who was driving was my own son.

Had you more than one trap?—Yes; Mr. Arnold's trap was there, and his son was driving.

Yes; any other traps?—Yes, Mr. Redwood's waggon was there.

Did you see Sir David Monro before the election?—It was after the election I saw him in Nelson.

Did you vote for him?—I did.

Well, now, after the election did you see Sir David Monro?—Yes, I saw him in Nelson.

When you went to see Sir David, what was that for? Did you take him anything?—Well, I did.

What was that, Mr. Bell?—It was an account.

What was that for?—It was for the expenses of the traps and other things.

Was there a charge made for your own expenses?—Yes, there was.

What did you charge for yourself?—I charged £1 a day.

By the Chairman: And that included the trap?—That included the trap.*By Mr. Allan:* Well, now, were there accounts of somebody else?—Yes.

Who?—There was a charge made for Mr. Arnold.

Any other one?—Yes, Thomas Eden.

How much for him?—There was £2 for Thomas Eden; he had been two days.

Well, any one else?—Lawrence Dron.

These are the charges forming that account?—Yes.

Well, now, when you saw Sir David did you say anything to him about this account?—No, I do not think I did.

What did you say to him then?—He bade me good-morning at the door, and he told me if I went into the room that Elliott would settle with me.

Did you say you came for a settlement?—I cannot recollect that I did; it is possible I did, but I cannot recollect.

How did he come to say Elliott would settle with you? Did you say anything about it before?—No, I had not seen him before.

Did you state that you had come about the settlement of the election account?—I cannot recollect that I did.

What did he say about Mr. Elliott?—He said, "I am engaged just now, but if you go into the room here now, Mr. Elliott will settle with you."

What did Sir David do then; did he show you into Mr. Elliott's room?—Yes, he did; he opened the room door and showed me into the room where Mr. Elliott was. This was in Sir David Monro's own house in Nelson. He opened the door and showed me where Elliott was.

Did you see Mr. Elliott?—Yes.

Was that Charles Elliott, the auctioneer?—Yes; I did not know whether he was an auctioneer at that time; he was the same Mr. Elliott I spoke of in a former part of my evidence.

Did he pay you that day, or agree to pay you?—He paid me that day.

By the Chairman: Mr. Elliott did?—Yes, Mr. Elliott did.*By Mr. Allan:* Did you merely say that you brought the account, and that you wanted to be paid?—Well, there was some little conversation.

He got your account?—He got my account, but said he had not time to look over it, and that he would see me before I left in the afternoon.

Do you remember the election day, the 10th of February, the day of the polling?—Yes.

Now, do you know a person of the name of Henry Bosselmann?—I do not know whether I did know a Henry Bosselmann.

Do you remember meeting a person there that day?—Yes.

Named Bosselmann?—Yes, his name was Bosselmann.

Do you know a person named Dreyer, a German?—Yes.

Is Alexander his name?—I do not know; I only know him as Dreyer.

Was Dreyer taking any part in the election?—I do not know that he was taking any part.

Do you remember him coming to you that day, and saying something about the Germans?—Yes, I do.

Well, what did Dreyer say to you?—He said, "Here are twelve Germans come down from Kerr's Hill; they have come to vote for Monro."

What was said to him?—Dreyer said, "You will have to see the foreman of the gang, for I can do nothing with them." I said, "I know nothing about the men; I do not know any of them; where is the foreman?" He said, "I'll send him to you."

Well, did he send him to you?—He did.

Now, when did he come to you; what time of the day?—I think it was about a quarter past 10, it might be half-past 10.

When this man came to you, did he tell you what his name was?—Yes; I asked him his name, and he said his name was Bosselmann.

What did he say then?—He said, “We are twelve; we have come down from Kerr’s Hill; and we want to vote for Sir David Monro.”

Was this at Waimea West?—It was down between the polling-place and Palmer’s; it was on the road below the polling-place, near Palmer’s.

It was in Palmer’s public house?—Yes; Palmer’s public-house is near the polling-place, about 150 yards from it.

Did you hold your Committee meetings at Palmer’s, or did you meet at Palmer’s that day?—We were there that day, but we had no meeting. We were not all there that day. There were three of us there that day.

Well, what did you say to them when they said, “We want to go down and vote for Sir David Monro.” I said I was glad to see so many of them come down to vote for Sir David Monro.

What did Bosselmann say to you?—He said, “We want something; we have been all night on the road in a heavy cart, and we want something.” I said, “I daresay you do want something; you will want some refreshment.” He said, “Yes, we do.” I said to him, “Will you have a glass of beer, and I will go and see that there is some breakfast got for you?” He said, “No; we do not care about beer just now; we have had a glass of beer; but we will take something to eat.” He then said that they wanted something else, that they were two days away from their work, and they would require their expenses to be paid. I asked him what expenses he alluded to—what he meant. He said they would require to be paid two days’ work for coming down; it would take that to pay their expenses; they had come away without having any money; that they had nothing to get refreshment, and that they were going back next day. I said to him that I was not authorized to pay any money away, and I could not do it.

What did he say to that?—He said it was very hard, for they had nothing to get refreshments going up next day. I then said, “I will try to satisfy you as far as I can; I will give you £2, which will get refreshments for you going back.” I told him I would give him £2. That would be on my own responsibility; I could not do anything more, but that I would mention the circumstance to Mr. Elliott.

Did you say something more about Mr. Elliott?—Not that I can recollect.

About his being Monro’s agent?—Well, it is possible I did. I cannot recollect every word I said to the man.

Well, then, did you get the money, or had you the money with you?—I had not half enough of money with me, but I borrowed £2 from Mr. Palmer.

By Mr. Bunny: That was the landlord of the house?—The landlord of the house; I borrowed the money from him; and I borrowed it on my own responsibility.

By Mr. Allan: Well, then, when you borrowed the money, where was this Bosselmann that spoke to you and the other men at that time?—I cannot say; I did not go to look for them. While Bosselmann was talking to me on the road the other men, I understood, were going up voting.

You cannot say that they voted?—I cannot say whether any one of them voted.

Did you go into Palmer’s and see any of the men there that day?—Yes; it was shortly after that Mrs. Palmer called the men to breakfast; and I went in when they were at breakfast and gave Bosselmann the £2 I had promised to give him.

You gave him the £2; did Bosselmann say anything then to you?—No, he said nothing; he took the money.

Did you say anything to him when you gave him the money about the men being there?—Yes, I looked round the table and said, “You are not all here; there are only ten.” Bosselmann said—“Oh, there is one in the sulks.” I asked him what was the matter, and he said, “Well, he came down to vote for Mr. Parker, and he does not like us all voting for Monro.”

What was his name?—Sixtus.

Do you know whether any of the men had voted at that time?—I could not say; but I think they had all voted, “them that were at their breakfast.” I am not certain whether they voted at all, but I saw them going up and down the road as if they were going to vote, one or two at a time.

By Mr. Travers: You saw them walking towards the poll booth?—Yes.

By the Chairman: Do you say they had all voted before breakfast?—I know they had not all voted before breakfast, because Sixtus had not voted.

Do you know that some of them voted before breakfast?—I think it is likely they had, but I cannot say.

By Mr. Allan: How long was it after you made the promise of £2, and your paying it?—Oh, probably a quarter of an hour, as well as I can recollect.

Well, who paid for the breakfast for those men?—I do not know. I ordered the breakfast at Palmer’s; who paid for it I cannot tell.

By Mr. Travers: Do you know whether it has been paid for?—I do not know; I ordered the breakfast.

Do you know Frederick Ducker?—Yes.

When you paid the men, did you tell them how much a-piece it would be?—I cannot say whether I did or not. I said this will be sufficient for refreshment going up next day. I did not say that at the time of paying the money. I told them, before going into Palmer’s, that that was as much as I could do; it was on my own responsibility, and that that would be sufficient to get them refreshment when going up next day.

You have seen those Germans since?—Some of them.

You saw Sixtus?—Yes.

And Bosselmann?—I saw the two Bosselmanns here, but not Henry Bosselmann.

And Ducker, did you see him?—Yes. At that time I did not know any one of the men by name.

Do you know them now by name?—Yes.

Well, now, you said you would get the money, if possible, from Elliott; did you see Elliott afterwards?—Yes.

Did you get the balance?—No; I never asked for the balance. I told Mr. Elliott what the

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men asked for. I told him what I had done, and what I had promised to do—to mention the circumstance to him.

You told him that?—Yes.

Where was Elliott at the time you told him this?—He was on the street. It was on the same day I saw him at Sir David Monro's house, in Nelson. It was on the street that I told him this.

What did Elliott say?—He shook his head when I told him, and said he was not sure about that.

Did he say anything more? Did he add something to that about the payment?—He shook his head, and said, he did not know about that; he would see about it.

Did anything more pass then?—No, not then, to my knowledge.

Do you know whether the men have been paid?—I do not know.

Have you heard from them that they have?—No, I have not.

Have you been called upon to pay that £2 you borrowed from Palmer?—No, I have not.

Do you know whether that has been included in Palmer's account?—I do not know.

And Palmer has never asked it from you? Have you ever offered to pay him?—I asked him for my own account. I owed him for some other little things that I had had. I asked him for my own account for that which I considered myself responsible. It was at the election time, and there were two or three quarts of beer that I had for the Committee themselves.

By Mr. Allan: Did he ever give you the account?—No, he has not; he told me not to hurry about that for a few days, that he was busy then.

Do I understand you to say you never had any account from Palmer?—No, I have not.

I believe you saw Mr. Luckie and he told you he would require you to go up to Wellington on this matter?—Yes.

After Mr. Luckie said he would want you to go over to Wellington on this matter, did you see Mr. Elliott in Nelson?—Yes.

Did you tell Elliott that you wanted payment of the £2 or about the getting of the balance?—Oh, no; Mr. Luckie never gave me to understand that there was any balance.

What did you tell Elliott?—I told him I saw Luckie down street, and that he was making a great deal to do about the money that had been paid, and the Germans that had been bribed, and Mr. Elliott asked me if I had ever bribed any of them.

By Mr. Travers: What did you say?—I said if they could constitute that bribery, I had been guilty of giving the men something when they were hungry and something to get a meal of victuals on going up next day.

By Mr. Allan: What did Elliott say to that?—I do not think he said much; he seemed to treat the matter with contempt.

You did not remind him of his promise to try and get the balance?—No, I did not.

When speaking to the men what did you say—that you were to tell Elliott?—I said I would mention the circumstances to Elliott.

Did you say you would try and get the balance from him?—No, I did not say so; I never intended to try and get the money from him; I promised them I would mention it to Mr. Elliott.

I understand you to say that the Committee met at Palmer's?—We only met twice to the best of my recollection. We met the night after I had the letter from Sir David Monro, and we met about three or four nights after that again. That was twice.

By the Chairman: Where was that?—At Mr. Palmer's.

By Mr. Allan: You had a conversation with Elliott at different times about the expenses at the election?—No, I had no conversation with him about that.

Did he ever say that the expenses were heavy?—No, he never mentioned expenses to me.

By Mr. Travers: Now, Mr. Bell, when you gave the money and the breakfast, was there any condition attached to it at all?—No condition whatever.

I think I understood you to say that, before anything of this took place, they had announced to you their intention of voting for Sir David Monro?—Yes, Bosselmann said "We are twelve come down from Kerr's Hill, and we want to vote for Sir David Monro."

Did he say, "We will vote if you give us money," or anything of that kind?—Oh, no.

You understood that the two days' wages which he asked for these men would be the amount necessary to cover their travelling expenses for the two days; is that what you understood?—Yes, he said so.

That is what I mean; he said that it would be to meet their expenses?—Yes.

Had Sir David Monro given you any instructions to provide voters with refreshment, or anything of that kind?—No, he did not.

Never?—No.

Did Mr. Elliott?—No.

Or any other person, professing to be agent for Sir David Monro?—No.

And what you did was entirely at your own suggestion?—Yes, and others of the Committee.

By Mr. Allan: You state that they wanted to vote for Monro; have you not stated that they wanted to be paid; that you offered them refreshments?

The Chairman: They stated that they did not want beer, but they wanted refreshments.

By Mr. Travers: They said they wanted something, they wanted to be paid their expenses for coming down; they did not say they wanted to be paid as the condition of the vote; was that it?—No; they did not say anything about condition. I offered to give the men some refreshments. They said, "We want something else." I said, "What do you want?" They said, "We have been two days from work, we came away without any money, and have nothing to get refreshments going up to-morrow."

The Chairman: Any more questions to ask this witness?

Mr. Allan: No.

Witness withdrew.

The Committee adjourned.

FRIDAY, 8TH SEPTEMBER, 1871.

8th Sept., 1871.

The Committee met at half-past 10 o'clock.

Mr. Brandon in the chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and Mr. Travers for the sitting Member, Sir David Monro.

Minutes of last sitting read and confirmed.

Diedrich Bosselmann was sworn and examined.

Mr. D. Bosselmann.

By Mr. Allan : Is your name Diedrich Bosselmann?—Yes.

Are you a settler living at Moutere?—Yes.

You were living there on 10th February last?—Yes.

By Mr. Travers : What section?—I believe it is 58.

By Mr. Allan : You are on the electoral roll as an elector for Motueka?—Yes.

What is your occupation?—I am a farmer.

You remember the election for Motueka last February?—Yes, I do.

Now, on that day did you go down to Waimea West?—I went down in a dray.

Whose dray?—David Kerr's.

Did you go alone, or did other persons go with you?—There were eleven including myself, and there was another man who went down. (Witness mentioned the names given in the petition).

You went down to Waimea West?—Yes.

Was the election going on when you went down?—It was not going on when we arrived at nine o'clock.

When you got there, did you see two persons named Bell and Arnold?—I met them.

What did they say when you met them?—They said they were glad we were coming down, and that we had better go down to Palmer's.

When you went to Palmer's what took place?—Oh, we had something to drink.

Well, after you had something to drink, what did you do then?—We stopped there, and we were talking about the voting—Mr. Bell, and Arnold and Dreyer, they were speaking about the election.

Did they say anything to you or the other men?—They were telling us that we were to go down and vote for Sir David Monro.

When they told you to go down and vote for Sir David Monro, did you go?—We did not go then.

Why did you not go then?—Because they had promised to pay our expenses, and we would not go down till we would know whether we would be paid our expenses, and how much they would give us. They had promised to pay us our expenses for going down, and for the loss of time.

Did you assign that as a reason or not why you did not go to vote then?—I did not tell them that.

Did you see your brother Henry have any conversation with Mr. Bell or Mr. Arnold?—Yes, I saw them go down the road together; I saw him go down with Mr. Bell and Mr. Arnold.

After your brother had been down with Bell and Arnold, did they say anything to the other men?

Mr. Travers : I object to what his brother said.

Mr. Allan : What the brother states would be evidence, because we have the admission of Bell himself that he was in communication with Henry Bosselmann; that he saw Henry Bosselmann, and he was to pay these men a certain amount of money. He became the agent; it is a sort of link in the chain.

The Chairman : He was not an agent between Bosselmann who spoke to Bell, and his brother who voted.

Mr. Allan : If there is one agent, and then another agent, you show the link as between them.

The Chairman : You say you are not going to bring Henry Bosselmann before the Committee as a witness.

Mr. Allan : No, we cannot get Henry Bosselmann.

Mr. Bunny : I think we might hear what Henry Bosselmann stated.

The Chairman : The Committee are not bound by strict rules of evidence.

Mr. Gillies : Although we are not bound by the strict rules of evidence, yet it is contrary to any rules of evidence that one man should be asked to retail a conversation with another man about a person who was not present.

Mr. Travers : I submit that in this case the charge made is that of bribery, the instrument is supposed to be the agent of Sir David Monro, and the persons acted upon are supposed to be voters. The charge of bribery is one of a criminal character, and if sustained would subject the voters to have their names struck off the roll and to be no longer entitled to the franchise in any degree. I submit that any person shown before the Committee to be guilty of bribery, would be immediately and *ipso facto* indictable for that charge. It would be a very remarkable anomaly if the Committee inquiring into the matter were to decide the case on evidence which could not be given if the party who is to be affected by it were placed on his trial in a Criminal Court. It would involve this absurdity, that the Committee, acting outside of all the ordinary rules of what is termed evidence, might arrive at the conclusion, from loose language used by parties, that there was something done in the nature of bribery, while a Court of Law, acting upon well-known rules of evidence established for preserving the rights of the people, might say that the act done did not amount to bribery. I would submit, with all deference, that although the Committee is not bound by strict rules of evidence, yet the Committee should substantially require precisely the same proof of the fact as would be required for the purpose of securing a conviction in a Court of Law, otherwise it must involve a very great absurdity. Nowhere in the world would such a class of evidence be received. We have no evidence that these statements were made by the principal actor Bell, who was here and not examined upon that point. There is no evidence whatever of his having ever used any language calculated to induce the Henry Bosselmann

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spoken of to make use of such expressions as those now sought to be elicited from the witness. I submit that the Committee must deal with the evidence in the same way as if the case were under investigation in a Court of Law in a criminal charge.

Mr. Allan : I submit we are entitled to give this evidence. We show that Bell was agent, and that Bosselmann goes to these men, through him, and treats with them.

Mr. Travers : It does not show that he treated with them in any degree.

Mr. Allan : He certainly says that he treated with them ; and Bosselmann became Bell's agent and communicated with these people. Of course, if I attempted to call a witness who is not shown to be in any way brought into connection with Mr. Bell, the evidence would not be admissible, because I should not show in any way an agency on his part. I contend that I have shown quite enough to lay the foundation for Bosselmann's statement.

The Chairman : If you show agency at all, it would be that Henry Bosselmann was agent for the other.

Mr. Allan : He becomes also agent to Bell ; he consents to certain terms with him. I contend that Henry Bosselmann was the agent on behalf of the other Germans ; that he is, therefore, the principal representing them, and that any communication he had with Bell he is entitled to communicate it to them in return.

The Chairman : As their agent ; not as Bell's.

Mr. Allan : But he to a certain extent is Bell's agent.

The Chairman : I should not think so from Bell's evidence,

Mr. Allan : If I appoint an agent to negotiate with some one else, and that agent communicates to me what has taken place, would that not be evidence ?

The Chairman : He did not act as a go-between between those people and Bell for the purpose of making terms, except for themselves. He was their agent, and I do not see how you make him the agent of anyone else.

Mr. Allan : The Committee are not bound by strict rules of evidence.

The Chairman : The Committee are desirous of obtaining every information they possibly can. It would be better to leave the Committee to consult among themselves whether they would receive that evidence, as it may crop up again as part of these proceedings.

After a brief deliberation in private, the Chairman informed Counsel of the result. He said : The Committee have come to the conclusion that it would be better that you should confine yourselves to the strict rules of evidence in putting questions yourselves to the witnesses ; but if you want anything not within the strict rules of evidence, you must ask the Committee to put the questions. If they think the question should be asked, I shall put it as Chairman. There is one question the Committee wish me to ask the witness, and it is this : When they started from Kerr's Hill, did they start with the intention of voting for one particular candidate in preference to the other ?

Mr. Travers : I may mention that it is shown in *Cushing*, a well-known authority in Parliamentary law, that the same general rules by which courts of law are governed prevail also in cases of controverted elections.

The Chairman : When you are confining yourself to the strict rules ; but when you want to go beyond them, put the questions to the Committee through me, and I shall put them to the witnesses.

Examination continued—

By the Chairman : When you started for the purpose of going to the polling-place, had you, or any of you, made up your minds to vote for any particular candidate ?—I was going to vote then for Sir David Monro. We were not going down at first, but David Kerr came up and asked us if we were going down to vote. We said, "No, we were not going down." We thought the election was over. We said, "We could not afford to leave the work—that it would not do for us to go down, as it would take us two days, or perhaps three." He said, "That he would take us down in the cart—that we would be paid expenses, and that we would not lose anything by it." We said, "Yes, that we would go down."

You did not know the mind of the others, but, as far as you are concerned, you went down with the intention of giving your vote for Sir David Monro ?—It was my intention to vote for Sir David Monro.

Did you go straight to the polling-place, or did you go anywhere else ?—We went to Palmer's.

Had you any conversation there amongst yourselves as to the terms or conditions on which you should vote ?—I did not have any conversation, except that Dreyer spoke to me in Palmer's. He asked me if I was going to vote for Sir David Monro ?—I said, "I did not know yet."

You stated at starting you intended to vote for Sir David Monro ; what made you hesitate afterwards ?—My brother said he would see Bell about it, and see if we would get anything, and if not we would not vote at all.

When you said "if you could get anything," what was it that you intended when you said that ? Was it the expenses that Kerr said would be paid ?—It was the expenses for travelling—for coming down.

Mr. Allan : May I ask what the witness's brother said to him ?

The Chairman : If it is as to any conversation between Bell and Bosselmann, you cannot ask it.

Mr. Allan : Can I put it in this way : After his brother saw Bell, did his brother say anything to him ?

The Chairman : You may ask him that.

By Mr. Allan : After your brother had said he had seen Bell and Arnold, did he say anything as to what you should get ?—He told me that we were to get 8s. per day.

Did you vote after that ?—Yes, we went down and voted for Sir David Monro.

Did you go down to Palmer's afterwards ?—Yes, I did.

Had you any refreshments there ?—Yes, we had.

When there, did you see Bell ?—Yes, he came into the room when we were having something to eat ; I don't know whether it was breakfast or dinner.

Did you see him do anything?—Yes, he gave my brother £2.

In notes or silver?—I don't know whether it was all silver; but I believe it was all silver.

When he gave your brother this money in silver or gold or whatever it might be, did you hear him say anything to your brother about it?—He said that was all the money he had at present, but that he would send the rest up by somebody.

By the Chairman: Was 8s. a day the usual wage?—No, we did not make 8s. a day where we were working.

By Mr. Travers: It was a contract?—It was a contract.

By Mr. Allan: How much did the contract bring you in a day or week?—It brought us in about £1 a week.

By the Chairman: What is the usual day's wages that you consider you make?—Well, £1 a week up there.

You got provisions besides the £1 a week?—Yes.

Do you consider 8s. a fair remuneration for your losing a day's work?—I think I got fair wages. We came down in the night-time; we got there at 9 o'clock in the morning.

Do you consider that 8s. as fair remuneration for the trouble you took on that occasion?—Yes. I think it is sufficient.

Not more than sufficient?—That was all we asked for.

By Mr. Bunny: What was your contract?—Road making. I was the cook at the time.

By Mr. Allan: What were you getting?—I was to get the same as the rest got from the contractors.

By the Chairman: Do you go out to work for other people?—I have done it sometimes, but I do not do it now.

Had you within the year previous done any work for anybody else than yourself and under contract?—I have worked under contract.

Have you, besides working under contract, worked for anybody else?—Yes, I have been out on service.

What did you get then?—Sometimes 15s. a week, and sometimes more.

When you got 15s. a week did you get keep as well?—Yes, we got keep and lodgings too.

By Mr. McGillivray: What are the usual wages of that district without keep per day?—From 6s. to 7s. and 8s.

By the Chairman: That is the regular wages in the district?—That is what is usually received.

By Mr. Allan: Was that £2 in silver divided among you that day?—Each of us had half-a-crown of it; there was some left that could not be equally divided.

Did you pay for any refreshments at Waimea West; that is, during the election?—No, I did not pay for any. I did not pay for any refreshment at Palmer's. I was never asked to pay for it.

When did you get to Kerr's Hill?—I am not sure if I got there on Sunday or Monday evening.

What was the day of the week of the polling?—I believe it was on Friday.

Was it arranged beforehand how you were to get back?—They were going to take us back. We went home without going back in the same cart. We walked home. We took provisions instead of the horse, and walked home.

What did you send in Kerr's cart?—Provisions for the contract party.

You could not have taken those provisions by yourselves unless in some vehicle?—We would have had to get a cart to take up the provisions.

Did you pay Kerr for taking up those provisions?—No.

Did you ever receive any money afterwards?—Yes.

How long afterwards was that?—I cannot say how long afterwards. It was some time afterwards. It was about four or five days afterwards.

How much did you receive?—13s. 6d.

From whom did you receive it?—From Henry Bosselmann.

Do you know from whom your brother received it? from David Kerr?—I was told so. I did not see it paid. My brother gave me the 13s. 6d.

Mr. Travers: I am instructed to say that the balance was paid by Sir David Monro as part of the expenses. He does not dispute that.

Examination continued.

By the Chairman: What time did you start from Kerr's Hill?—It was about 11 o'clock in the evening.

Had you travelled all night?—Yes.

What is the distance?—It is between 30 and 40 miles.

You started on Thursday night at 11 o'clock?—Yes. We arrived at Palmer's about 1 o'clock on Friday.

By Mr. Allan: You came down on the morning of the voting. When did you leave Palmer's?—We left immediately after dinner.

When did you get back to the place where you were working?—I am not sure if we got back on Sunday or Monday.

By the Chairman: Did you stop anywhere on the way after leaving Palmer's?—We called in at Beusemann's, at Upper Moutere.

By Mr. Travers: Who was the contract taken by?—It was taken by my brother, but I was joined in it: it was for cutting up a road.

Was there any fixed time for finishing it?—Yes; and there was a penalty for not finishing it.

How far is it from Palmer's to Moutere?—I suppose it is between eight and ten miles.

It is across the new road, the mail road?—Yes; we did not go that way; we crossed over the hill.

How far was it to your place?—I cannot say exactly.

Who first spoke to you about voting?—It was my mates. I didn't hear what David Kerr said to my brother.

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After that you spoke among yourselves about it?—Yes.

Who did you agree to vote for?—The same as the rest were going to vote for. I didn't know any of the candidates. I agreed to vote for who they said was the best.

Who did they say was the best?—Some said one and some said another.

Who did they agree to vote for?—They agreed to vote for Sir David Monro—if they got their expenses paid, they would go down.

By Mr. Allan: Had you finished your contract?—No, we had not finished it then; we have finished it now.

And got paid your money?—Yes, we have been paid the contract, but there was deducted £14 for penalties.

How long after the time for finishing the work had you been at the contract?—About fifteen or sixteen weeks.

Witness then withdrew.

Mr. Allan: I propose now to call Frederick Ducker.

The Chairman: If you cannot bring something stronger in the case of bribery—or rather, if the others cannot speak to anything beyond what has been already said by the last witness—is it worth while to call any other witnesses?

Mr. Allan: Their evidence would be to confirm the statement that they would not have voted unless they had been promised their expenses.

Mr. Bunny: Then it is hardly worth while calling additional witnesses.

Mr. Travers: I would like to know whether this witness had not signed the requisition to Sir David Monro.

Mr. Ducker.

Frederick Ducker sworn and examined, through an Interpreter named Baucke.

By Mr. Travers: Did you sign the requisition to Sir David Monro to come forward as a candidate?—Yes.

By Mr. Pearce: Were you one of the partners in the contract at the time of the election; one of the road party with Bosselmann at David Kerr's Hill?—Yes.

Mr. Allan: I take it that these witnesses will confirm what has been already said.

Mr. Bunny: Yes, we will take that to be the case.

By the Chairman: Did you go to Sir David Monro on the 10th February last?—I do not know exactly the day, but I went to him on the day of the election.

Witness then withdrew.

Mr. Allan: Do we leave the bribery question now?

The Chairman: Leave that question now.

Mr. Bunny: That closes the bribery case.

Mr. Gillies: When the bribery case is disposed of, let us deliberate and settle that. Let us decide that point and go on to the next.

Mr. Pearce: That would be a far more convenient course.

The Chairman: It would be as well to hear what Mr. Travers has to say on that point before we go to the other.

Mr. Travers: I was going to ask the Committee whether they would consider that any *prima facie* case had been made out. If they decide that there is a *prima facie* case, they will call upon me to bring forward rebutting evidence. That course would save a great deal of time.

Mr. Allan: I am entirely in the hands of the Committee. If the case is closed, I should address the Committee now; if it is to be re-opened, I should reserve my observations.

Mr. Travers: If the Committee think there is any necessity for rebutting evidence, I will call it. But I submit, in the first instance, there is no sufficient case. If the Committee think there is a sufficient case, requiring me to call rebutting evidence, I must ask for an opportunity of doing so.

Mr. Gillies: Mr. Allan wishes to address us on the point upon which we are about to deliberate, as to whether there is a *prima facie* case or not, before you call further evidence.

Mr. Allan: If the Committee decided that there was no *prima facie* case, there would be no use in my addressing the Committee.

Mr. Travers: The proper course is for me to move that there is no case. It is in the nature of an application for a nonsuit on the ground that there is not sufficient evidence before the Committee. I am considering the petitioner's case as closed on the question of bribery, and not whether he should have an opportunity of calling further evidence. I move that there is not sufficient evidence before the Committee upon which the charge of bribery can be sustained. I would address the Committee on that point, and my friend would have the right to reply.

The Chairman: I think that is the better course to adopt.

Mr. Travers: I submit then that there is no such case as should call upon the sitting Member to produce any rebutting evidence. Upon questions of bribery the Corrupt Practices Act of England is very much the same as that of New Zealand, and the rules which Committees would follow in determining these cases must be similar to those laid down by some of the most eminent English Judges. I need not call the attention of the Committee to the fact that the charge of bribery is one of a very serious nature. It not only exposes the parties concerned to grave criminal consequences, but it also has the effect of absolutely depriving the sitting Member, if proved against him, of the right to become a candidate during the continuance of the existing Parliament; and therefore it is necessary, before arriving at any conclusion upon a point of this kind, that the evidence which is, if I may use the term, to convict him of so grave a charge, should be of the most clear and conclusive character. In order to prove the charge in this case several witnesses have been called on the part of the petitioner. One is Mr. Bell, who was, as we admit, the agent, to a certain extent, of Sir David Monro, in reference to this election. Mr. Bell, I submit to the Committee, gave his evidence with the greatest clearness and without the slightest hesitation,—and he was my friend's own witness. His manner indicated that he was the

witness entirely of truth. Mr. Bell has stated all the circumstances under which he became connected with the voting of these men. It is very important for the Committee to observe that Mr. Bell's connection with these men did not take place until after they had actually arrived at the place, or close to the place, where the polling was going on, and that these men, according to their own account, had made up their minds to go down and vote for Sir David Monro. That is perfectly clear. The Bosselmann who was examined stated that he came down intending to vote for Sir David Monro; and I was going to call the attention of the Committee specially to the fact that the only other witness brought forward for the purpose of proving bribery had signified that intention at a period long anterior to Mr. Bell's connection with him, because he admits that he signed the requisition.

Mr. Allan: I do not want to interrupt Counsel, but, as I understand the case, it stands before the Committee thus—that several witnesses I proposed to call would support the evidence of the witnesses whom I did call; that there was the evidence, not of one man, but of several men, who are prepared to give the same evidence.

The Chairman: That is not inconsistent with what Mr. Travers says.

Mr. Travers: Who are the men?—I had no notice of who are the witnesses.

Mr. Allan: Sixtus.

Mr. Travers: Will my friend undertake to say that Sixtus voted for Sir David Monro.

Mr. Allan: I will undertake to say nothing.

The Chairman: You should confine you self to this fact, whether the money given for travelling expenses was a legitimate purpose on the part of Sir David Monro.

Mr. Travers: I am not going to blink the fact that distinctions are drawn in the judgments to which I shall call the attention of the Committee, between money paid in pursuance of a previous condition and operating probably as an inducement to give the vote, and money paid in respect of ordinary travelling expenses after the vote has been given and without previous arrangement. The judgments which I am about to read to the Committee are those of Judges of the highest position in England—Baron Alderson and Justice Williams—and they clearly draw the distinction between the case of a vote given in consequence of a previous promise to pay expenses, and that of the payment of expenses of witnesses who have voted. There is a great distinction between voting under a contract, and voting and receiving money afterwards by way of expenses, the payment in the latter case not operating in any way as an inducement for giving the vote. I am entitled to call attention to the character of the evidence, and to show that there was no change of mind whatsoever; that all of these men had come to the conclusion that they could not afford to lose time, and therefore would rather abstain from voting at all. That is an important point. Bosselmann distinctly stated that had they not been paid their expenses for coming down—not that they would have voted for the other side, but that they would not have voted at all. It was not as if there was any change of mind amongst them. They had made up their minds to vote for Sir David Monro; but they said they would not have consented to waste their time in coming down unless they had been satisfied that their reasonable travelling expenses and so forth would be paid. Bell's connection did not take place with these men until they were actually at the polling place, forty miles from the scene of their labour. It was a previous arrangement with themselves that they should demand their reasonable expenses. There was no arrangement whatever to that effect with any authorized agent of Sir David Monro before they had actually started, and so earnest were these men in their desire to record their votes on that occasion that they actually started in the middle of the night, no doubt after having performed their ordinary day's labour. And it was not until they had reached the place of polling that any communication whatever took place between them and Bell, whose evidence, as I before observed, was given with the greatest degree of frankness and propriety. He was my friend's witness, and answered every question put to him. He was but little cross-examined, and he showed that he was acting as an honest man should do, namely, with the greatest care for his own character and with the greatest regard for the position of the gentleman whose election he had been promoting. Now, the case of *Cooper v. Slade*, 6 E. and B., and the judgments of the learned Judges, had an important bearing upon questions of this kind. The following is the judgment of Baron Alderson:—

“In determining this question, we are to look to the declaration: and as that follows the words of the statute on which it is founded, we have to construe that statute. We are not called on to go into any general considerations as to what would be bribery if the statute had simply prohibited that offence by that word. What we have to do is, to construe a positive law which enacts that to ‘promise’ ‘money’ to a voter ‘in order to induce any voter to vote,’ and ‘corruptly’ to give money to a voter ‘on account of such voter having voted,’ are several matters which subject to a penalty the person so promising or giving. And upon the construction of this statute, we are of opinion that a promise to a voter of his travelling expenses, conditionally on his coming and voting for the promiser, is within the first cited part of the enactment; but that a promise of travelling expenses not so conditioned, is not. Again, consider the consequence of holding that an unconditional promise to pay travelling expenses is within the Statute. Would giving a free passage by railway be so, as a gift of a valuable consideration? If not, there seems an absurdity: namely, that to give the price paid for the place is illegal, but to give the place itself is not. If the free passage is within the Statute, so also would be taking a person in a private carriage; and the result would be, that any one taking in his own carriage a voter to the place of election, without any bargain that he should vote, would be guilty of a crime or misdemeanour, punishable by fine and imprisonment, subject to a penalty of £100, and liable to be disqualified for life from voting; which is an alarming and almost an absurd consequence. We are further of opinion that, if the letter of 12th August, 1854, is evidence of a promise within the Statute, namely, a promise to pay conditionally on the voter voting, and made to induce him to vote for Lord Maidstone and the plaintiff in error, then there is no evidence against the plaintiff in error that he authorized it. For we agree with the opinion he expressed, namely, that it is lawful to defray travelling expenses to bring up the out-voters; and we cannot see that that opinion, which does not imply that the voting may be made a condition, authorized the making of a promise so conditioned, and therefore (as the plaintiff must contend) a promise prohibited by law. This, of course, would necessitate a *venire de novo*.

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"That is the position of the law as laid down by Baron Alderson, and as applicable to the circumstances of the present case. There is no control of any kind over the voting in this country, which is by ballot, and no promise which could be made could have an ulterior effect upon the party voting. I say no breach of any promise made by the voter could produce any ulterior effect upon him; because, notwithstanding some loose expressions to the contrary, there is no possible means of ascertaining in what way he may have voted. And now, I would ask, what evidence is there to show that the money was given as an inducement to vote for a particular candidate? None whatever. There was no condition of any kind attached to the payment. Mr. Bell, in his evidence, distinctly states that when he was spoken to on the subject, he attached no condition whatever—that no condition was even suggested. It is perfectly clear that he is straightforward upon the subject. What, indeed, does Mr. Bell say in reference to this transaction? He says, "I remember Dreyer coming to me and saying, 'Here are twelve Germans come down from Kerr's Hill to vote for Monro.'" These were the first words used by Dreyer in accosting Mr. Bell, before the latter had communicated with these persons at all [Counsel reads the evidence of Mr. Bell on this part of the case]. He distinctly swore that no condition whatever was attached to the giving of the £2; that it was given as part of the expenses they would necessarily incur; that it was not given in the nature of a bribe, or for the purpose of influencing the minds of the voters. It had been distinctly stated by Dreyer, by whom he was put in communication with them in the first instance, and then by the foreman himself, before he said anything to Bell on the subject of expenses, that they had come down to vote for Sir D. Monro. "We are twelve (said he) and we want to vote for Sir David Monro." And one of the witnesses distinctly stated that, had they not voted for Sir David Monro, they would not have voted at all on the occasion. Under these circumstances, I submit that the fact is clearly shown that these men considered themselves justified in asking for their travelling expenses, and that they made it no condition whatever that, unless those travelling expenses were paid, they would not vote for Sir David Monro, or would vote for somebody else; but that, in order to save them from the unnecessary loss to which they would be put by having travelled eighty or ninety miles, they ought to be indemnified. It comes distinctly within the language used by Baron Alderson, in the case I have referred to. The case also goes into the question of treating, and shows clearly that the treating must be given corruptly, on account of an elector having voted, or in order to induce him to vote. That comes strictly within the language of our Statute, which I believe is word for word with the English Statute. Mr. Justice Williams, it is true, differed from the other Judges, but only on the question of whether or not there was evidence to go to the jury, and not upon the law. He said:—

"As to the eighth count, I think the same view ought to be taken; for there was some evidence that Mr. Slade, in performance of a previous promise, had paid the travelling expenses of a voter who had come and voted for him at the election. And this, I think, amounted to some evidence, not only that Mr. Slade had given money to the voter on account of his having voted, but that he had given it corruptly; because the promise, in my view of the Statute, is to be deemed bribery. And if so, a payment in performance of it is, I apprehend, a corrupt payment within the meaning of the Act. I am quite aware that the Statute, as I have construed it, will act harshly, and apply to cases which can hardly have been in the contemplation of the Legislature. But the language of the Act appears to me so plain and unambiguous that these considerations afford only an argument to prove that the Statute was inconsiderately passed, and ought to be amended."

The distinction drawn by the rest of the Court was this:—That although there was clear evidence that the money was paid in pursuance of a previous promise, there was not any evidence that it was paid in pursuance of a previous promise coupled with a condition that the voter should record his vote in a particular way. I therefore submit to the Committee that the evidence does not sustain the charge against these parties, of having committed the grave offence of bribery, and does not justify the Committee in causing the names of these men to be erased from the electoral roll, or unseating Sir David Monro on the ground that the votes in question were given under a corrupt contract; that they were to receive a sum of money as the condition of their doing so.

Mr. Allan: In answer to this, I may say that my friend has made a great deal of the result of any unfavourable decision to Sir David Monro; but I believe that the Committee will not allow any such consideration to affect the conclusion at which they may arrive. The view that the Committee will adopt will be formed entirely on the facts and the law. I think there can be no doubt that it will be held that Mr. Bell and David Kerr acted as agents of the sitting Member: not only from the evidence adduced, but also from the fact that Sir David Monro has admitted that he has since discharged the balance agreed to be paid by these gentlemen, that is to say, the amount necessary to make up the sum of 16s. to each man.

The Chairman: You have not identified the original promiser, Kerr, as agent.

Mr. Allan: The paying of the balance ratifies the proceedings of all these different persons. Now what is the law relating to agency?

In *Rogers on Elections*, p. 381, it is laid down as a clear canon, that "There is a wide difference between the principles of Common Law and Parliamentary Agency. Any agent employed by the candidate for the purposes of the election makes the candidate liable for the parliamentary consequences of all his acts, though some of those acts may not only be unauthorized by, but are expressly contrary to, the wishes of the candidate; whereas no liability is incurred at Common Law, without proof of authority, express or implied, on the part of the candidate." Now, I believe I have established agency by more conclusive evidence than any that will be found in any of the reports on election cases in the General Assembly Library, in which it has been decided that persons only were the agents of the candidate on whose behalf the bribe has been given. We have shown that Mr. Bell was a member of Sir David Monro's Committee, that he took an active part in the election, and was paid for his services. He was clearly, therefore, Sir David Monro's agent; and however unauthorized his acts may originally have been, Sir David Monro, according to the dogma above quoted, must be held responsible for their consequences. But further, whatever Sir David Monro may now say, the Committee, I think, will be clearly of opinion that he ratified those acts by paying the money agreed to be paid to the Germans who voted.

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Now, do the acts of Messrs. Bell and Kerr amount to bribery? The case has been assimilated to one of payment of travelling expenses. I concede that if a small sum is given for travelling expenses, and there is no condition attached to the gift, that the recipient should vote for the person by whom the expenses were paid. If a man, after voting, says, "I have been put to some expense, will you pay the amount of the expenditure I have incurred?" and such a sum is paid, that could not be held to be bribery; although possibly, if a very large sum had been given, it might be looked upon as a sort of colourable way of paying a man for voting, and it could be held to be illegal. The sum these men got was small, but it was more than they could have obtained by their contract. The promise of it, therefore, was a sufficient inducement to them to come down and vote.

The Chairman: It is not more than ordinary wages.

Mr. Allan: No, not more than ordinary wages, but they were getting a holiday, and they probably would have received the money due on their contract afterwards. Independent of that, the law, as laid down in Cooper and Slade, and confirmed by the House of Lords, is that, if a man votes in consequence of the promise of the payment of his travelling expenses, it is as much bribery as if hundreds of pounds had been promised or given. Let us see what Mr. Justice Willes states on the section of the English Statute, which is the same as the second section of "The Corrupt Practices Prevention Act, 1858," passed by the General Assembly. I am citing from the report of the judgment of the House of Lords in Cooper v. Slade, 27 L. J. Q. B. 456. Mr. Justice Willes says "Now it is clear that a promise of travelling expenses is a promise of money, and so within the words of the Act, which must therefore be construed as including it, unless to do so would lead to some manifest absurdity or in congruity with the rest of the Statute, showing that such could not have been the intention of the Legislature. I see no such absurdity, but the contrary. A voter who will obtain his travelling expenses if he votes for A, but not if he votes for B, has, when at the polling place, a direct pecuniary inducement to vote for A; and a person who promises to pay expenses on such a condition creates that inducement. Moreover, if the payment of travelling expenses were allowed, there would be danger of such allowance being made a cloak for bribery. There is no reason, if a man is to be repaid his disbursements because he has expended money, he should not also be remunerated for the inconvenience and loss of time he sustains in going to the poll." Again, Lord Cranworth says (p. 463), "Giving money to a voter to come and vote for a particular candidate, was giving him money within the meaning of this section, and of previous sections to the same effect." And Lord Wensleydale adds (p. 464), "Now, with respect to the first proposition, that every payment of legal expenses to a voter in order to induce him to vote, every payment upon any condition, implied or expressed, that he should be paid his expenses if he voted for any particular candidate, was bribery within the meaning of the Act of Parliament, appeared to admit of no doubt at all: it was admitted in all the Courts below them."

The Chairman: There is a later decision in 1869, in Ottiwell's case, in which the payment for refreshments on a journey, and railway expenses, was not held to be bribery.

Mr. Allan: That would be quite consistent with the decision in Cooper v. Slade. The law is this: that if a man were simply to be given so much for his railway expenses if he is going down to vote, and nothing is said to him beforehand as to what he wants the money for, or no promise is made, then that would not be bribery, because it would amount to an unconditional payment unconnected with the manner in which the voter might vote. If a man gets money for travelling expenses beforehand, and goes down and votes for the party afterwards, that would not amount to bribery, under the first section of the Corrupt Practices Act; but if he gets a promise of so much on condition of going down to vote, that is bribery, and is so laid down by Judges in the House of Lords. Now what is the evidence adduced by the petitioner to establish bribery. I called Mr. Bell, and his statement was very strong. When the Germans came down they tell him that they require that their expenses should be settled before they vote, to which he replies, "I have no authority to do it, but I agreed to pay you £2;" and when they still press for more, he adds, "I will see Elliott about it." The men then agreed to vote; they did vote for Monro, and were paid afterwards. The evidence of Bosselmann was that originally they did not know whom they should support; it was a matter of indifference to them for whom they voted. Kerr asked them if they would go down and vote for Monro, and they said they must be paid 8s. per day expenses. Upon Kerr promising that they should receive that sum they agreed to vote for Monro, and came down. When they arrived at the polling place, they were met by Bell and Dreyer, who asked them again how they were going to vote, and Bosselmann said "I am not going to vote, and the others are not going to vote, unless our expenses are paid."

The Chairman: He said he would not answer for the others.

Mr. Allan: Even his one vote, given under such circumstances, would be sufficient to vitiate the election. He stated that he, as well as the others, said that they were not going to vote at all until they had 8s. a day.

M. Travers: He did not state it to Bell.

Mr. Allan: Bell came down and asked them if they were going to vote for Monro. They said, "They did not know yet, and that they were not going to vote unless they were to get their expenses." If that evidence does not come within the definition of bribery, as laid down in the House of Lords in the case of Cooper v. Slade, I do not know what evidence can be brought within it. Some men are influenced by the offers of large sums, and some by small; but if there is a corrupt influencing motive brought to bear on the mind of the voter, and, actuated by that motive, he subsequently votes, it falls within the language of the Corrupt Practices Act. The giving or promising to procure money to or for a voter, to induce him to vote—and that these men are speaking the truth, who can doubt? what interest had they in making a false statement? By admitting what they have done, they become as liable to be charged with an offence under the Corrupt Practices Act as either Bell or Kerr. I say that their evidence is strong, and incontrovertibly strong. The evidence of Bell was guarded, but his evidence was enough to show that he was treating with them for their votes, and that the money was promised, and paid afterwards. I beg the Committee to bear that in mind—to look at the decision in the case of Cooper v. Slade, which goes fully into the matter. The principles eliminated in Cooper v. Slade are these—that an unconditional payment of expenses or money for loss of time, which does not amount to more than the ordinary sum a man would earn by his labour, might probably

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not be considered as illegal; but that the promise of any sum, in consequence of which the voter's mind is influenced—and the influence upon his mind can only be shown by the outward act—that any payment for travelling expenses, or for loss of time, is a payment to procure a man's vote, and therefore illegal. In this case the whole evidence is one way: that these men did not intend to vote; that they had no object in voting; that they were induced by Kerr, Sir David Monro's agent, to go down and vote for Sir David Monro, upon getting 8s. a day. That they then saw Mr. Bell, who gave them £2 down, promising to endeavour to procure the balance, and the balance was afterwards forwarded. Does he then say to them, Go, and vote afterwards for whoever you like? These men do not tell you that; they tell you, We came down, as we had been promised 16s. We came down, and Monro's election agent came up to us. He asks us, if we are going to vote for Monro? We replied, "No, not until we get 8s. a day." The 8s. a day was then promised, and they went and voted, and the whole money has been since transmitted to them. I do not see that the Committee can come to any other decision, when they consider the law carefully, and apply the facts to the law.

The Chairman: There is a distinction between the present case and that of *Cooper v. Slade*.

Mr. Allan: It was held in *Cooper v. Slade*, that Slade was liable.

The Chairman: The promise was made at the time of the election.

Mr. Allan: The decision of the Exchequer Chamber in the case of *Cooper v. Slade* was reversed, not on a question of law, but fact. The House of Lords held that there was evidence that Slade had authorized the promise to pay travelling expenses, and that the decision of the Court of Exchequer Chamber on that point was erroneous.

Mr. Travers: The question was, whether there was any evidence that Slade had authorized the addition to the letter. The evidence given was—

Mr. Allan: The Chancellor put this question, Whether, assuming that the letter of the 12th August could have been written and sent to Carter by direction of Slade, there was any evidence to go to the jury that the agent was guilty of bribery within the 2nd section of the Corrupt Practices Act?

Mr. Travers: They held that there was some evidence to go to the jury.

The Chairman: They did not reverse the law of the Chamber below. Has there not been a later Act passed on those points?

Mr. Allan: There is a later Act, which makes payment of travelling expenses illegal. You have the decision of the highest court of jurisdiction on the question.

The Chairman: Has there not been an Act since passed, making it legal for candidates to pay such expenses.

Mr. Travers: Yes, they are certified by an auditor.

Mr. Allan: Was the money paid conditionally upon these men voting? If nothing was said about voting beforehand, it would not be illegal. If the money is not paid as the result of a contract, it is not illegal. But you have the evidence of these men that they did not care whom they voted for; that they were induced to go down to vote for Sir David Monro in consequence of a promise of payment of expenses; that when they came down they saw Sir David Monro's agent, who gave them refreshments, and that he agreed to give them 8s. per day, as they said they would not vote if they did not receive it. If any case comes within the meaning of the Corrupt Practices Act, this case does.

The Chairman: Would you say that the evidence is such as to oblige the Committee to arrive at this conclusion: that the payment was made to induce the voters to change their mind?

Mr. Allan: The voters said, "We are not going to vote till we get our expenses." There is the promise to them that the expenses for loss of time shall be paid. They stated that, after that promise was made, and in consequence of that promise, they went and voted. That comes within an agreement to pay money to induce the persons to vote. I think the Committee will agree with the statement that these men would not have voted until they got the 8s. a day.

The Committee adjourned without coming to a decision.

SATURDAY, 9TH SEPTEMBER, 1871.

9th Sept., 1871.

The Committee met at half-past 10 o'clock.

Mr. Brandon in the chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and *Mr. Travers* for the sitting Member, Sir David Monro.

Minutes of last sitting read and confirmed.

The Chairman: The Committee have not yet decided the question under consideration. We understand that there are witnesses whom you, Mr. Allan, desired to be called and examined, in order that they might get away on Tuesday. I have heard that you desire, instead of waiting for the decision of the Committee, to proceed with the examination of witnesses as to the charge of personation.

Mr. Allan: I have no objection.

Mr. Travers: I submit to the Committee that there was no *prima facie* case. I only assented on the proposition of my friend, that the other witnesses whom he was going to call would confirm what was stated by the witness Bosselmann. I should like to have an opportunity of examining those other witnesses. I am not prepared to admit their evidence on the charge of bribery. I do not know whether you made use of the expression reported in the newspaper in that respect: "I think, Mr. Allan, if you cannot bring something more in the shape of bribery, it is not worth going on."

The Chairman: That is a wrong version of what I said. What I said, according to the notes of the short-hand writer, was, "If you cannot bring something stronger in the shape of bribery—or rather, if the other witnesses can speak to nothing beyond what has been already said by the last witness—is it worth while to call any other witnesses?" That was what I said, assuming that they knew nothing further than what the other witnesses had stated.

Mr. Travers: It would be desirable that these witnesses should be subject to cross-examination, for *non constat* their testimony might not be shaken in cross-examination, it would at least afford strong

ground for believing that, if all these witnesses came and told the same story, it looked uncommonly like an understanding. I cannot consent to treat the evidence as being evidence which every one of them would give precisely alike; and although they did, I should treat it as unworthy of credence, as it would look uncommonly like a made-up story, and that they had agreed to swear to the same effect.

Mr. Gillies: I wish to understand exactly what you mean. As I understand it, you applied yesterday for what we may call a nonsuit, on the ground that there was no *primâ facie* case to call upon you to enter into rebutting evidence. But supposing the Committee were of opinion that there is a *primâ facie* case, then you would still have the opportunity of calling those witnesses for any purpose you might wish.

Mr. Travers: I may assume that they are not going to state the same story, except they prove that there is not a *primâ facie* case.

Mr. Gillies: You cannot be prejudiced in any way.

Mr. Travers: I cannot consent to their evidence being taken as if given, except for that one purpose. If the Committee are of opinion that there is a *primâ facie* case the witnesses must be examined.

Mr. Gillies: You would have an opportunity of calling them.

Mr. Travers: If I do not call them, they have not given any evidence. I tell my friend at once, that I will not be a party to submit, in any degree, that the evidence the other witness would give is, item for item, the evidence already given.

Mr. Bunny: Then go on, and call the witnesses.

Mr. Allan: Of course, I could not say that the evidence would be word for word what the other witnesses stated. I consider the witnesses I proposed to call would support the evidence given by the one witness we did call. I said, certainly, as far as I was instructed, that was so. I understood the Committee decided the witnesses need not be called. The witnesses are here, but the interpreter is not.

The Chairman: Might I ask whether the other witnesses could go farther than those the Committee have examined? I understood not; upon which *Mr. Travers* asked if there was any *primâ facie* case. I considered, therefore, that your case was closed, and that he had assented.

Mr. Travers: I only assented for that purpose; but what I submit is this, that if the Committee feel that there was a *primâ facie* case, I must have the opportunity of cross-examining the other witnesses.

The Chairman: If that be so, if we say there is a *primâ facie* case, it will be for you to call witnesses.

Mr. Travers: I must have the witnesses for the purpose of cross-examining them.

Mr. Allan: I am willing to call the witnesses, but I have not my interpreter here.

Mr. Fitzherbert: It is all very well to have an interpreter, but I consider that the witnesses may be intelligible witnesses without the assistance of an interpreter.

Mr. Travers: I am perfectly well acquainted with the men, and those I shall call can speak English very well.

The Chairman: It would be a pity to detain the witnesses beyond the day you stated they could leave—Monday next. You had better arrange which way it should be, and call the witnesses at once.

Mr. Allan: I should like to have my interpreter here.

The Chairman: As the stoppage of the case arose from the suggestion of the Committee and myself, it will be but fair to you to allow you to continue the case as to bribery.

Mr. Travers: I would call your attention to the newspaper report, which represents what I understood to be the decision come to yesterday:—"It was agreed that no further witnesses should be called to prove the complaint of the petition as to bribery, until Counsel had addressed the Committee as to whether, *primâ facie*, a case had been made out."

The Chairman: That was so. The Committee not having yet decided upon that point, and the desire being that the witnesses might go home, we think it would enable us to let the witnesses go, if you continued now the examination, without waiting until we had decided the question.

Mr. Allan: If I had known, I should have taken care to have the interpreter here.

The Chairman: The Committee do not attribute any blame whatever to you.

Mr. Allan: I understand one of the witnesses, Sixtus, can speak English.

Johann Henry Sixtus, sworn and examined.

Mr. Sixtus.

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By Mr. Allan: Is your name Johann Henry Sixtus?—Yes, Sir.

Where do you live, Mr. Sixtus?—I live in Moutere.

Were you, at the last election, on the roll of electors for the Motueka District?—Yes, Sir.

Now, do you remember the 10th February last?—Yes.

Before I go to that, let me ask you, were you one of twelve persons engaged on the road at Kerr's Hill?—Yes, Sir.

Were you engaged in the contract with Bosselmann and others?—Yes.

What were you making by that contract—how much a week?—We were making about £1 a week.

Had you to pay for your provisions out of what you were making?—Yes, I had.

Well now, before the 10th February, the day on which the election took place, do you remember a person of the name of David Kerr coming to see you and the other men?—Yes.

How many days was that before the 10th February?—It might have been about a week previous to the election day, as near as I can recollect.

Was that at Kerr's Hill?—Yes, on the work.

When he met you did he say anything about the election?—He asked us if we intended to go down to the election.

Then what did you say to that?—We said "What election was going off?" and he said, "For the House of Representatives." He asked us if we would go down, and vote for Sir David Monro. We

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told him we could not afford it, and asked him how we were to go down, it was such a long way off. Then he said he would take us down in his cart. Well, then we said, "That was all very well, but how are we to come up again?" Then he said, the carman that took us down would come back again: meaning that we could come back on the same cart. He said that we should be paid for our time and trouble down at the Waimea, at a reasonable demand. We said we would go down on those conditions.

Was anything said as for whom you were to vote when you got down?—He asked us to vote for Sir David Monro, and he took us down—at least his son took us down. When we came down, there was a party at Palmer's, and they said something about how much we were getting paid for coming down to vote. Then I did object to vote, and one of my mates talked rather sharply to me why we were going down—what we were going down for, because I would not vote. Mr. Dreyer and Mr. Bell invited the others to go in and have some refreshment, but I did not go in. Then Mr. Bell and Mr. Dreyer came to me and asked me what I was cross about. They said they had nothing to do with the voting—that I could go in all the same, and get something to eat. They persuaded me to go in, and I went in, and had some refreshments. Then I considered over the matter, thinking that as the work was not finished, and as they might tease me again, I made up my mind, and went down and voted.

By the Chairman: What work do you allude to, when you state the work was not finished?—Our work at Kerr's Hill: the road work.

By Mr. Allan: Did you go and vote then?—I went and voted after dinner. While we were at dinner, Mr. Bell came in to where we were sitting, and gave Henry Bosselmann £2, and told him that was all he could give him that day.

Was Henry Bosselmann one of the men who came down with you?—Yes. He told Henry Bosselmann that the rest of the money would be sent up to the work. Some time after we came out from dinner Henry Bosselmann told me.

Mr. Allan: After Sir David Monro admitting that he paid the balance as travelling expenses, I go to that point?

The Chairman: The question was, whether it was a corrupt payment, being made afterwards.

Mr. Allan: That it was a payment afterwards, in consequence of a previous promise. Therefore I submit what Bosselmann told this witness is evidence. If not strict evidence, the Committee would, according to the rule laid down yesterday on the inquiry, accept it.

Mr. Travers: The payment afterwards must be a corrupt payment, as made in pursuance of a previous contract by the Member.

Mr. Allan: By the Member, or by any one else.

Mr. Travers: The Committee will see at once this broad distinction. In order to fix upon the Member a corrupt payment, he must have been made aware that it was paid in pursuance of a previous contract. A member may properly, upon the information of his Committee, pay what are represented to him as being the reasonable expenses of certain persons who had come down to vote. When an agent presented accounts, the Member, being probably informed that the payments are reasonable, discharges the accounts. But it does not follow that he was acquainted with all the circumstances of the case, or with what had been done by the person who acted for him. It does not follow that the Member is aware of the circumstances of the contract, if he pays *bonâ fide* in the belief that it is reasonable remuneration for expenses in coming to the poll. It does not follow that it was corruptly paid by him. If it was paid by him after being informed that it was in pursuance of a proposition to pay the men, on condition that they should vote for him, it might undoubtedly amount to a corrupt payment. I admit that the Member paid it, but I submit that it was given in payment of part of the general amount of expenses of the election, and that he was informed that this was a reasonable payment to those men for their expenses in coming down. In order to make it a corrupt payment, he must be made aware that it was paid in pursuance of a previous contract.

The Chairman: That is a question for consideration afterwards; I think we shall be obliged to take the evidence.

Examination continued.

By Mr. Travers: After I had dinner, and after I had voted, Henry Bosselmann told me that he had given to the others a half-crown out of the £2, and I might as well have half-a-crown too, leaving to him the shillings in his hands, which he could not divide amongst twelve.

By the Chairman: Did you take the half-crown?—Yes.

By Mr. Allan: He paid you the half-crown?—Yes.

Do you know whether Bosselmann had been speaking to Bell?—I saw him go up and down the road.

By Mr. Allan: When Bosselmann paid you the half-crown, did he say anything more?—He said that the rest of the balance would be sent up to us to the works.

Did the balance go up afterwards—did you get the balance afterwards?—I was not up at the time; I took ill, and had to go down.

Had you at any time afterwards been paid the balance?—Yes.

How much was that?—13s. 6d. was allowed me.

By Mr. Travers: Did you receive it?—Yes. I did receive it.

By Mr. Allan: From whom did you receive it?—From Henry Bosselmann.

Did he say what it was for?—

Mr. Travers: I do not think, really, you should ask that question.

The Chairman referred to some case upon the point.

Mr. Travers: The rule is clear, that you cannot detail a conversation, unless you intend to call Bosselmann.

Mr. Bunny: We must bear in mind that in the case quoted, the Courts were bound by the strict rules of evidence. They had not got the same laws as we have here. It would be better to go on with the evidence.

Examination continued by Mr. Allan.

Who paid for the dinner at Palmer's—did you pay for it?—No, Sir.

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Have you ever been asked to pay?—No.

What is the ordinary rate of wages which men in your position get in your district?—From 6s. to 10s. for day work.

And have you to find your provisions out of that?—Yes.

By Mr. Travers: Would you travel forty miles for 6s. per day?—I daresay I would, if it was offered me.

Do you mean to say you would go forty miles at 6s. a day?—No, if I could get work otherwise.

Who did you vote for?—For Sir David Monro.

Had you made up your mind to vote for Mr. Parker?—Well, up at the work, I had.

When you got down, why did you vote for Sir David Monro?—Because my mates were rather cross with me.

Was that your only reason?—That was my only reason. I did not comprehend what you said about my making up my mind.

Had you not made up your mind before you came down to vote for Mr. Parker?—No; we all agreed to vote for Sir David Monro.

That was before you came down?—Yes, before we came down.

Was David Kerr present when you discussed it?—Yes, partly.

While you were talking that matter over?—Yes.

And why were you sulky when you came down?—Because some men said how much we were getting paid for it, and I did not like it. I was not sulky, but was cross, because people said I was voting because I was paid.

And that was not true, was it?—Yes.

Did you vote because you were paid?—Oh, no.

Did you vote of your own free will?—No, not then.

When you went into the polling place did you vote as you liked?—I had of course to please my mates; I went in and voted.

It was only to please your mates that you went in and voted?—Yes.

Was it because you were paid, or to please your mates?—No, I did not think about the money at the time.

Then you were angry because people supposed you were voting for money?—Yes.

You were not voting for money?—No, I was not thinking of the money at that time.

By Mr. Allan: You were asked about whether you had made up your mind to vote for Mr. Parker—did you know that Mr. Parker was coming forward?—Not then, when I signed the requisition.

When did you sign the requisition?—It was on the second Christmas day, the day after Christmas day, I signed the requisition for Sir David Monro.

Who asked you to sign the requisition?—A man named Drummond.

You say, at the time you signed the requisition, you did not know that Mr. Parker was coming forward?—No.

Were you a supporter of Mr. Parker?—Well, I always was, Sir.

If you were a supporter of Mr. Parker, would you have come down to vote unless David Kerr had promised you your expenses?—No.

As I understand you, it was then agreed that you were to be paid your expenses, and go down and vote for Monro?—Yes.

By the Chairman: Did you make the promise yourself to Kerr?—We all did, that we would go down on condition that we should be paid for time and trouble.

By Mr. Allan: You agreed to do that, and you agreed with him to go down and vote for Monro?—Yes.

By the Chairman: Was it arranged amongst yourselves that you should all vote in the same way?—Yes, on those conditions, that our expenses should be paid.

By Mr. Allan: When you got down, you knew Mr. Parker was a candidate?—Yes.

Why didn't you go and vote for Mr. Parker if you were a supporter of his?—I had given my word to my other mates, and I didn't like to break it. I had made up my mind not to vote at all.

Why did you vote at all, you being a supporter of Mr. Parker?—The people had an idea there that we were paid for our vote.

Mr. Parker being a person whom you supported, why didn't you go in and vote for him if you could vote as you liked?—Because some of my mates were cross with me; they said something to the effect that I was not a man of my word.

Well, you determined to keep your word given to Mr. Kerr, and to vote for Monro, although you liked Parker the best?—Yes.

By the Chairman: When you say given to Kerr, you mean given to the rest and to Kerr as a body?—Yes.

By Mr. Allan: You agreed with the others to go down and vote for Monro if your expenses were paid?—Yes.

And when you came down, although you were anxious to vote for Parker, you felt you must keep your word and vote for Monro?—Yes, just so.

And you voted for Monro?—Yes.

And got your half-crown?—Yes.

And got your 13s. 6d. afterwards?—Yes.

By the Chairman: Was there any arrangement made amongst yourselves that if your expenses were not paid you would not go down and vote at all?—Well they all said so, that they would not vote, not before they had any guarantee that the expenses would be paid. They said something to that effect. Some said they would go to David Kerr and see if he would guarantee the expenses.

Had you amongst yourselves any conversation to the effect, or resolve amongst yourselves to the effect that you would not go down and vote at all if you had not your expenses paid without reference to any one candidate or the other?—They all talked with David Kerr, who said our expenses would be paid, and on that condition we went down.

Mr. Siatua.
9th Sept., 1871.

Did you determine amongst yourselves that, unless your expenses were paid by somebody, you would not go down and vote at all?—Well, Kerr made the promise to us that our expenses would be paid.

Mr. Travers : You are not answering the question.

By the Chairman : Had you all made up your minds not to go down and vote at all for either one candidate or the other unless your expenses would be paid?—No, we wouldn't have come down unless our expenses had been paid; we wouldn't have come down to vote for either candidate.

By Mr. Allan : You made up your minds not to vote, and you saw David Kerr who promised your expenses, and you were to vote for Monro?—Yes.

Mr. Travers : No, my friend is not to put the contract into the mouth of the witness.

The Chairman : He said he would not have come down unless the expenses were to be paid.

Mr. Travers : If my friend will look at the evidence of the witness he will see that he did not know that there was an election on until David Kerr spoke to him first. (To witness) Was that so?—Yes.

Mr. Bunny : He also states that he did not know Parker was a candidate until he arrived at the Waimea. That is already down.

Witness withdrew.

The Chairman : I must take notice of the statement in the *Independent* to-day in connection with this point. The *Independent* has made me say: "I think, Mr. Allan, if you cannot bring something more in the shape of bribery, it is not worth going on." I said nothing of the sort. What I stated was that, if the witnesses Mr. Allan proposed to call would not speak to anything beyond what was stated by Bosselmann, was it worth while to call those witnesses?

Mr. Travers : Yes, that was substantially what I understood you to state.

The Chairman : The report was a gross error.

Mr. Allan : What you stated was exactly what I stated, and the Committee stated that it would be only taking up your time to repeat evidence given so fully.

The Chairman : And beyond which the other witnesses could not go. I am made to say, in the *Independent*, that I suggested it was no use going on; what I stated was quite the reverse.

Mr. Travers : It was made to appear as if you stated there was no case.

The Chairman : What I stated was quite the reverse.

Mr. Ducker.

9th Sept., 1871.

Frederick Ducker sworn and examined, through Mr. Baucke, Interpreter.

By Mr. Allan : You live at Moutere?—Yes.

Are you a registered elector for Motueka district?—Yes.

Were you one of the twelve Germans working at Kerr's Hill?—Yes.

Before the 10th of February last, do you remember a person of the name of David Kerr coming to you and the other eleven?—Yes.

Did he say anything to you about an election that was going to take place for Motueka?—Yes.

What did he say?—He said to me, personally, if we would go down to vote for Sir David Monro?

By Mr. Travers : Did he speak in German?—No, in English.

By Mr. Allan : What did you state to that, when he asked you to go down to vote for Sir David Monro?—The first answer I gave was, that it was too far for them to go down to vote.

What did Kerr say in answer to that?—Kerr said, if he would pay them for their trouble, would they then go down? Kerr said that to me. If we would go then, he would pay for it.

When he asked you that question, what did you say?—"Yes," was my reply.

Was anything said to you afterwards, before the 10th February, about going down?—I am not quite certain of the day you refer to—of the 10th February.

Before the election, did any arrangement take place between you and Kerr, as to going down to the election?—No, there was no arrangement made. He said he did not know when the election should take place.

But before the election?—This person came down and asked me before the election took place; he made an arrangement with me; but previous to that nothing had taken place—no understanding on my part whether I would vote for Sir David Monro.

By the Chairman : How many times had Kerr seen you about the matter?—I had only seen him on one occasion.

By Mr. Allan : Was there any agreement with Kerr on that occasion when you saw him about your going down to vote?—Yes, on that occasion an agreement was understood.

On that occasion when you saw Kerr, what agreement was made about your going down to vote for Monro?—I first replied that it would not pay to go down. Kerr replied that we should get paid for going down. I then said, How should we get back again? Then Kerr said that the cart was coming back.

Was it agreed then for whom you were to vote?

Mr. Travers : Do not put the question in that way.

By Mr. Allan : Was anything said about whom you were to vote for that day?—It was distinctly understood that we had to vote for Sir David Monro.

Well, now, did you afterwards go down to Waimea West, to where the election was going on, on the 10th February?—Yes, for that purpose only I went down.

After you went down on the 10th February, did you see a person of the name of William Bell when you came to the place?—Yes.

Did William Bell say anything to you?—He asked me if I came down from the working place at Kerr's Hill, and I said, "Yes."

When you said "yes," did Bell say anything to you as to voting?—I asked Bell if he had spoken to Bosselmann.

Before Bell said anything to you about your speaking to Bosselmann, did he ask you whom you were going to vote for?—Yes.

For whom did Bell ask were you going to vote?—Bell asked me for whom I was going to vote.

What did you say to Bell?—He asked me if I would vote for Sir David Monro; I replied that I didn't know what the understanding was with Bosselmann.

Did Bell say anything as to Bosselmann?—Bell said he had spoken with Bosselmann, and that they would get £2, and the rest of the money would be sent to them.

By the Chairman: In what language did you and Bell converse?—In English.

Did Bell say whether he had paid the money or not to Bosselmann at that time?—Yes, he said £2.

After Bell had stated that, did you go and vote?—Yes.

For whom did you vote?—For Sir David Monro.

Did you get refreshments at Palmer's?—Did you go in and have dinner?—Yes.

Have you paid for that?—No.

After the election, do you remember seeing David Kerr some days afterwards?—Not exactly one or two days, but I recollect seeing him about a fortnight afterwards.

Did Kerr offer to pay you any money?—Yes.

Did David Kerr say what the money was for?—Yes, that we had come down, and for having voted.

Did you take the money, or tell Kerr to pay it to some one else?—No, he said he should pay it to Bosselmann.

By Mr. Allan: When Kerr offered to pay the money, what words did he use?—The first words were that he said, "He had brought the money for the voting." I said, "I would not have the money," and he gave it to Bosselmann, the contractor.

Did you see him pay money to Bosselmann?—Yes.

By the Chairman: Why did you tell him to pay the money to Bosselmann?—I could not understand him properly.

By Mr. Allan: Did you receive afterwards any money from David Kerr?—Yes, he paid me afterwards.

I think you told my friend that you had signed a requisition to Sir David Monro asking him to stand?—Yes.

At that time when you signed the requisition did you know that Mr. Parker was a candidate?

Mr. Travers: Was Mr. Parker a candidate then?

Mr. Allan: I ask him a perfectly simple question. (To witness) At the time you signed the requisition, were you aware that Parker was a candidate, or about to become a candidate. Did you know that Parker was a candidate?—No, I did not know.

If you had known—

The Chairman: He says he did not know of it.

Mr. Travers: You are not to put it in that way.

Mr. Allan: You know it is important; you know it goes to the root of the case: that your case is gone.

The Chairman: You should not say that.

Examination continued.

By Mr. Allan: If you had known that Mr. Parker was either then a candidate or going to become a candidate, would you have signed the requisition?

Mr. Travers: That is an objectionable question in every sense of the word, and would not be permitted in any case.

Mr. Allan: It is as clear a legal question as possible. If not a legal question, I say that, even within the rules and provisions in the Act which we have so often referred to, the Committee would inquire this for themselves.

The Chairman: Mr. Allan, will you ask him if, on previous occasions he had ever supported Mr. Parker?

By Mr. Allan: Had you been on previous occasions a supporter of Mr. Parker?—I have not known Mr. Parker, and cannot say.

Would you have come down and voted if you had not been promised your expenses?

Mr. Travers: That is rather for the Committee to judge.

The Chairman: He was asked that already.

By Mr. Travers: Where were you when Kerr came to you at Kerr's Hill, at the time you refer to?—We were just going about the work; we were at the place where we were working; we were just on the point of going to work.

What were the first words Kerr used?—The first question was if we would go down and vote for Sir David Monro.

Did Kerr not say, Are any of you going down to vote for Sir David Monro?—Yes, he asked first if we would go down to vote, or were we going down to vote.

That is a different thing. Did David Kerr, when he came to you, say, Are any of you going down to vote for Sir David Monro? Was that the way Kerr asked the question?—No; I cannot recollect that he put such a question to me.

Was not the question put in English?—Yes.

Repeat the words in English as you heard them?—He asked if we were going down to Waimea West, and we said, "No."

Did you speak, or who spoke?—It was Bosselmann spoke, and not me.

You did not speak at all?—No, not at that time; it was to Bosselmann, the contractor, he spoke, and not to me.

Did you speak to Kerr at any time about it?—I have personally only spoken to Kerr when he brought the money. I have not spoken to Kerr, neither before nor afterwards.

Mr. Ducker.
8th Sept., 1871.

By the Chairman : Are we to understand that all this conversation was not between you and Kerr, but between Kerr and Bosselmann?—No, not to me personally, but only between Kerr and Bosselmann; but we were all about, and heard it.

Does Henry Bosselmann speak English well?—Yes, he speaks good English.

Then whatever arrangement was made by Kerr was made with Bosselmann, and not with you?—Yes.

When you went down to vote, did you vote for the candidate that you liked best or preferred?—I can't say anything to that.

Was it because you got money that you voted for Sir David Monro, or not?—Yes, he paid me for it; we got paid for our loss of time.

If you had not been paid, would you have voted for Mr. Parker?—No, we would not have gone at all.

Was it not because you had your expenses that you went down to vote—that you would not go unless the expenses were paid?—We didn't know that there was voting going on. We would not have gone if our expenses were not paid; I say that positively.

Were you paid for voting for Sir David Monro, or was the money you received to defray expenses that you incurred for going to Waimea West?—We merely thought to get our time paid and expenses. In fact, we were too far; we could not have come down on our own account.

The Committee wish this to be put—If an agent of Mr. Parker had gone to you and proposed to pay your expenses for going down, would you have come down and voted for Mr. Parker?—I can't say that.

Interpreter : He speaks for himself only.

By Mr. Allan : Do you know where Henry Bosselmann is living now?—Yes, on the West Coast.

By Mr. Travers : What is he?—He is on the West Coast, sawing.

By the Chairman : Do you understand English sufficiently to have understood what passed between Kerr and Bosselmann, or was it all translated to you afterwards by your fellow-countrymen?—No, I did not understand it all.

Who told you what had transpired between Kerr and Bosselmann?—I partly understood that we had to go down to vote; I did not exactly understand everything that was said.

By Mr. Travers : Did Bosselmann tell you about it?—Yes; I partly understood it, and Bosselmann explained the rest.

By Mr. Allan : What did you understand of what Kerr said?—I understood that, if we would go down to vote, he would bring us down and back again.

How much did you understand of the conversation, and how much not?—I understood that Kerr asked if we would go down to vote, and if we would go down we would get our trouble paid for.

Mr. Allan : I propose to call John William Bosselmann, so that my friend, Mr. Travers, may ask him any questions.

Mr. Travers : I do not want to ask him any questions.

Mr. Allan : He will corroborate the evidence of the other witnesses.

The Chairman : Unless the whole of the evidence were read over to him, I do not see how he could do that.

Mr. Allan : This witness will corroborate the other witnesses; I do not wish to take up the time of the Committee. I put him into the witness box, and let my friend examine him.

The Chairman : We cannot take the assertion that he could corroborate everything.

Mr. Allan : We will examine him, then.

Mr. W. Bosselmann.

9th Sept., 1871.

William Bosselmann sworn and examined, through the Interpreter.

By Mr. Allan : Is your name William Bosselmann?—Yes.

Living at Moutere?—Yes.

Are you a voter for Motueka?—Yes.

Are you one of the twelve Germans who were working on a contract at Kerr's Hill?—Yes.

Do you know a person named David Kerr?—Yes.

Now, before the day you went down to vote for the election for Motueka, do you remember David Kerr coming to you?—Yes, I recollect it.

Do you remember David Kerr saying anything to you or the party as to your going down to vote?—Yes, he said something.

Will you tell the Committee what you heard Kerr say?—I am quite willing to say it, but I cannot understand sufficient English to say that I understood all that Kerr said.

Tell us what you understood Kerr to say?—The first question was if we were to go down to vote. He spoke to the whole company, and not to me only. My brother Diedrich was not present at the time; he was cooking.

What did Kerr say about your going down to vote?—Kerr asked us if we would go down to vote? I cannot say the difference, if he expressed himself if we were or if we would go down.

What did you say to Kerr when he asked you the question?—When Kerr made the proposition to us, I spoke to my mates, and gave my opinion that we could not go down, as it would take so much time; and then David Kerr said to us that we would get paid for the time we would be going down.

What did Kerr say to that?—Kerr said we would get paid for it.

By Mr. Travers : What did you say then?—We then spoke amongst ourselves, and agreed that we would go down when we got paid for it. It was such a long distance we objected to walk. Then Kerr said he would see to bring us down in a waggon or cart.

They agreed to go down and vote when they were to be paid for it; was anything said then as to whom they were to vote for?—It was distinctly understood that we would only be paid when we voted for Sir David Monro; if it had been any other person, Mr. Parker, for instance—if we had voted for Parker, we would not be paid for it.

Did you go down on the day of the election?—Yes.

Mr. D. Bosselmann.

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How did you go down?—On a waggon.

When you came down did you see William Bell?—I recollect now seeing him; I did not know his name then, but I know his name now to be William Bell.

Did Bell come to you anywhere?—Bell was in company with Dreyer, and some three or four other gentlemen, and they came up to me.

What did they say to you when they came up?—I do not recollect it exactly.

Do you remember going to Palmer's?—Yes.

What had you at Palmer's?—We drank a glass of beer.

Had they anything to eat?—Yes.

Who paid for that?—I do not know who paid for it.

Do you remember Bell going into Palmer's?—Yes.

Did you hear Bell say anything then when he came into Palmer's?—Bell had £2. He gave it to Harry, and said that was the money he would give him. I saw him go in with £2 and give it to my brother.

Had you voted at that time?—That was after I had voted.

By Mr. Allan: Before voting, had anything been said about expenses at Waimea?—I had nothing to do with that, that was agreed with my brother.

Before you voted did your brother tell you anything as to what you were to get?—It was of course understood before we went that we were to get 8s. a day.

By the Chairman: Do you know whether any of the other twelve voted before Bell paid the £2 to your brother?—Franz Schwass had voted before the money was paid, but I am not quite certain; to the best of my knowledge I think so.

Unless you had been promised that you would be paid, would you have voted or come down to vote?—No, we did not know anything about the election.

By Mr. Allan: Did you receive from your brother half-a-crown on the day of the election?—Yes.

After the election did you receive 13s. 6d. from your brother?—I think I have got it all, but I am not particular.

By Mr. Travers: Who did David Kerr speak to when he came to the tent?—Schwass and my brother Harry were there, and Kerr spoke to them first.

Did you speak to Kerr at all?—Yes; they produced a paper with their names on it, and he asked us if our names were all written on that paper.

What paper was that?—It was a little card.

Did Kerr tell you that he would only take down those who were willing to vote for Sir David Monro?—I cannot say exactly that he used those words—that he made such an expression—because it is now some time.

Do you remember what took place?—I recollect well that Kerr has been there, and that I have gone to the election.

Is that all you can recollect?—I have said already what I can recollect.

You cannot remember the words that were used, is that it?—That is what I mean; I cannot recollect the words exactly that Kerr used.

Did you not understand from Kerr that he would take down those who were going to vote for Sir David Monro, and would pay their expenses for the time?—I know well what the understanding was—that Kerr gave me to understand that he would take them down who would vote for Sir David Monro; he may have taken a number more down, but I do not know.

By the Chairman: When Kerr said he would take them down, did he mean that he would take those only, or would he take with them any others who wished to go down to the poll and pay their expenses?—I cannot say that, because I have spoken but very little with Bell.

By Mr. Travers: Had you any conversation amongst yourselves who you would vote for?—When Kerr had been there we came to the conclusion that we would vote for Sir David Monro. Before that we did not know of any election taking place.

You did not know at that time whether Mr. Parker was a candidate?—I cannot recollect exactly whether we had heard that Mr. Parker was a candidate, or had come forward as a candidate; but I think Mr. Schwass did mention that Parker was a candidate; I am not quite sure.

But you all made up your minds to vote for Sir David Monro at that time?—Yes.

Had you any breakfast that morning until you arrived at Palmer's?—No.

Did you fast all night when travelling; were you not hungry when you came in?—Yes.

By the Chairman: Had you any money with you to pay for refreshments?—No; we might have had a shilling or so in our pocket, but we had no money.

Were you one of the parties who signed the requisition to Sir David Monro?—No. I have never signed anything.

By Mr. Travers: Can you write?—Yes, in German.

Had you any means of going down unless your expenses were paid?—I had no means to go.

Not sufficient money to pay expenses?—We had no money; I might have had some money, but it could have been only a little. I do not recollect it exactly.

By the Chairman: Were you with others working at a contract, and bound to complete it at a certain time under a penalty?—I was not bound; the contractor was bound.

By Mr. Travers: Were you getting wages, or were you to have a portion of the contract money?—I was bound under the contract.

By Mr. McGillivray: You said you agreed to go down at 8s. a day; on what ground did you agree to that sum in particular; why was that sum named at the rate at which you were to be paid?—First, we wanted 10s. a day; and then we went into the tent to consult among ourselves.

By Mr. Travers: Why did you fix upon 8s.?—They had put the question to Kerr, and he said he could not promise them as to what amount they would get. They had to make that out when they came down. It was our calculation among ourselves that 10s. a day was what we should ask for going down. We wanted 10s. a day; and we conferred among ourselves.

Mr. D. Bosselmann.

9th Sept., 1871.

Mr. Bunny : As I understand it, they agreed amongst themselves that they should ask 10s. a day for going down to vote at that election. That appears to have been demurred to by Kerr. They then considered it over amongst themselves, and finally arranged to take 8s. a day.

By the Chairman : How long had you been working at this contract?—I cannot say exactly ; I do not know how long we worked after the election.

When you took the contract, what did you consider you were making per day?—One of us had calculated that we were to have 10s. a day, if we completed our contract within the time.

When you had consulted together and agreed to go down for the 8s. a day, was it with reference to what you were then making from the contract?—I do not recollect that I named any sum to Kerr.

By Mr. Gillies : When you named that sum of 8s. amongst yourselves, did you name that sum as being a day's wages?—We made it out amongst ourselves that we would ask 10s.

By the Chairman : What did you consider at the time of the election you were earning under the contract per day?—Once we had made a calculation when we had worked there about six weeks' and we found that we merely got 6s. a day. That is the only time I recollect that we had made any calculation.

Was that calculation made before or after the election?—(No answer).

By Mr. Allan : How many shillings a week were you making after the election?—When the election took place I do not know how much, but after that we found we were making £1 per week.

Had you to buy provisions out of that?—Yes.

How long before Kerr asked you to go down to vote for Monro, did you know that Monro was a candidate?—About three or four weeks before, I had heard that Monro was to come forward as a candidate.

By the Chairman : Had the polling-place been a short distance from where you were working, for which candidate would you have voted?—I cannot say ; I did not know Mr. Parker, neither did I know Sir David Monro.

By Mr. McGillivray : Did you consider your contract a good contract, earning £1 a week?—I have never had worse contract than this one, earning £1 a week.

Witness withdrew.

The Committee adjourned.

11th Sept., 1871

MONDAY, 11TH SEPTEMBER, 1871.

The Committee met at half-past 10 o'clock.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker ; and *Mr. Travers* for the sitting Member, Sir David Monro.

Minutes of last sitting read and confirmed.

Mr. J. Hagan.

11th Sept., 1871.

James Hagan sworn and examined.

By Mr. Allan : What is your name?—James Hagan.

How do you spell it?—(Witness spells the name as given).

How old are you?—Twenty-two last August.

You mean August, 1871?—Yes.

You know your father's name?—Yes.

What is his name?—James Hagan.

Is your father alive?—No.

Where did he live?—He lived at Waimea South.

When did he die?—In August, 1868.

Do you own any land at Waimea West?—We have land. It belongs to my mother till her death, then it comes to me and my brother.

Is your mother living there now?—She is living in Waimea South.

Do you know whether your father was registered as an elector?—I believe he was.

Have you ever applied to have your name put on the electoral roll?

Mr. Travers : I object to that question ; that is a matter entirely for the consideration of the Registration Officer, whose act is a judicial one. It has been decided to be a judicial act and not open to investigation. I will call your attention to cases in which that point has been actually decided. Of course it is perfectly immaterial how the witness answers the question as affecting the position of Sir David Monro ; but I object to a question being asked on a subject which the Committee has no power whatsoever to decide, and which may affect Sir David Monro. In the first place I call your attention to the latter part of the 38th section of "The Election Petitions Act, 1858," which says, "The electoral roll shall be deemed and taken to be conclusive evidence that the persons therein named were duly qualified to vote." I apprehend that no question whatsoever can come before the Committee upon that point. It is quite immaterial whether he really possessed the qualification or not. The roll is conclusive evidence on that point, and no inquiry in regard to it can take place before the Committee. It has been decided over and over again in courts of law that the Revising Barrister has no power to inquire whether a claim has been made or not. There is a leading case, *Davis v. Hopkins*, in 3rd Common Bench, new series. It was an appeal case, and the whole question was considered by the Judges. In England the notices of claims are given to the Overseers of the Poor, who make up the lists for revision. Here the notices of claims are given to the Magistrate or some person called a Registration Officer, and it is his duty to make up the list. He occupies precisely the same position as the Overseers of the Poor, who make up the lists in England. The case I have

alluded to was fully argued, and the opinion of the Judges given. Chief Justice Cockburn was of opinion that the Revising Officer was right in allowing the vote in this case. He commented on the language of the Act of Parliament to show how that opinion was arrived at, and the language of the Act of New Zealand is precisely word for word in that respect with the language of the English Act. He says—"I am of opinion that the Revising Barrister was right in allowing the vote in this case. It appears that the voter sent in a claim to the Overseers, in due time and in proper form, to have his name inserted in the list of claimants, but that, instead of being signed by himself, it was signed by some one else in his name and by his authority. The Overseer, acting upon the notice, inserted the name of the party in the list of claimants. The vote being objected to, the qualification was proved; and the only objection now is, that the Act requires, that the notice of claim shall be signed by the party's own hand, and that his vicarial signature is not sufficient. The opinion I have formed is, that this is, in the first instance, a matter between the claimant and the Overseers. If the Overseers are satisfied that the notice is the notice of the person who claims to be entitled to vote, and chooses to act upon it, and to place the claimant's name upon the list of claimants—which, together with the old register constitutes the list to be revised—it seems to me that the Revising Barrister has nothing to do but to consider whether the claimant makes out his right to be upon the register in respect of the qualification described in the list." And Justice Williams says—"I am entirely of the same opinion. Two questions are reserved for the opinion of the Court by the Revising Barrister in this case:—First, whether he ought to have put the claimant to proof of his claim; secondly, whether the notice of claim was sufficient. In the view I take, it becomes unnecessary to decide the second question. I am clearly of opinion that the Revising Barrister was wrong in putting the claimant to proof of his claim. It may be that the notice was so imperfect that the Overseers were not bound to place the claimant's name upon the list; but, they having done so, the maxim, *Fieri non debuit, sed factum valet*, applies; and, the name being there, all that the Revising Barrister was called upon to do, was, to ascertain that the claimant possessed the qualification stated therein." There is the deliberate decision of the Judges upon an appeal from the decision of the Barrister; that, even if no notice of claim had been given at all, and the name had been often upon the list, the only objection that could be urged to retaining the name upon the list was the existence or non-existence of the qualification. The case I have quoted has been followed in a great many cases, and the whole point elaborately considered. What I contend is this, that the legal position is precisely the same here as it is in England; that the Revising Officer has no power whatsoever, under the Act, to inquire whether any notice has been given. All the Revising Barrister has to do, upon an objection being made to the name of any person on the roll, is, to inquire whether he possesses the qualification. The Act under which this investigation is taking place, decides that the Committee has no power to question the qualification. Now, I take it that the investigation before this Committee is as to the identity of the two individuals; not the notice of claim, or the existence or non-existence of qualification. The question is, merely, whether the witness here is the James Hagan who is upon the roll, and the Committee has nothing whatever to do with whether he has made a claim or not. I would ask the Committee to consider that this is a question of personation; it is a charge of a high misdemeanour, which subjects the party himself, if guilty of it, to a severe amount of penal servitude. He is not called upon to enter into the question, whether he gave notice of claim or anything of that kind. The question is, whether the James Hagan represents the witness or some other elector of that name. I object to any question being asked by my friend as to whether this witness gave notice of claim or took any step to put himself on the registry.

Mr. Allan: I do not know what the case referred to by my friend has to do with the question. There is no doubt that if a man is the person whose name is on the roll, the question would arise whether the Committee would not consider that the qualification has not been carefully considered by the Revising Officer. That is not, however, the question here. The question the Committee has to try is, whether James Hagan improperly voted or not; and, therefore, I contend that every question that will go to show whether that James Hagan whose name is on the roll was the proper person or not, is admissible and strictly legal evidence under the provisions of the Colonial Act. The question is not raised here whether the qualification is properly described or properly admitted by the Revising Officer; it is, whether the James Hagan now on the roll for 1870-71, is the James Hagan entitled and who claims to vote. I say I have a right to put every question and adduce any evidence which will go to show that he is not the party. We are not disputing the qualification, but we are disputing the identity, and I submit that the evidence is clearly admissible, and that the case quoted has nothing to do with it. That was a question whether the Revising Officer was right or not in putting the man's name on the roll. Here we see that the James Hagan on the roll was not the person who voted.

The Chairman: The man has been dead two years.

Mr. Travers: Three years since 1868. I would ask the Committee to ask this witness whether an objection was not made to him to his name being on the roll.

Mr. Fitzherbert: The question is now whether a certain question shall be put.

The Chairman: The question might arise that where objections might be raised before the Revising Officer and not raised, whether they could be raised afterwards or not.

Mr. Allan: I contend that the man who pretends to vote as James Hagan was not the James Hagan on the roll. The question has been allowed in England over and over again.

Mr. Travers: No.

Mr. Allan: I beg your pardon, Mr. Travers.

The Chairman referred to a Statute.

Mr. Allan: The Committee must not be led away by that. The question before the Committee is this, whether they will allow a vote which is given in the name of a person different from the witness—a vote given in the name of a person who is a different person from the one who had offered the vote. It is the first time I have heard that if a man has assumed to vote in the name of another person, whether dead or alive, that that cannot be inquired into by the Committee.

The Chairman: If a man, however he gets upon the roll, is there, and has the qualification, and has not been objected to at all, how can he be declared to be not on the roll?

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Mr. Travers : He was objected to, and the objection was allowed.

Mr. Bunny : It would be better for the Committee to consult among themselves.

Mr. Fitzherbert : I think so.

Mr. Allan : We are not discussing whether the man has actually been on the roll, and whether there was any defect in his qualification, which the Revising Officer ought to answer. The question is whether it will lead up to the point I want to prove, that this witness is not the person whose name was on the roll.

The Chairman : There is a person of the name of James Hagan ; if he has the qualification upon the roll, and that qualification is sufficient to entitle him to be there, how can you raise the objection ?

Mr. Allan : He has not got the qualification ; the question is, whether he ever put in any claim to vote.

The Committee consulted among themselves upon the objection raised.

The Chairman : Will you give the exact question, Mr. Allan ?

Mr. Allan : Did he ever make any claim to be registered before 1870—before the 31st March, 1870 ?

The Chairman : The Committee have determined to allow the question to be put.

Examination continued.

By Mr. Allan : Had you ever made any claim to have your name put on the list ?—I sent down my brother-in-law ; I asked him to register my name ; I didn't say Waimea West or South ; I simply asked him to do it.

When did you send him down ?—I don't remember the month.

By Mr. Bunny : Can you recollect the season of the year ?—No.

By Mr. Allan : Was it in January, February, or March ?—I cannot remember.

By the Chairman : Can you remember whether it was in summer or winter ?—I do not remember.

By Mr. Allan : Did you sign any paper or anything before your brother-in-law went ?—No ; I merely sent him down to try and get my name on the registry. He was going down, and I asked him to do it.

Did your brother-in-law come back and tell you whether he could get you registered or not ?—He told me that night that he could not do it unless I was there myself.

Did you ever yourself make any application or send in any signed paper or anything to be registered ?—No, not before then.

By the Chairman : Have you since ?—I have since, for Waimea South.

Is Waimea South included in Motueka District ?

Mr. Travers : No, it is not ; it is a different electoral district.

Mr. Fitzherbert : We are enquiring about Waimea West.

Mr. Gillies : Waimea West is part of Motueka.

Mr. Allan : But Waimea South is not.

Mr. Fitzherbert : He made this application for Waimea West in 1870. I want to know if he ever made a subsequent application for Waimea West after the first failure.

By Mr. Allan : Did you ever make a subsequent application to be registered for Waimea West after 1870 ?—No.

Did you never make any application to be registered for Waimea West, except when you told your brother-in-law to get you registered, if he could ?—No.

I understand your evidence to be this, that you wanted your brother-in-law to try and get you put on the list of electors for Motueka ?—I didn't say anything but ask him to register me as an elector.

By Mr. Bunny : For what district ?—I think it was for Waimea South.

By Mr. Fitzherbert : Did you ever make application to be registered for Waimea West ?—No.

Did you through your brother-in-law ?—No.

By Mr. Allan : And you never applied yourself ?—No.

At that time, in 1870-71, were you an elector for the district of Waimea South or Waimea West ?

The Chairman : I do not think that is a proper question ; you ask him whether he is an elector. Is he on the roll or not ?

Mr. Allan : No, he is not on the roll ; he does not own the property. (To witness) Before you voted, or were asked to vote, in 1870, did you consider that you were on the roll ?—Yes, I considered my name was on the roll.

Did you know that that name on the roll did not apply to you ?—(No answer).

By the Chairman : Why did you consider your name was on the roll ?—Well, I knew the name was on the roll ; I had been told that my name was on the roll, and that I had a right to vote.

Now, when was it that you were told that ?—Before the election.

By Mr. Allan : Who was it told you ?—It was James Arnold told me.

Where was it he told you that ?—At Waimea South.

You remember exactly what he said to you when he told you that your name was on the roll ; did he say anything more ?—He said he wanted me to go down and vote.

Did he say anything as to your name being the same as your father's ?—He said my name was on the roll, and they could not stop me from voting ; that I had a perfect right to vote.

Did he say anything about your father ?—I think, if I remember right, I said it was not my name. He said my name was on the roll, and I had a right to vote, and they could not stop me.

When you said it was not your name, although it was the same name as yours, did you know whose name it was ?—I knew it was my father's name.

Did you suppose or not that that name on the roll applied to your father or to yourself ?—I thought I could vote.

Because it was your father's name ?

Mr. Travers : He did not say that.

The Chairman : He did not say that exactly.

By Mr. Allan : You thought you could vote after Arnold told you so?—Yes.

But before Arnold told you so, did you consider that you had a right to vote because that name was there?—I did not think anything about it.

Do you know whether your father had ever voted?—Yes.

When did your father vote?—He had always voted at the elections before.

When Arnold asked you to vote, did not you say you had no vote?—I said my name was not on the roll.

Do you remember your going in to vote? Who took you in to vote?—I went in myself.

Where was that?—At Waimea West Schoolroom.

Well now, when you went in, did the Returning Officer say anything to you?—He looked at me and looked at the roll, and said, "Oh, I thought that was your father's name."

What did you say?—I never answered.

Was the voting paper handed to you?—Yes.

Were you the person on that roll, or was it your father? You know what I mean. You saw a printed paper?—No.

What did you see, then?—The voting paper.

Electoral roll handed witness.

Are you the person described on the roll—"363, Hagan, James, Waimea South, freeholder, Waimea West, 300 acres of section 112"?—No; I am not the person described there.

You never made any application to be registered in 1870, as a freeholder for Waimea West, 300 acres, section 112?—No.

Who owns that section of land now?—It is my mother's till her death.

Are there trustees for your mother?—Yes.

For whom did you vote?—For Sir David Monro.

Had you any intention to vote for Sir David Monro before Arnold asked you to vote?

The Chairman : You should first ask whether any objection was taken at the time by the scrutineers; whether the ballot paper that he used had been set aside by the scrutineer for the purpose of future investigation.

Mr. Allan : I consider that unimportant. If you ask that question yourself, I cannot prevent it. If the question is to be prohibited; if the House of Representatives is not to inquire into things of this sort, because some scrutineer might not have objected at the time, or because the Revising or Registration Officer did not do his duty, election by ballot must cease.

The Chairman : There are provisions made for a scrutiny at the end of the polling, and it is then the objection should be taken to a vote which is considered to be wrongly given, otherwise, what is the use of the ballot?

Mr. Allan : In England, it is always allowed that the parties be represented at the polling by persons whom they may chose to appoint; and those persons can always object or not to persons personating, or object to the voting. I never heard in cases of inquiry as to personation, that because some one may not have objected at the time to the vote, that the House of Commons or the House of Representatives is not afterwards to inquire into it.

The Chairman : My own opinion is, if the scrutineers wish to object to any voter, to his vote or to his conduct, that the time for meeting that objection is at the end of the polling. If the objection is not then taken, if the voting paper with which he votes is not set aside as a disputed paper, then I consider that we ought not to go further into the question as for whom he voted. The English cases do not bear upon the question. It is not secret voting at home, but here it is secret voting. Personation subsequently disowned would be another matter.

Mr. Gillies : The 61st clause of the Regulation of Elections Act provides that the production of the ballot papers used is evidence of a person whose name is on the roll having voted. Unless it was objected to, it is only evidence of some person having voted. In order to prove that it was some person who voted in that name, the production of the ballot paper, I think, is necessary.

Mr. Allan : It is not necessary. This has not anything to do with the ultimate decision of the House or Committee. It is evidence, no doubt, of a person having voted. It would not be conclusive evidence, because if that were so, the House of Representatives would be abrogating its privileges. I would request the Chairman, with the consent of the Committee, to have the ballot paper opened and examined.

Mr. Travers : I do not object to the question.

Mr. Allan : The ballot paper is evidence of the party having so voted, but that ballot paper is not conclusive evidence. If otherwise, the sooner the law is altered the better. What is meant by that section is, that the ballot paper is to be evidence that the party voted; it is evidence against himself.

Mr. Gillies : The person who is named in the registration roll.

Mr. Allan : A man claims to vote as so and so. The ballot paper is handed to him, and he votes on it; but that is not conclusive evidence that he has the right to vote.

The Chairman : Were any of the questions mentioned in the 40th clause of the Act put to the witness at the polling?

Mr. Allan : That has nothing to do with it. We are not here to try Mr. Hagan. He is here to answer every question boldly and openly. It is not a question whether he acted contrary to the Act or not; the question is, whether the man who votes in that name is entitled to vote, not having a qualification. The scrutineer may not know every person who comes in. A party says he is the person to vote; he asks for the paper, and votes. It afterwards turns out that a number of people voted under the name of others, and that could not be inquired into at the time.

The Chairman : The presumption is that all voting is to be secret.

Mr. Bunny : Every voting paper has upon it the number on the roll, for the purpose of identi-

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Mr. Allan : If Hagan had refused to answer as to how he voted, we could have the ballot papers opened to find out the ballot paper; but as he has admitted how he voted, it seems to me to be unnecessary to have the list opened.

Mr. Fitzherbert : As the question is not objected to, why continue the discussion.

The Chairman : It is for our own guidance. This is the first time we have sat upon an election petition, and I think we have to be cautious as to the extent of our power.

Mr. Travers : The German witnesses were asked the same question.

Mr. Bunny : I think we had better go on.

Mr. Pearce : Whether right or wrong, the other witnesses were asked the question.

Mr. Allan : These papers are not to be opened except after every other evidence has been exhausted to get at the truth. All the witnesses have admitted that they have voted for Sir David Monro.

The Chairman : The question is, whether the scrutiny at the end of the polling-day should not be final, except in certain cases. If an objection is not taken to the vote, and the ballot paper is not set aside, I think it is a question whether the ballot paper should be produced before the Committee to show for whom the party voted. My opinion is, that unless the scrutineer objects to some voter and requires that the ballot paper should be set aside, the ballot papers should be sacred.

Mr. Studholme : The Committee have the power under the Act to open the ballot papers.

Mr. Bunny : The 61st clause of the Act is clear upon the point.

Mr. Allan : The scrutiny of the scrutineers is not to be final, unless expressly provided for under the Act establishing the ballot.

Mr. Bunny : We have got the evidence direct from the witnesses as to how they voted.

Mr. McGillivray : The necessity for opening the ballot paper seems to be superseded by the evidence of the witness.

Mr. Travers : The witness has a right voluntarily to criminate himself if he chooses, and I do not know how you can refuse it.

Mr. Bunny : I think we had better go on.

Examination continued.

By Mr. Travers : Had you ever before this voted at any election for Waimea West?—Yes.

Under the same name on the roll?—Yes.

After your father's death?—Yes.

You were objected to at the last revision, were you not?—Yes.

The objection was this, that the James Hagan on the roll was dead?—Yes.

Mr. Fitzherbert : What date was that?

Mr. Travers : In May last.

Mr. Fitzherbert : That was subsequent to this roll being made out.

Mr. Allan : The question is, whether this witness had a right to vote in 1870-71.

Mr. Travers : The objection to his being on the roll was, that he was dead. The objection was to his being retained on the roll of 1870. The roll states:—"The following persons are objected to as not being entitled to have their names retained on the list of 1870," and the objection in this case was "dead."

Mr. Allan : That was after he had voted.

Mr. Travers : This was in May, and he voted in January, 1871. (To witness) Was that objection allowed or not? Were you struck off?—I believe it was not allowed. I have seen by the newspapers that the objection was not allowed.

You and your brother, I believe, are entitled to the property, on the death of your mother subject to a life interest?—Yes.

To the 300 acres?—Yes.

Who was the Returning Officer before whom you went; was it Mr. Brunner?—Yes.

Now, did he put a question to you, "Are you the person whose name appears as James Hagan on the roll for the Electoral District of Motueka?"—No.

Well, now, just try and remember?—He did not put any question at all to me.

Did not he ask you if you were twenty-one years of age?—No.

You are quite sure?—Yes.

I am bound to ask you that very distinctly. Did not Mr. Brunner, the Deputy Returning Officer, on the occasion of your voting at the election of Sir David Monro, put the following question to you:—"Are you the person whose name appears as James Hagan in the roll in force for the Electoral District of Motueka?"—No.

Did he ask you, "Are you twenty-one years of age?"—No.

You are quite sure now?—Yes.

How often had you previously voted at elections?—Twice before.

In respect of the same name on the roll?—Yes.

Can you state when that was?—The one before that was for the Provincial Council, between Henry Redwood and somebody else.

Can you remember that? Was there a contest?—Yes.

You voted on that occasion?—Yes.

Did you vote on any other occasion?—Upon the last election for Superintendent.

The Chairman : What year was that?

Mr. Travers : It was in 1869.

By Mr. Bunny : Do you recollect the year?—No.

By Mr. Travers : Your vote was never objected to?—No.

Did you believe you had a right to vote?—I believed I had a right; I was told that I had, and I believed that I had a right to vote.

The land is yours, subject to your mother's life interest?—Yes.

The 300 acres?—Yes, between me and my brother.

By the Chairman: If you voted on those two occasions, believing you had a right to vote, what made you think you had no right on the last occasion?—I had been told that the name was struck off.

Was that the reason you thought you had no right to vote?—Yes.

By Mr. Travers: Until then, did you believe that you had a right to vote?—Yes.

I believe, when you heard that the name was not struck off, you still thought you had a right?—Yes.

By the Chairman: You say you thought it was your father's name that was on the roll?—I knew that it was my father's name.

You knew it was the same name?—Yes.

Did anybody tell you it was your father's name since, and that you had no right to vote?—I do not remember.

Who were the Returning Officers in the case of the Provincial Council election and the election for Superintendent?—The Returning Officer was a man named Higgins, a schoolmaster.

Did he know you?—Yes.

Know you well?—Yes.

Did he know your father?—Yes.

Did he make any objection to receiving your vote?—No.

Who was the Returning Officer on the other occasion?—Higgins.

On both occasions?—Yes, I think so, as well as I remember.

On these occasions he made no objection to your voting?—No. He told me before the election for Superintendent that I had a right to vote.

Higgins, the Returning Officer, told you that you could vote?—Yes, he told me that I could vote.

Was it after that you were told your name was struck off?—For two elections I was told the name was struck off.

Was it because of that you thought you were voting in the name of your father?—I know I was voting in the name of my father.

Did you believe, when you voted, that you had a right to vote in respect of the property left to you by your father after your mother's death?—Yes.

Is that the same property mentioned here as the qualification?—Yes.

Waimea West, 300 acres, section 112?—Yes.

By Mr. Allan: Was the person who got you to vote at those two elections the same person who asked you to vote for Sir David Monro?—Arnold and Higgins both came and asked me to vote.

By Mr. Fitzherbert: Was that the same Higgins, the Returning Officer, who asked you to vote?—Yes. It was before the election he asked me.

By Mr. Allan: Before the election Higgins asked you to vote?—That was for the Superintendent.

For whom did you vote?—I voted for the present Superintendent.

Was Higgins trying to get votes for him?—I think so.

At that time, had you anything like whiskers, or were you as tall as you are now?—I was nearly as tall as I am now, but I had no whiskers.

Had Higgins and Arnold known you from your boyhood?—Arnold did, but Higgins had not been in the district so long.

When they first came to ask you for your vote, what did they say to you?—I don't remember now, it is so long ago.

Did you tell them that you had no vote?—They told me how I could vote.

Did they tell you that you could vote because your name, James Hagan, appeared on the list?—Yes.

Did they ask you whether that was your name or whether you had registered your vote?—No, they did not.

Was Arnold acquainted with your father?—Yes.

I would ask you, unless these men had come to you for your vote, would you have ever thought of going to vote?—No.

And you had never, at that time, made any application to have your name on the list?—No.

Don't you know that this objection, made in 1871, was, that your father was dead; that the name ought not to be retained on the list?—Yes.

Do you know a Mr. Pitt, a solicitor, at Nelson?—Yes.

Was he acting as agent for Sir David Monro?—I believe he was.

The Chairman: Who was the Revising Officer in 1869-70?

Mr. Travers: Mr. Connell.

By the Chairman: Was Mr. Connell acquainted with you?—No.

Mr. Bunny: Mr. Connell was in Auckland.

Mr. Gillies: He came from Nelson to Auckland.

By the Chairman: Did he know your father?—I don't know.

By Mr. Allan: Have you seen that paper (copy of a letter)?—Yes, I have.

Did you ask Mr. Pitt to defend the vote, or did he come to you first?—Mr. Pitt came to me first.

Did he ask you to defend the vote?—He said he wanted me to give him authority to do so.

Had you asked him before that to go and defend it for you?—No, I did not.

Did you ever tell Mr. Pitt that you had put in an application to be registered, and that the application was allowed?—No.

Mr. Travers: He gave Mr. Pitt authority generally to defend the vote.

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Mr. Allan (handing a written paper to witness) : Is that the authority you gave Mr. Pitt? Is that your signature?—Yes.

The Chairman read the document, which was dated at Nelson, 20th June, 1871.

By Mr. Allan : Did Mr. Pitt produce that written paper to you?—He read it to me.

He had asked you to defend the vote?—He asked me to give him authority.

You had never asked him in any way to defend it?—No.

The Chairman : There is the positive request in writing.

Mr. Allan : I want to know how he got that document, which speaks for itself, of course.

The Chairman : I do not think you should go beyond that ; there is the document itself.

Mr. Allan : If the Committee take that strict view, I have nothing to say.

By Mr. Bunny : You say Mr. Pitt came to you and asked you to authorize him to try and maintain your name on the voting paper?—Yes.

Did he at that time produce that paper to you?—He read it while I was present.

Read it over to you?—Yes.

And then asked you to sign it?—Yes.

Which you did?—Yes ; he said it was only merely claiming the name.

By Mr. Allan : Were you called as a witness before the Revising Officer?—No.

By Mr. Fitzherbert : In this paper, James Hagan, Waimea South, protests against his name being removed from the list, on the ground of his being a freeholder. Are you a freeholder?

Mr. Travers ; That is Waimea South, and his claim is in respect of Waimea West.

By Mr. Fitzherbert : It is in respect of land held as a freehold. The property is in Waimea West, and he resides in Waimea South. (To witness) I want to know whether you are a freeholder?...The land is my mother's till her death.

Do you understand what is the meaning of a freehold estate?...I believe I do, Sir.

Then are you a freeholder?—The property is my mother's till her death, and then it partly becomes mine.

Mr. Travers : It is a freehold, but not in possession.

The Chairman : It is a vested estate.

Mr. Bunny : It is not a freehold, as contemplated by the Act.

Mr. Fitzherbert : Two persons cannot claim, therefore, he is not a freeholder.

The Chairman : The Act makes no difference in the tenure ; he is the holder in reversion.

Mr. Allan : The Constitution Act says that he must be a freeholder in possession.

The Chairman : That is not a question of freehold ; that is a question of tenure.

Mr. Allan : His mother has a life interest, and after her death he has part of the property. I put in evidence a certified copy of the will, and an affidavit of witness's mother, to show his age : that he was twenty-one years of age at the time he might have registered.

The Chairman read the will.

Mr. Bunny : According to that, there is no freehold at all.

Mr. Travers : No freehold at all in possession.

Mr. Bunny : No freehold at present, until certain things take place.

The Chairman : Are you quite done with this witness?

Mr. Allan : Yes.

Witness withdrew.

Mr. Allan : The practice is to consider whether one vote is good, and if it is bad, you might not go into the other.

The Chairman : The witnesses want to leave for Nelson. The Committee came to the conclusion that you might go on with the whole case, leaving your summing up until afterwards. What the Committee understood that you desired was, that the evidence of these two parties should be taken to-day, in order that they might go to Nelson themselves afterwards. The Committee assented to that.

Mr. Allan : I understand there is to be an application made on the other side for an adjournment, in order to enable them to recriminate. That I shall oppose.

Mr. Travers : There will be an application made to rebut the charges. Of course we could not conceive the character of the evidence, and we are obliged to call witnesses.

Mr. Pearce : That applies to the bribery case?

Mr. Travers : Yes.

Mr. Bunny : You had better go on with the present case now.

Mr. Tomlinson.
11th Sept., 1871.

Henry Tomlinson sworn and examined.

By Mr. Allan : Where do live now?—At Waimea West.

In the year 1870-71, were you living at Waimea West?—Yes, Sir.

On what land were you living ; was it your own land or other persons land or not?—Part of it is mine, and part of it is my father's.

Upon what section is that?—There are five or six sections.

Can you name the number of those sections?—No, Sir.

Now, in the year 1870 were you a householder, occupying a house at Waimea West, upon part of section 133?—No, Sir, I was not.

You were, I understand, at that time living on these sections?—No, I never was a householder.

Have you any relation who was a householder there?—Yes, many years ago.

What was his name?—Henry Tomlinson.

How many years ago?—He lived there in 1861.

Do you know where his house was situated?—Yes, Sir.

Where was it?—It was on part of section 133.

I see on the electoral roll one Henry Tomlinson, 501, Waimea West, householder, Waimea West,

upon part of section 133, and you say that that was where your cousin lived?—Yes, it is where he lived. *Mr. Tomlinson.*

11th Sept., 1871.

What was your cousin's name?—Henry Tomlinson.

Did you ever claim to be registered as an elector as Henry Tomlinson, Waimea West, householder, Waimea West, upon part of section 133?—No, Sir; I never did.

Never signed any papers to claim as an elector?—No; I never claimed to be an elector for that section, 133.

Did you ever send in an application?—Yes, Sir.

What was that for?—For No. 10.

Section No. 10?—Yes.

Where?—In Waimea West.

How did you describe yourself: a freeholder, or householder, or what?—As a freeholder.

When was that, how long ago?—In March, 1869.

As Henry Tomlinson, freeholder, part of section 10?—Yes.

You remember the election for Motueka, on the 10th February, when Sir David Monro and Mr. Parker were candidates?—Yes, Sir.

For whom did you vote then?—I voted for Sir David Monro.

Well now, in whose name did you vote, or on what qualification?—I voted in my own name; I thought it was my name.

Did you vote as Henry Tomlinson, Waimea West, householder?—No; they never put any question to me.

But did they give you a ballot paper?—They gave me a paper with the names of the candidates on it; that is all.

What did you claim to vote as? Were you shown any paper or roll (electoral roll) like this?—No, Sir.

When you went in, did they ask you your name?—No, Sir.

Has any one been speaking to you here about this matter?—No.

You have never been told that you might be under penalty?—No.

When you went in to vote, what did you do?—Mr. Brunner observed, "This is Henry Tomlinson," and he gave me a paper.

Was he the Returning Officer?—Yes.

By Mr. Travers: You knew that?—Yes.

By Mr. Allan: Did he ask you were you the person numbered 501?—No, he did not.

You voted then in the name of Henry Tomlinson?—Yes.

Did you vote as an elector?—Yes, Sir. I cannot swear whether that was my name or not. I knew I was a freeholder.

Are you the Henry Tomlinson, of Waimea West, householder, section 133?—I am a householder; I know that much.

Are you the person described in the roll?—I never had anything to do with 133.

You say that was your cousin?—It was nine or ten years ago.

Were they any other parties in the booth when you went in, besides the Returning Officer?—Yes, young Coffin was there.

By the Chairman: He was the poll clerk?—I don't know.

Did Coffin know you?—He did.

By Mr. Allan: You never applied to be an elector in respect of section 133?—No, I never made any application.

By the Chairman: You applied to be on the roll as a freeholder?—Yes.

Mr. Allan: The person who voted is not on the roll. We had better look at the ballot paper, and see whether it is not marked 501, Henry Tomlinson, Waimea West. The witness has no right to vote under any qualification, because there is only one Henry Tomlinson on the roll.

The Chairman: You do not want the ballot paper for that, as there is only one Henry Tomlinson. He says he voted for Sir David Monro, and has not the qualification described.

Mr. Studholme: You would not gain anything by opening the ballot papers.

Mr. Travers: I have no questions to ask the witness.

By the Chairman: Where is your cousin now?—He is in Waimea East.

Did you ever vote before?—Yes, Sir.

Whom did you vote for on that occasion?—I voted for Mr. Curtis, Superintendent.

Who was the Returning Officer that took your vote?—Mr. Brunner.

Did he know you?—Yes.

Can you read?—No, Sir.

Are you aware whether your name was upon any previous roll in respect of the qualification which you claim?—My name ought to have been on the roll in 1866.

Do you know when it was taken off?—It must have been taken off in 1867, and I was registered again in 1869.

Was your claim objected to?—No, Sir; not that I know of.

Do you know any reason why your name is not on the present roll?—The Returning Officer scratched my name off.

Mr. Travers: I am going to show that that objection was made to "Henry Tomlinson, householder." By mistake the Returning Officer ran his pen through "Henry Tomlinson, freeholder"; and that was the cause of the error.

Witness: I voted on No. 133 section, and afterwards I found out that my name was not on the roll.

The Chairman: He made his claim.

Mr. Allan: It was never registered.

By Mr. Travers: You made a claim?—Yes.

Mr. Tomlinson.
11th Sept., 1871.

In respect of section 10?—Yes. My own freehold, it was then, and is now.

Can you read and write now?—No.

You made a formal claim on a regular printed form?—Yes.

Mr. Travers: Is that your case?

Mr. Allan: Yes, that is my case.

The Chairman: Supposing the Committee should think that the election of Sir David Monro was erroneous, and that the return is improperly made as far as he is concerned, do you purpose going into evidence to show that Mr. Parker ought not to be returned, or to make any application to that effect?

Mr. Travers: Certainly, Sir. The Committee will see that there are two cases before them; two special questions before them. The first question is, as to whether the parties were guilty of bribery, and whether the seat is vacant on account of bribery. The second is, whether it is vacant on the ground of personation. On both of these points I should wish to address the Committee, and independent of which, I should bring evidence to rebut that given as to the charge of bribery. I also wish to address the Committee on the question of personation, if my friend has closed his case.

Mr. Allan: I should like to know when you are going to close your case?

Mr. Travers: I would now, unless the Committee are prepared to decide that there is not a *prima facie* case as regards the charge of bribery, ask the Committee for an adjournment, in order to produce evidence to rebut the statements made by the witnesses. Of course, they have brought Mr. Bell, who was so far acting as a committee-man, or as an agent for Sir David Monro, at the election. We wish to go to the fountain-head of the matter. We wish to produce some of those persons with whom there was direct communication, at Kerr's Hill. We wish to produce Kerr, Schwass, and Henry Bosselmann, to show that there was no promise or inducement held out to these persons; and that what the witnesses have stated is entirely false in regard to any promise having been made, or inducement held out to them to go down and vote: to show that the parties were most careful in that respect not to make any promise whatever; and to show that these men came down entirely of their own free will. The promise given was simply this, that whatever travelling expenses were incurred, reasonable remuneration for their expenses should be recommended to the committee for payment; and that it was left entirely optional whether payment was to be made or not. Bell gave them £2, to provide refreshments on their way back; but, in any other respect, Bell never made any promise whatsoever, or entered into any arrangement. Bosselmann and Schwass will declare that they came down to vote without being induced by any promise whatsoever, except the promise made by Bell, that the matter should be mentioned as a question involving merely the actual and bare remuneration for the loss of time. If my friend has closed his case on the question of personation, I should be prepared to address the Committee, after the question connected with bribery has been further investigated, but not at present.

Mr. Allan: I shall oppose this adjournment, although most willing in every way to oblige my friend, with the consent of the Committee. I contend that there is no ground for an adjournment. The Election Acts of New Zealand require the petitioner to state his objections. The petition states that the petitioner objects to these votes.

Mr. Travers: I never got notice of the objection till this morning.

Mr. Allan: I am speaking of the petition of which you have a copy, and most likely had a copy long before the House sat. It sets forth the various parties whose names are objected to for bribery. I have no doubt your agent had as much opportunity of examining them as the agent representing Mr. Parker before this Committee. The names of the two persons objected to for personation were stated.

The Chairman: He might have fairly supposed that you were to bring forward these parties.

Mr. Travers: I thought Bosselmann and Kerr would have been here.

Mr. Allan: All I can say is, that they had ample notice of the objections we were going to take, and the kind of objections, and they ought to have had their witnesses here.

Mr. Travers: My friend obtained an adjournment for the purpose of sending for Henry Bosselmann, who was at the Grey.

Mr. Bunny: We have heard Mr. Travers' application, and the objection to it. Let the Committee think the matter over.

Mr. Travers: My friend applied for an adjournment in order to send for Bosselmann and other witnesses. He did not send for Bosselmann, and thus he threw me off my guard, as I thought this witness would have been present.

Mr. Gillies: It was specially mentioned that the application for adjournment would be made, if required, in order to enable Mr. Travers to obtain rebutting evidence. It was distinctly stated, that if the one adjournment was granted, the other application must be granted also.

The Chairman: You surely do not mean to say that Mr. Travers has no right to bring evidence to rebut the evidence already given.

Mr. Allan: Having had ample time, he should have had his witnesses here.

Mr. Bunny: The Committee will discuss the matter among themselves.

After a lengthened deliberation in private,

The Chairman informed the parties of the result arrived at. He said, "The Committee have decided that it was not proved that the sitting Member had been, either by himself or his agents, guilty of bribery, treating, or undue influence. The Committee agree that in the cases of personation by James Higgan and Henry Tomlinson, sufficient cases have been made out to call upon Mr. Travers to bring evidence to rebut the evidence given on the part of the petitioner."

Mr. Allan: I understand it that the charge of bribery has not been proved, but that with regard to the two votes, they should be disallowed, unless my friend can bring forward rebutting evidence.

Mr. Gillies: That there is a *prima facie* case made out, calling upon Mr. Travers to disprove the statements made.

Mr. Allan: The Committee consider that these cases have been proved, unless such evidence is brought forward on the other side as will rebut them.

The Chairman: It is scarcely that. It is that you have made out such a case as to require some rebutting evidence on the part of the sitting Member.

Mr. Travers : I would call the attention of the Committee to the prayer of the petition, which is 11th Sept., 1871. not merely that the names of the persons not entitled to vote be struck off, but that the name of Sir David Monro be erased, and that of the petitioner substituted instead. Now, unless the petitioner abandons that prayer, it will be necessary for me to show, as I am in a position to do, that there are votes on the other side which are objectionable: that, for instance, the vote of C. Stephen Starnes is one which must be objected to. I have here a declaration made in the matter of this petition by James Robson, who acted as Deputy Returning Officer at the polling place at Lower Moutere, who positively declares that after the hour of 4 o'clock, Stephen Starnes presented himself, and requested to be allowed to vote after that hour, and that he permitted the vote. There are other cases to show that the persons who voted for Parker voted irregularly. In considering the question whether the return is to be amended by the substitution of Mr. Parker's name, I propose to go into these cases, in order to ascertain whether the number of voters who voted on each side would still remain the same, leaving the decision to the Returning Officer, as the one which would govern the election.

The Chairman : You cannot go into that until it is decided whether the return of Sir David Monro is invalid or not.

Mr. Allan : Notice ought to have been given of the intended recrimination.

The Chairman : He did not know whether it was necessary.

Mr. Travers : It can be done as soon as the Committee have determined that point.

The Chairman : If we determined that the seat was vacant on account of bribery, there was an end of the whole matter. If we find that, on account of personation, the votes for Sir David Monro are reduced below the votes given for Mr. Parker, then comes the question whether the other party may not reduce the number of votes below the number who voted for Sir David Monro.

Mr. Allan : No doubt; but they ought to have given me notice at the commencement.

Mr. Travers : It can be given to you according as your case progresses.

The Chairman : What better position would you be in? You would have to bring a number of witnesses, without knowing whether you would require them.

Mr. Allan : They ought to have given notice at the commencement, to enable us to know what case they meant to make out.

The Chairman : I think not, until the Committee decide that he is bound to do so.

Mr. Bunny : The petitioner disputes certain votes, and asks that they be struck off the whole number of votes; and the other should say, we have got votes we intend to dispute.

Mr. Travers : We are not in a position to do so until the petition is presented to the House.

Mr. Allan : You knew what the petition was long before the House sat.

The Chairman : How could the other party give you notice until it was known whether you had proved your case.

Mr. Allan : If they pretend to claim the seat because some of our votes are bad, they ought to have given notice at the first sitting of the Committee.

The Chairman : I do not think that is the practice.

Mr. Travers : I have a declaration, made by the Deputy Returning Officer himself, in which he distinctly states that he is the individual who actually accepted the vote.

Mr. Bunny : That is another case relating to Higgan and Tomlinson.

Mr. Travers : I intend to make a statement before calling the recriminating evidence. I should like to call the attention of the Committee to the case.

The Chairman : I do not think you have a right to say anything on the personation question. You may mention what evidence you propose to call to rebut that already given, and when you have called that evidence, you will have your reply.

Mr. Allan : If my friend intends to recriminate, he should give me notice of the case.

Mr. Travers : I intend to do so.

Mr. Allan : No doubt it is the object of the sitting Member to prolong the inquiry as long as he can.

The Chairman : You have no right to make such an assertion. If any one has been misled, it has been Mr. Travers. You asked, and obtained an adjournment, for the purpose of getting certain witnesses, and surely he had a right to think they would be here.

Mr. Travers : I gave my friend notice that, on the hearing of the petition, objection would be taken to the vote of Stephen Starnes, on the ground that such vote was given after the hour of 4 o'clock, after the time allowed for recording votes at the election.

The Committee adjourned.

TUESDAY, 12TH SEPTEMBER, 1871.

12th Sept., 1871.

The Committee met at half-past 10 o'clock.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and *Mr. Travers* for the sitting Member, Sir David Monro.

Minutes of last sitting read.

Mr. Fitzherbert : I think the decision come to by the Committee on the previous day was rather stronger than is represented on the minutes. I think it is, however, better that we should consider the matter among ourselves.

The Committee deliberated for a short time in private, after which Counsel and parties connected with the case were admitted.

Mr. Travers : In reference to the decision of the Committee yesterday, I have to ask the Committee to favour me with an adjournment, as I propose to bring the following evidence before them, in connection with the vote of Henry Tomlinson. I have some observations to address to the Committee on the case in reference to the vote of James Hagan, but I do not propose to bring forward any evi-

12th Sept., 1871.

dence whatsoever in connection with that case. With reference to the vote of Henry Tomlinson, I propose to offer evidence to the following effect: That in the year 1867, Henry Tomlinson and his three brothers all preferred claims to vote in respect of freehold property then in their possession. The Henry Tomlinson who was examined as a witness claimed to vote in respect of a freehold section in Waimea West, contained about 180 acres, and numbered 10. I propose to prove that his claim was preferred, in common with the claims of his other three brothers, by Mr. Winfield Higgin, then acting as schoolmaster at Waimea South, to show that the claim was prepared in due form, and submitted to the Registration Officer in due form. I can show now, by the signed copy of the revised roll for the year 1867, that the names of George, Joseph, and Charles Tomlinson, the three brothers, were inserted by the Registration Officer, and allowed by the Revising Officer, in the list of persons claiming to have their names inserted on the electoral roll. I am informed that the reason why the name of Henry Tomlinson, the claimer, was not inserted in the list of those claims was, that the Registration Officer was acting under the belief that he was the same person who was already on the electoral roll as Henry Tomlinson, not knowing that there were two distinct persons bearing the same name, and that the Registration Officer was under the impression that it was merely a claim in respect of an additional qualification, and that it was unnecessary, therefore, to make any alteration in the roll. I will show that that was the reason why this special claim was omitted; and I will show, moreover, that the Henry Tomlinson, who appears on the roll as a householder, has left the district many years before, and has never since possessed a qualification, in respect of which he is on the roll. Now, I submit that if I prove these facts, if I prove that, although the qualification opposite the name of Henry Tomlinson is certainly not that in respect of which he claimed to be and would have been entitled to vote, I submit that that would sufficiently identify the Henry Tomlinson as the individual, the Henry Tomlinson who appeared before this Committee to give evidence; and that, therefore, although the qualification was described the identity would be established, and that his vote could not be objected to on the ground that he personated a voter. I have stated the facts I propose to prove. It is not an uncommon course, as my friend will admit, for Counsel in a litigated case before any judicial tribunal, to state that which he proposes he is prepared to prove. The Committee having the facts which I propose to adduce in evidence before them, may think it desirable to consider whether these facts, if proved, would amount to a sufficient rebuttal of the *prima facie* case already made out by my friend in respect to Henry Tomlinson. It will be necessary for me, in order that I may be able to produce that evidence, to ask the Committee for an adjournment, so that I may send for the witnesses. There is a mail about to close for Nelson, and assuming the possibility that the Committee would grant the adjournment, I have prepared subpoenas for the necessary witnesses, which would go off by the steamer. There would be but a small amount of delay in the case. No further delay than that necessary to serve the witnesses, who are close at hand, and who would be able to come by the earliest steamer. One of the witnesses lives at a distance of thirty miles from Nelson, so that it would not be possible to serve him in time. I would, therefore, ask the Committee for an adjournment, in order that I might be prepared to adduce evidence in support of what I have stated we are in a position to prove. I am not prepared to adduce any evidence in the case of James Hagan, but I shall be prepared to address the Committee upon it when the case on both sides has been closed. I shall be prepared to prove that it does not come within the allegations of the petition, and that the Committee cannot treat it as coming within those allegations. It is unnecessary for me to trouble the Committee with observations on that point now, if the Committee grant me the adjournment in order to produce the evidence in connection with the case of Tomlinson. The Committee will be good enough to understand that I do not admit at present that the case has been made out against me. The Committee have decided that a *prima facie* case exists.

The Chairman: The Committee have decided rather more than that. The Committee are of opinion that there is a strong case: in fact, they decided that the case has been made out.

Mr. Gillies: I object to such a statement. I would not submit to an imputation of prejudging the case in that way.

The Chairman: Well, the Committee have decided that there has been a *prima facie* case made out.

Mr. Travers: I understand it that my friend's case, unless actually rebutted, is made out.

Mr. Bunny: That is correct.

Mr. Travers: The Committee came to that decision with the reservation that they would hear counsel on the point. There may be matters which would present themselves to the members of the Committee in a different light from that which they present at present. I should be prepared to address the Committee on that point, unless in the meantime they consider that the evidence I would adduce would not affect the matter in any degree in their minds, as at present advised. If the Committee have not come to a conclusion upon the point, they would probably favour me with the necessary adjournment. Assuming the possibility that the Committee would grant the adjournment, I have written full letters of instruction to the agents of Sir David Monro, and I have the subpoenas prepared for the witnesses, and which would be sent by the steamer. I believe the next steamer will be here in the course of a week.

The Chairman: Cannot you telegraph?

Mr. Travers: We could not telegraph the subpoenas. The witnesses are not bound to obey anything but the actual subpoena under the hand of the Chairman. I would telegraph to the agents to expect the communication. The witnesses could not be here on Thursday, so that I would ask an adjournment, in the first instance, until Monday next.

The Chairman: Do you raise any objection, Mr. Allan?

Mr. Allan: I am entirely in the hands of the Committee. We should have got notice of this. When the petition clearly discloses the ground on which the petitioner proceeds, if it is intended to dispute those grounds, notice is generally given to the parties at the time the case comes on, in order that they may know all about it, and that there may be no delay.

Mr. Travers: Although the petition mentions Henry Tomlinson, it does not give us any clue to the person referred to.

Mr. Allan : There is only one Henry Tomlinson on the roll.

Mr. Travers : Henry Tomlinson might have been in Jericho, for all we know. The petition does not give us sufficient clue to know who was going to be brought against us, until the witness appeared. I raised no objection to my friend's application for an adjournment, in order to enable him to produce witnesses.

Mr. Allan : I gave him notice.

Mr. Travers : I never received the list of objections.

Mr. Allan : I shall certainly oppose this adjournment.

Mr. Travers : I think the Clerk of Committee will satisfy the Committee, that I asked him for the list, which I believe is not in existence. I never saw the list, and do not know who the persons are.

The Chairman : I understood that Mr. Allan had given the list to you several days ago.

Mr. Travers : I never saw it.

Mr. Allan : It was left with the Committee, and my friend had an opportunity of seeing it. He cross-examined Henry Tomlinson yesterday, as to whether he made the application, and therefore he came prepared for that witness.

Mr. Travers : Because I saw him since he arrived in Wellington?

Mr. Pearce : Would not Mr. Allan accept the allegations.

Mr. Travers : As proved.

Mr. Allan : I am not prepared to do that. I say these allegations, if proved, would be no answer here.

Mr. Pearce : Are you not prepared to admit that the allegations are correct: that Henry Tomlinson was the man whose name was on the list, and that his qualification was put on in error?

Mr. Allan : I am not prepared to admit that.

The Chairman : If the name of Henry Tomlinson, with the proper qualification that he claims for, had been struck out by mistake, and the same man tendered his vote, do you mean to say that his vote would not be legally taken, or that we should not admit it?

Mr. Bunny : That is to say, a person whose name was not on the roll, but who would have a right to be on the roll, that his vote should be taken.

The Chairman : His name having previously been struck out by mistake.

Mr. Gillies : It never was upon the roll; it was a wrong qualification.

Mr. Travers : The intention of the Revising and Registration Officer was, that the roll should represent the person named Henry Tomlinson, the witness who was before the Committee; but through an error the qualification was retained, and the name erased. The Revising Officer was under the impression that he was merely adding a new qualification to the one existing to the name of the same individual. He did not represent that he was another Henry Tomlinson, but he said "I am the Henry Tomlinson on the roll." It turns out that the qualification was erroneous. It is not a case of personation; but it is a case of voting when he is not on the roll at all. He personates himself only, believing that he ought to be on the roll, and was on the roll. He was not pretending that he was Henry Tomlinson, a householder, formerly a householder in Waimea West, but the person whose qualification is described. He says, "I can identify my identity within the name, but the qualification is a misdescription."

Mr. Allan : That is not so. There is no doubt that there was a Henry Tomlinson, who was qualified with a household qualification in Waimea West. Henry Tomlinson might have gone and voted on that qualification. Here, this man goes and votes upon that qualification. Therefore, how such a vote as that could be allowed I cannot understand, even though my friend proves his case.

The Chairman : It is the error of the Revising Officer that there is any mistake in the qualification.

Mr. Allan : Supposing he had a right to vote in any way, the Revising Officer having exercised his discretion, and struck the name off, I say under no circumstances would he have a right to vote now. He could have claimed to have voted on such a qualification; and if the Returning Officer refused to allow his vote, he could have tendered his vote under protest. He does nothing of the kind. He never claims to vote as Henry Tomlinson, having a freehold qualification, but goes and votes under the name of another elector altogether.

Mr. Bunny : It appears to me, Counsel on both sides are pretty much agreed. No doubt they are in a position to show that the man who voted was not the man on the roll.

Mr. Travers : No; that the man on the roll voted, but there was a misdescription in the qualification.

Mr. Allan : That is quite wrong.

Mr. Gillies : That is a question which the Committee can decide.

Mr. Fitzherbert : The Counsel for the sitting Member applies for an adjournment, to produce the evidence of the Returning Officer as to Tomlinson. Is there any other point?

Mr. Travers : The other point is, that I should produce evidence to show that Stephen Starnes voted after the poll was closed.

Mr. Fitzherbert : Does that require further evidence?

Mr. Travers : That would require the evidence of the Returning Officer.

Mr. Fitzherbert : That is another reason for an adjournment.

Mr. Travers : So I intend it. I have the declaration of the Returning Officer. The Committee have a right to look at it, but I do not tender it in evidence to the Committee.

Mr. Allan : I object to its being tendered.

Mr. Travers : I only tender it to show my own *bona fides* in the application. It is the declaration made by James Robson, Lower Moutere, schoolmaster, who states, that at the election of a member to serve in the present Parliament for the Electoral District of Motueka, he acted as Returning Officer; that after 4 o'clock on the day of election, Stephen Starnes, whose name is on the roll, presented himself at the polling place at Lower Moutere, and voted. His vote was accepted. It is an extraordinary affidavit for a Returning Officer to make, but it shows the *bona fides* of my application to have the Returning Officer here to examine him on that point. It is a declaration made before a Justice of the

12th Sept., 1871. Peace under the Act. I only tender it to show that it is not merely for the purpose of delay that I am making the application to produce this witness. I may state, in regard to the man Hagan, that I have here a declaration by the Returning Officer, also in which he distinctly states that he put the question to Hagan: "Are you the person who appears as James Hagan on the electoral roll?" and that James Hagan answered, "Yes." Hagan denied having the question put to him. I mention this, in order to show that we were to a certain extent misled by testimony of this kind.

Mr. Allan: It only makes the case stronger against Hagan.

Mr. Travers: I am not going to ask for any evidence in the case of Hagan. I only wish to produce evidence to show that the man Tomlinson on the roll is the man who voted, and how the error occurred as to qualification.

The Committee having deliberated in private for a short time,

The Chairman said—The Committee, before deciding on the application for adjournment, would desire to hear Counsel on both sides, on the question as to whether a vote taken after 4 o'clock is valid or not.

Mr. Allan: I understand that the parties were in the polling booth before 4 o'clock.

The Chairman: Admitting, for the purpose of argument on a point of law, that the votes were allowed, the point to which the Committee wish you to direct yourselves is, whether a vote taken after 4 o'clock is valid or invalid.

Mr. Travers: I can only refer to the 36th section of the Act, which regulates the mode of conducting elections, and the polling:—"Every polling shall commence on the day appointed for the same at nine of the clock in the forenoon, and shall, unless lawfully adjourned, finally close at four of the clock in the afternoon of the same day; and shall be conducted in the manner hereinafter mentioned." I apprehend that the language of the Act is perfectly clear. If the poll is not finally to close at 4 o'clock, it might be kept open until 4 next morning. If time is to be disregarded to the extent of a single minute, then I know no limit to which it might not be disregarded by a Returning Officer in keeping the poll open. The case is on all-fours with the case of hiring a servant to commence *in futuro*, if the hiring is to commence *in futuro*, then a single hour or a single minute vitiates the contract, precisely as it would if it commenced at the end of a day, or a week, or a year. I should like to have the opportunity of calling the attention of the Committee to the decisions upon the point which probably would, in some degree, affect the decision of a case of this kind; but the language of the Act is as strong as possibly can be—that, unless lawfully adjourned, the polling shall finally close at 4 o'clock in the afternoon. The lawful adjournment is where the polling is interrupted by a riot or disturbance, in which case the Returning Officer will not "finally close the poll, but shall adjourn the taking of the poll at the polling place at which such interruption or obstruction shall have happened, to the following day." But mark, that notwithstanding an interruption of that kind, "the poll shall be kept open for seven hours in the whole, and no more;" showing clearly that the intention was that the poll should continue for seven hours only, and no more, if interrupted by any of the causes mentioned in the 63rd section of the Act; and that the final closing of the poll is to take place the moment the minute-hand of the clock indicated that the hour of 4 had arrived. That, I apprehend, to be the meaning of the Act. I can only submit to the Committee that, if the poll is to be kept open for a minute, or two or three minutes, after the hour of 4 o'clock, there is no reason why it should not be kept open for several hours. The final closing of the poll means that no vote can be taken after the minute-hand has reached the hour of 4 o'clock, even though the voter should have entered the polling booth before the hour had elapsed. But, taking the evidence before us, such as it is, assuming that the statements of the Returning Officer are correct, that the vote was not given until after 4 o'clock, I apprehend that the Legislature did not intend to entrust the Returning Officer with any discretion whatever, in regard to the admission of votes after the hour of 4 o'clock. I have only the language of the Act to submit to you, and that language is only susceptible of the meaning that, when the hour of 4 has arrived, no vote can be recorded at the election.

Mr. Allan: I submit that this vote would be properly received. In the first place, it is clear that the elector was there before 4 o'clock.

Mr. Gillies: That is not the question.

Mr. Allan: Well, in this case it does not appear that the poll was closed. The Returning Officer does not say that the hour had arrived.

The Chairman: That is a matter of fact; all the Committee wish you to address yourself to, is this: admitting that the clock had struck four, and that the elector tendered his vote after that hour, and it was received, was that valid or invalid?

Mr. Allan: If the poll had not been closed, it was for the Returning Officer to ascertain that the hour of 4 o'clock had arrived or not. If that hour has arrived, he closes the poll; and having done so, he can refuse to accept any vote after that time. It is evident, from the affidavit, that the poll had not been closed.

The Chairman: The Committee wish Counsel to confine themselves to the simple question—admitting that it was 4 o'clock—whether a vote tendered after that was valid or invalid.

Mr. Allan: I say, if the poll had not been closed, and the vote had been accepted, that the vote cannot be affected. If 4 o'clock has arrived, and the Returning Officer keeps the poll open, a vote given then is properly received.

Mr. Gillies: Do you contend that, supposing the Returning Officer had chosen to receive votes up to 6 o'clock, those votes would have been good?

Mr. Allan: I should say that they would be good; because the Returning Officer had not closed the poll.

Mr. Gillies: Have you any authority for that?

Mr. Allan: No authority. There is a case in one of the recent reports, where it was said that some objection had been taken, but nothing came of it. I do not think the reports are here.

Mr. Travers: I submit that the power of the Returning Officer to accept a vote has gone; he has no discretion whatever. The closing of the poll is not the shutting of the doors, or anything of that kind; but, *ipso facto*, his power to accept a vote after 4 o'clock is gone by Statute.

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Mr. Allan : If the Returning Officer accepts a vote, the poll is open.

Mr. Bunny : Inferring that it is not 4 o'clock.

Mr. Allan : That it is not 4 o'clock.

Mr. Pearce : The Returning Officer says it was 4 o'clock.

Mr. Allan : If he was satisfied that 4 o'clock had arrived, he ought to have closed the poll, and refused the vote.

The Chairman : Upon the affidavit or declaration of the Returning Officer himself, inasmuch as he has stated that it was after 4 o'clock, was the vote good, or was it bad ?

Mr. Allan : He had a right to receive it, unless he had actually closed the poll before. It was not objected to ; he admitted it.

The Chairman : Had the scrutineers any right to interfere after the clock had struck four ?

Mr. Gillies : Give us your views on section 63 of the Act. It does not say that the Returning Officer shall finally close the poll ; but it says every polling shall finally close at 4 o'clock, not that the Returning Officer shall close the poll.

Mr. Allan : No doubt, but the Returning Officer is the person to close the poll.

Mr. Bunny : Is he the clock ?

Mr. Allan : He is judge of the clock.

Mr. Travers : We are in a position to show that the poll was closed and re-opened.

The Chairman : That is not the question. As I said before, admitting that the vote was tendered after 4 o'clock, and received by the Returning Officer, was that a good vote, or not ?

The Committee deliberated for a short time with closed doors, after which

The Chairman asked, What time will you want, Mr. Travers ?

Mr. Travers : I shall only require an adjournment until Monday next, if I can get the papers off by the steamer which leaves to-day.

Mr. Bunny : It would be well to sign the subpoenas, and enable Mr. Travers to send them off.

Mr. Allan : You have come to no decision in the case.

Mr. Bunny : We have come to no decision at all, except to grant an adjournment.

The Chairman : It has been resolved that an adjournment be granted until Monday, the 18th instant, subject to the leave of the House.

The Committee adjourned.

MONDAY, 18TH SEPTEMBER, 1871.

18th Sept., 1871.

The Committee met at half-past 10 o'clock.

Mr. Brandon in the chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker ; and *Mr. Travers* for the sitting Member, Sir David Monro.

Minutes of last sitting read and confirmed.

The Chairman : Are your witnesses in attendance, Mr. Travers.

Mr. Travers : I have some of the witnesses. I have here an affidavit from Mr. Pitt with reference to one of the witnesses, named Winfield Higgin, who resides at Collingwood, and who was unable to arrive in Nelson before the departure of the steamer. [Affidavit produced and read]. The Committee will see that he is an important witness, and I would therefore ask the Committee to favour me with a further adjournment.

Mr. Allan : I shall oppose the application for a further adjournment. I asked and obtained an adjournment for the purpose of having Henry Bosselmann, an important witness, here. It was impossible to serve him with the subpoena in time for him to attend before the Committee. I felt that I was bound not to ask for any further adjournment, but proceed with the case with the witnesses I was able to procure. I oppose the adjournment, as the other side knew we were going to object to Henry Tomlinson.

Mr. Travers : I have read the affidavit, as I thought it to be my duty to give the Committee every information. If my friend had asked for a further adjournment, for the purpose of bringing Henry Bosselmann, I should not have objected.

The Chairman : I think you had better to go on with the case.

Mr. Travers : I will shortly state the nature of the evidence I propose to bring before the Committee, in reference to the two matters I have referred to : First, in reference to Henry Tomlinson, who recorded a vote, and who had made application to be placed on the electoral roll. The Registration Officer is here for the purpose of giving evidence in reference to this matter. The Registration Officer will state that in the year 1867 he was Registration Officer for the district ; that he received in that year applications to be placed on the electoral roll from persons named Tomlinson. I understand that he cannot remember, whether he received an application from Henry Tomlinson. On reference to a copy of the list of claimants of that year, he finds that he did receive from the brothers of this Henry Tomlinson applications to be registered as voters, but he has no recollection whether Henry Tomlinson who voted was one of the applicants. He will state, however, the course which he invariably adopts in reference to these matters, acting under instructions from the Revising Officer. He will state that he had been instructed in all cases where additional applications are made by the same persons to be placed on the electoral roll, to set them aside as being unnecessary, and this is the course he invariably adopts. He did so on the last revision, and it was made the subject of complaint by Dunbar and Coppins. Mr Coppins having sent in an application to be placed on the electoral roll in respect of a certain qualification, and his name being already on the roll, the Registration Officer did not appear to have seen the inconvenience that might result from the adoption of the course he had been pursuing. The course he had invariably followed was, that when he found an application made by a person of the same name on the roll, to put the application into the waste paper basket.

Mr. Allan : I object to this.

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Mr. Travers : I am stating what I propose to prove ; my friend may object at the proper time. The Registration Officer will state that he has done this on many occasions. He will state that, although he has no recollection of a claim having been made by Henry Tomlinson, yet, if such a claim had been made, he would in all probability have put it into the waste paper basket, under the impression that it was a claim made by the same person who was already upon the roll, and that he would have done it in accordance with the verbal instructions received from the Revising Officer. I am not going to shut my eyes to the fact that that class of evidence, in itself, is comparatively weak ; I will allow my friend the benefit of supposing that it is only half a link in the chain of circumstances to support the statement made by Henry Tomlinson, that he made application to vote, and that the paper was set aside, under the impression that it was a duplicate application made by the same person. I then propose to offer evidence in regard to Starne's vote, which was given under these circumstances. The polling, it appears, became very slack just about the hour of 4 o'clock, and the two scrutineers, actuated by a strong desire to serve their respective candidates, went out on the hill to see whether any more voters were coming. A man was observed coming in the direction of the polling booth, and they waved their hands to him to come up. On Starne's entering the door, the Deputy Returning Officer called his attention to the condition of the clock : that it was more than half a minute after 4 o'clock. On consultation with the two scrutineers, the Deputy Returning Officer thought it would not do much harm if the vote were recorded, and he accepted the vote after the hour when the poll should legally have been closed, and he reported the circumstance to the Returning Officer on handing him over the papers connected with that polling place. I will show you by his evidence, that the polling commenced at 9 o'clock to a second, by the same clock to which the Deputy Returning Officer directed attention when Starne entered the polling booth for the purpose of recording his vote. The scrutineers will confirm the statement of the Returning Officer. The latter will state that the circumstance mentioned was reported to him by the Deputy Returning Officer when they went over the roll, in order to determine that there were no duplicate votes on the list.

The Chairman : Was the Returning Officer aware for what purpose the scrutineers went to the top of the hill ?

Mr. Travers : I do not know. I did not inquire whether he was or not. It appears that, in the hurry of the moment, the Deputy Returning Officer asked the voter who he intended to vote for, and that he said he was going to vote for Mr. Parker. It is not surprising that he should do so, having been accustomed to conduct elections under the old system. The question was put inadvertently, in the hurry of the moment, and he forgot at the instant that the voting was by ballot. The vote was accepted by him, and no doubt it was enumerated on the list of those who recorded their votes for Mr. Parker.

Mr. Campbell.

Alexander Le Grand Campbell sworn and examined.

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By Mr. Travers : Your name is Alexander Le Grand Campbell ?—Yes.

Are you the Registration Officer for the District of Motueka ?—I am.

Were you the Registration Officer for that district in the year 1867 ?—Yes.

Will you look at this. [List of Claims for Revision for the Year 1867, handed witness.] And say whether that is your signature ?—Yes, that is my signature.

Can you state whether, in that year, you received applications to be placed upon the electoral roll from any persons of the name of Tomlinson ?—Yes.

Mr. Allan : I object to this evidence being given at all. The Act for the Registration of Electors states that the electoral roll is to be the roll for the year, and nothing is said as to giving the Committee power to inquire whether a man's name has been left out or put on. We produced the roll of 1870-71 ; and we called Henry Tomlinson, who stated that he voted under a certain qualification which was not his, never was his, and that he had no right to vote under that qualification. I submit that the Committee cannot inquire into what took place in 1867, 1866, or 1865. The only question is, whether Henry Tomlinson was on the roll. He states that he was not the person ; that he was not a householder ; that it was the qualification of another person, alive, and who had a right to vote under it. I submit that this evidence cannot be received.

Mr. Travers : My friend is entirely misapprehending the object of this evidence. It is not for the purpose of proving that the Henry Tomlinson who voted is the Henry Tomlinson on the roll. It goes to disprove the allegation of the petition that Henry Tomlinson perpetrated the grave offence of personation. The point is, that the Committee has only power to inquire into the allegations contained in the petition. The allegation of the petition is that two persons, named Hagan and Tomlinson, were guilty of personation. The words are these, that "Henry Tomlinson, not being a duly qualified registered elector, or qualified to vote for the said district, did knowingly personate and pretend to be the Henry Tomlinson on the electoral roll for the said district, and did falsely assume to vote, and did vote as such Henry Tomlinson at the said election, for Sir David Monro." That is the offence charged, and what we are seeking to disprove is, that there was no wilful attempt at personation, and that the person voted in the reasonable belief that he was on the electoral roll. He never pretended to be the Henry Tomlinson described as a householder in Waimea West. He was under the impression that he was absolutely on the roll. He was an illiterate man ; he could not read or write, and having made the application, he had reasonable grounds for supposing that he was on the roll. Had my friend in the petition charged that one Henry Tomlinson, being on the roll, voted at the election, that would have been a totally different matter ; but it is not so. He charges that the Henry Tomlinson who voted knowingly and wilfully personated and pretended to be somebody else. Such is not the case. What we wish to show is, that Henry Tomlinson voted under the impression and belief that he was on the roll—not that he knowingly and wilfully pretended to be another person. If we succeed in showing that, the offence set forth in the petition is not proved. I apprehend that the same evidence which would be necessary for the purpose of proving this charge, if included in an indictment, will be that which will alone satisfy the Committee that the charge in this petition is proved. The Committee can only go into the allegations contained in the petition ; can only investigate charges made in that

petition ; and have no power to determine the question, except upon proofs adduced in support of those charges. It lies on my friend to show the act of wilful personation, and not the mere fact that a man, under the *bonâ fide* supposition that he was actually on the electoral roll, had gone and voted. If that had been charged, the whole question would have assumed a different aspect, and this evidence would probably have been unnecessary. It is upon this ground I tender the evidence. My friend objects to it, and of course, if the Committee hold with him on the point, that ends the matter. The ground on which I tender the evidence is, to prove that the man was acting under the *bonâ fide* impression that he was entitled to vote, that he was on the electoral roll, and to disprove the charge that he wilfully and knowingly pretended to be an entirely different person.

Mr. Allan : Whether he wilfully personated or not, there was a personation which comes under the Act, and any person who personates will be punished.

The Chairman : I think you will find that it is scarcely so.

Mr. Allan : The language of the Act is, that any person who shall wilfully make a false declaration, or personates another elector, shall be guilty of a punishable offence. The Committee must not be led away from the real object of the inquiry, and it is this : Whether a witness personated or voted in the name of another elector. We are not trying Tomlinson ; this is a question of personation. I have proved it before the Committee, by calling Tomlinson, who stated that what appeared on the roll was not his qualification, never was his qualification, and that he had no right to vote under that qualification. That comes under what is clearly understood to be personation. If that were not allowed, grave frauds might be committed, and persons might be returned by those who had no right to vote.

Mr. Travers : He did not state that he voted under that qualification.

Mr. Allan : He stated that he voted as Henry Tomlinson, householder, and that he had no right to vote under that qualification at all.

The Chairman : Clause 38 says :—“ Every person tendering his vote shall do so in the manner following that is to say he shall state to the Returning Officer or Deputy his Christian or other names and surname and such other particulars of those required by law to be expressed in the electoral roll as the said Returning Officer or Deputy may for the purpose only of ascertaining upon the roll the name intended by such person require.”

Mr. Travers : The Committee will remember that Henry Tomlinson said that all that took place when he went into the polling place was this :—The Returning Officer, Mr. Brunner, said, “ This is Henry Tomlinson,” and handed him the ballot paper. He asked him no question, and the man would naturally suppose that he was on the electoral roll. Nothing was more calculated to throw him off his guard than that the Returning Officer should say to him at once, upon his going into the polling booth, “ This is Henry Tomlinson,” and hand him the voting paper.

The Chairman : The only question is, whether he was the person on the roll. We cannot go into the qualification. Is he on the roll ?

Mr. Allan : He states that he was not on the roll.

The Chairman : Was he the Henry Tomlinson in respect of that qualification, or not ?

Mr. Allan : He was not ; he had not that qualification, and had no right to vote.

Mr. Bunny : We had better consider the matter among ourselves.

The Committee deliberated in private for a short time ; after which

The Chairman said : The Committee have decided to receive the evidence.

Examination continued.

By Mr. Travers : You say that this is your signature to that list ?—Yes.

And that on that occasion several persons of the name of Tomlinson had applied to be placed on the roll ?—Yes.

Can you state how many applications in the name of Tomlinson you have received ?—I do not remember.

Can you remember whether you received one from a person by the name of Henry Tomlinson ?—No, I do not remember at all.

Have you at any time received special instructions of any kind, verbal or otherwise, from the Returning Officer, with reference to the preparation of the List of Claimants ?—Yes, I have received verbal instructions.

What was the nature of these instructions ?—They were, not to publish or write out a list of claims which I thought were not of any use ; not to write the claims of any persons already on the roll.

By Mr. Fitzherbert : You mean not to insert the names that you knew were already on the roll ?—Yes, not to insert the names of those already on the roll.

The Chairman : Or in respect of the same or any other qualification ?—I cannot remember the words of the instructions, as they were given four or five years ago.

By Mr. Fitzherbert : Whether it referred to the identity of names only, or whether it included the identity of qualification ?

Mr. Travers : I shall show that in other evidence. [To witness] Have you acted upon those instructions in any cases ?—Yes, I have.

In many ?—Yes, in a good many cases. I cannot state the number now ; every year there were one or two.

Did you act upon those instructions very recently ?—Yes, I acted in the same way with regard to one claim last year.

To whose claim was that ?—It was that of a person named Mr. Coppins.

Was not the qualification in that case a different one from that on the roll ?—Yes.

Did I understand you to say that in cases where the names appeared to be the same, that you have frequently omitted the claim ?—Exactly.

In the list of claims for revision ?—Yes. I omitted the claims which I believed were already on the roll.

By Mr. Fitzherbert : You treated such an application to be registered as being unnecessary ?—Yes, I treated it as unnecessary to be published.

Mr. Campbell.

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Although it was a formal application?—Yes.

By Mr. Travers : Are you in a position to say whether you treated any application on the part of any Henry Tomlinson in that way?—I cannot remember any particular name so far back as 1865, 1866, or 1867.

In this recent case of Mr. Coppins, I believe it was made the subject of complaint that you omitted the name?—Yes.

Was the qualification altered in consequence?—The qualification was altered. The name was not taken off the roll; it was simply an alteration of the qualification.

Now, what do you do with the claims in respect of which names are inserted on the list for revision?—The claims are retained by the Revising Officer.

Are they returned to you by him?—No, I never receive them.

Are they retained by the Returning Officer?—I presume so; I do not have them back again.

Now, what do you do with the claims which you omit to insert, in consequence of those instructions?—I do not think they are of any further use then. I put them into the waste paper basket.

Do I understand that you do not preserve any of these?—No, I do not; I do not think it is necessary to preserve them.

Then you are not in a position to say whether a claim was made by Henry Tomlinson or not?—No, I have no recollection of that at all.

By Mr. Bunny : At any time?—No.

Not in 1869?—No; I do not remember; it is difficult to remember claims sent in years back.

By Mr. Allan : I think you were Returning Officer at this election?—Yes, I was.

I understand the votes were equal: 193 for Sir David Monro, and the same for Mr. Parker?—Yes, they both were equal.

You calculated them from the electoral roll?—Yes.

You gave your casting vote for Sir David Monro?—Yes.

You were a strong supporter of his, were you not?—I took an active part in Sir David Monro's election.

Did you ever canvass any electors before the election?—I did not canvass any electors that I remember.

Try and remember. Did you, or did you not?—I do not remember doing anything of the sort.

Will you swear that you did not?

The Chairman : What is that to lead to?

Mr. Allan : I am cross-examining this witness on certain matters, and I have a right to do so.

Witness : Of course I may state that I considered one candidate better than another.

Do you know George Glover, watchmaker?—I did not ask him; I never attempted to sway any man's vote; I never asked him to vote; I never asked a soul to vote. To the best of my recollection I never asked any one to vote since I was Returning Officer.

Do you remember asking Glover how he was going to vote?—I do not think I ever asked him; he told me himself he was going to vote.

Did you ever say to him, "You are a religious man, and you should know better than go and vote for Parker"?—I might have said so; I do not remember.

Did you say "Look at the place; it would make £50 or £100 difference to me in the value of the property, to have a man like Monro elected"?—I never could have said so.

I want to know whether you did or not?—I cannot answer; my memory fails me. I remember speaking to Glover. I do not know what passed. We talked upon the subject of Tomlinson's vote. I didn't expect this would come up.

Might you not have said something of that sort to him; it is not so long ago?—I cannot remember what passed when I saw him; I cannot remember a word that passed.

Had you determined to vote for Parker?—I had no vote.

Supposing you had a vote, had you then made up your mind to vote for Parker?—No, I had nothing to do with it.

Do you know a man named William Burrell?—Yes, I do.

Do you remember meeting him on board the steamer "Lady Barkly," when Sir David Monro was there?—I have some distant recollection of his being on board the steamer.

With that distant recollection, try and see if this looms in view: did you say to him, "Are you going to vote for Sir David Monro?" that was before the election, you know?—I have only a recollection of seeing him on board the steamer, and that I cannot be positive of; I cannot say whether I spoke to him about the election or not; I may have done so.

Did you ask him whether he was going to vote for Sir David Monro?—I might have asked him, for all I know to the contrary; I cannot remember those casual conversations.

Did he say, "No, I know nothing about him, and if I vote, I shall vote for Mr. Parker"?—He might have said so, for aught I know; I do not know what I might have said; I have no recollection of having any conversation with Burrell on the subject.

Did you not, in answer to that say, "I didn't think you would have voted for a man like Parker"?—If I forgot one part of the conversation I must have forgot the lot. I do not remember.

Might you have said so?—I might, for all I know to the contrary; I might have said so; I don't think I did.

You admit that you had a conversation with him?—I might have done so, but I cannot remember. All I can remember is, that I have a recollection of Burrell being on the steamer going to Nelson, or back.

Was Burrell going over from the hospital?—That I cannot tell; it is very likely he was.

Was Sir David Monro on board at that time?—I do not remember the day.

You think you cannot remember, but you might have had a conversation?—I might have said many things which I forgot shortly afterwards.

You could not have said something about who he was going to vote for?—Yes, I might have. It

is difficult to remember conversations, brought up on the spur of the moment, as now, without any warning. I cannot remember.

Do you know a person of the name of Dreyer?—Yes.

Do you remember, before the election, his calling upon you, and telling you that he had called about Sir David Monro?—He either called on me, or I met him on the street.

Did he tell you what he had come for?—He told me for a copy of the electoral roll, as far as I can remember.

Did you and he go over the electoral roll together?—We might have done so; I think he got the roll from me, at all events.

You must remember this: you have been called here to prove certain things. I want to know whether he did not go over the electoral roll with you?—I went over the electoral roll with some one, but whether with him, I do not remember. I could remember in a short time (a pause). I might have done so, but I am not sure.

Did you not go over the names, and at several names say to Dreyer, "He's right, he's right, I have spoken to him"?—I might have said such and such people are right; that must have been at Nelson.

You admit that you might have said so-and-so is right?—Yes, knowing of elections that certain persons were one way.

Did not you make a calculation to show that there was seventeen of a majority for Monro?—No. Dreyer told me he had made a calculation himself previously. Where he told me I do not remember. He took a paper out of his pocket, and wished to show me; I did not wish to see it. He said he made a calculation, and would get so-and-so.

Had you voted for Sir David Monro on previous elections?—No.

Had you a conversation with Monro and Elliott about the elections?—Oh, yes, I had many conversations about the elections.

And as to Sir David Monro's chances?—Yes, I think I have.

What did you say to them about that?—I cannot remember.

Did you tell them they were sure of winning?—I could not do that, as I did not know how the people would vote.

Had you any conversation about the chances of winning?—Yes, about the election.

And as to persons who were likely to vote for him or not?—No, I don't think so. I never was over the electoral roll with them. I saw the electoral roll with Dreyer; but whether at Nelson, or at my office at Motueka, I do not remember. I did not wish him to do so; but he persisted in showing it to me.

You were the Returning Officer at the time?—Yes. I never told him whether he was right or wrong. He would say, "He's all right," or something of that sort.

Try and tell us what passed between Monro and Elliott, and you, when you talked about these matters?—It is difficult to remember casual conversations.

Did you at any time speak about the chances, or whether you canvassed any one?—Very likely.

Or whether you knew how people would vote?—I do not think I mentioned any particular name.

When this conversation took place between you and Monro about the election, did you mention any particular persons who were likely to vote for him?—I might have done so.

Did you canvass, or ask any persons to vote for Monro in any way at that election?—I never asked; I was cautious in not asking any person to vote for any party.

Did you ever ask, were they going to vote for Monro?—I might have done so.

The Chairman: Some of the Committee are desirous of knowing what you propose to lead up to by this examination, as it has nothing to do with the examination in chief.

Mr. Allan: I have a right to ask him these questions.

Mr. Gillies: What has that to do with the case?

The Chairman: To what point do you wish to lead up? Do you wish to call witnesses to show that he was not giving true testimony?

Mr. Allan: He is called here as the Registration Officer to give evidence, and I want to ascertain whether he knew his duty.

The Chairman: The Committee have got that already, that he was not acquainted with his duty as Registration Officer.

Examination continued.

By Mr. Allan: What is your practice as Registration Officer: do you send in the claims?—I send in every claim except those already on the roll. I received instructions from Mr. Connell that it was not necessary to send any such claims, previous custom having shown that it caused confusion on the electoral roll.

Have you read the Registration of Electors Act?—Yes.

Do you not know that it is your duty to make up every claim, whether right or wrong, and send it before the Revising Officer?

The Chairman: He says he did not do that.

By Mr. Allan: Do you send in the list of original claims as made by the persons themselves?—I do not send those I put into the waste basket; the others I send in to the Revising Officer, with the electoral roll for the year.

You send in the original claims to the Revising Officer?—Yes; everything I have got down on my list I send in.

Every claim that is made by an elector, you send in to the Revising Officer?—All except those I believe perfectly useless.

You interpret the Act in that way?—I do; there is a certain clause on that point: "But the Registration Officer shall not insert in such list the name of any person whose claim shall not purport to have been duly declared." [See Clause 8, Registration of Electors Act, 1866.]

Mr. Campbell.
18th Sept., 1871.

Mr. Campbell.
18th Sept., 1871.

By Mr. Bunny : You performed the duty of Revising Officer, as well as Registration Officer, and you formed your own opinion as to the claims sent in?—Yes.

Are the Committee to understand this: that the only claims you set aside have been those that have not been sent in in the form required by law?—Those I have already rejected.

Are those the only ones you reject?—Those who put in a claim for the same property twice over.

By Mr. Allan : Under the advice of the Revising Officer, you reject the claim?—He instructed me to do so.

By the Chairman : You do not send in the names of those who made application in respect of the same property. You see the same names you consider to be on the roll, and you do not consider it necessary to send in the claim?—Yes. I receive one man's name every year, for the same property, and if I published the name, it would go into the roll and be numbered consecutively.

Are we to understand that, if a person sends in an application, and you find that person to be already on the roll, you do not send in his application, whether the application contains the same or another qualification?—Not in all cases, unless knowing it is the same person.

You have said you went over the roll with some person?—I think I did with Mr. Dreyer; at least he did with me; I did not ask him to do it.

Was the name of Henry Tomlinson referred to by you?—Never, that I remember.

I mean in going over the roll, did you say he would vote one way or the other; was any observation made as to Henry Tomlinson?—I do not think so; I do not remember it. I was annoyed to think that I was pulled into a room and made to go over the list.

You do not remember whether Henry Tomlinson's name was ever brought under your observation?—I cannot remember his name being mentioned at all.

By Mr. McGillivray : Supposing a claim had been sent in by a person of any name whatever, and, supposing you found on the same roll a person of the same name already, I wish to know what you, as Registration Officer, would do in such a case as that?—If he lived in the same district, and with the same name, and I knew nothing at all about him, I should publish his name along with the rest of the claims.

Supposing the application was on a different qualification, what then?—I suppose I should publish his name, believing him to be the individual. If I knew him personally I would not.

You had no personal knowledge of these Tomlinsons?—I had no personal knowledge.

By Mr. Fitzherbert : Supposing a Henry Tomlinson, of whom you had no knowledge, had sent in a claim, the same name being on the roll with a different qualification, would you have put it in the waste paper basket, or sent it on to the Revising Officer, according to your ordinary practice?—I should consider whether there was only one Henry Tomlinson in the district, there could not be two Henrys in the same family. If I did not know that, I would be wrong in not publishing the name.

Well, if you would be wrong in not publishing it, if it had been sent in, would you have published it?—Yes, I think so. I depend on the constable sending me in the list of deaths. I have no instructions to inquire into certain houses, as to whether the qualification is right or not. In my own district I know most of the people.

By Mr. Bunny : Is it your habit to send to the constable the list of claims made?—No; no objection was made in 1866, 1867, 1863, or 1864, as to Henry Tomlinson. He is on the roll now, he is away. If any objection had been made to him, the name would have been struck off. He could not appear himself, as he was not there.

Witness withdrew.

Mr. Travers : The only other witness on this point is Mr. Winfield Higgins, who would prove that in this case the application of the four Tomlinsons, brothers, was made at the same time. The four claims were put into the same envelope, and that of Henry Tomlinson must have been received at the same time. They were all witnessed by the same person, and received at the same time, by Mr. Moss, gentleman, formerly a Member of the House. Henry Tomlinson had spoken to him about the claim, and he referred him to Mr. Higgins. The claims were made out in due course, and sent to the last witness, who must have treated those claims as he was in the habit of doing other claims, by putting them into the waste basket. That is the only solution we can offer of the matter. The witness is here to prove the case of Stephen Starnes.

James Robson sworn and examined.

Mr. Robson.
18th Sept., 1871.

By Mr. Travers : Your name is James Robson?—Yes.

You are a schoolmaster at Lower Moutere, in the Province of Nelson?—Yes.

Lower Moutere is within the Motueka District for the election for the House of Representatives?—Yes.

Did you act as Deputy Returning Officer at the late election for the Motueka District?—I did.

For which sub-district?—The Lower Moutere.

Do you know a man of the name of Stephen Starnes?—I do.

Did he vote at that election?—He did.

Where did the voting take place?—In the schoolroom at the Lower Moutere.

Had you a clock?—I had.

In the room?—Yes; in the room.

Was it going on that day?—It was.

Had you that clock for that special occasion?—It was a school clock, and I had it for some years.

At what time did you commence the polling on that day?—At 9 o'clock precisely I opened the poll.

Now, at what time did Starnes vote. State shortly what took place?—As the hour of 4 o'clock approached, I saw an elector, Stephen Starnes, approach the polling-booth. I remarked to the scrutineers that I was afraid he would be too late; the elector, I mean. The scrutineers went out and called to him to be quick. The scrutineers returned to the polling booth, and immediately Stephen Starnes entered;

he followed them in. The hour of 4 o'clock had then passed. I remarked to the scrutineers that it was then past 4. I felt somewhat embarrassed as to what I should do. I asked the scrutineer for Sir David Monro, "Shall he vote?" I asked the scrutineer for Mr. Parker, "Shall he vote?" They replied "Yes." In the hurry of the moment, being used to the old method of voting at elections, I forgot myself at the time, and said, "Who do you vote for?" He said first, "For Charles Parker." I immediately corrected myself and said "I should not have said that to him." However, I took his vote. I handed him the paper, according to law, and his vote was received. He deposited the paper in the ballot box.

Mr. Robson.
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Upon the scrutiny taking place afterwards, can you state for whom he voted?—Only by his assertion that he voted for Charles Parker.

You did not identify his special paper?—No, I could not identify the paper.

You have only got his assertion that he voted for Mr. Parker?—That is all; I cannot swear that he voted for Charles Parker; he stated to me that he did.

By the Chairman: Did Starnes retire to the inner part of the booth, where the voters strike out the names?—I am not prepared to swear to it.

By Mr. Travers: What was done?—The paper, on being handed to him, his name, I believe, was obliterated. He deposited it in the ballot box. Instead of going into the inner chamber, I rather think he obliterated the paper openly, and deposited it in the ballot box.

By Mr. Fitzherbert: Had the ballot box been removed from the place where it had been since 9 o'clock?—I did not move the ballot box at all.

By Mr. Travers: Did all this take place after 4 o'clock?—Yes, after 4 o'clock.

Did you report this circumstance to any one?—I reported it to the principal Returning Officer at Motueka.

Was that when you were going over the rolls?—I went down to Motueka immediately after the election was over; I went to the Returning Officer, and reported to him what had taken place in reference to this vote.

By Mr. Allan: Was the Returning Officer Mr. Campbell?—Yes.

Did you tell him all that passed?—Yes, nearly all.

Did you tell him that Starnes said he was going to vote for Parker?—Yes.

Did you read the Ballot Act about scrutineers not disclosing anything?—Yes, I did.

You told the Returning Officer that Starnes had stated he was going to vote for Parker?—Yes.

Did you ever tell any one afterwards?—Yes, I might have done so.

Did you vote yourself?—I did.

For whom?—For Sir David Monro.

At the time when you say you saw the man coming, was the poll closed?—No, it was not.

At what time did you see the man coming?—A few moments before 4 o'clock.

Might it have been one minute, two minutes, or three minutes before four?—It might have been two minutes before four; I cannot exactly swear. When the scrutineers called to him I saw him through the window.

Did he come immediately?—He came in afterwards. I do not know that he hurried himself at all.

How far off was he?—About fifty yards off.

You knew that he was an elector?—Yes.

You inferred that, because he was an elector, he was coming to vote?—Yes.

When he came into the room what was the hour?—Past 4.

How many minutes after 4?—Half a minute.

Did you close the poll then?—No, not till after his vote was taken.

Why did not you close the poll?—Because I was embarrassed.

Why not close the poll at 4 o'clock immediately?—That I cannot say; I should have done so.

Why did not you do so?—The scrutineers entering, and the man coming in, and seeing it was after the time, I felt in a dilemma.

Why did you not close the poll and shut the door before he came in, if 4 o'clock had arrived?—I cannot give any reason for it.

Was it not at least a minute to 4 o'clock when this voter came in?—Most decidedly it was not.

That you will swear to?—I swear to that.

How far had the minute hand got beyond 4 when he came in?—It was to half a minute past 4 o'clock. I sat watching the clock, expecting to see if this man would enter at 4 o'clock. When I saw the man I immediately remarked that the time had passed.

When he came in did not you say, "I am bound to take this vote. I cannot say it is past 4 o'clock"?—I did not say that.

What did you say?—"It is past 4;" and I told him he was too late, that the hour was past.

Did you say that to him?—No, to the scrutineers.

Was he in the room?—Yes.

Did you also say that you could not take the vote?—No, I said the time was past; I do not know that I said the words, "I cannot take the vote."

What did the scrutineers say to you when you said that it was past 4?—I asked them, "Shall I take his vote?" and both the scrutineers replied, "Yes."

Did you say to them it was past 4 o'clock, and that it was illegal for you to take the vote?—No, I said it was past 4 o'clock; I did not say it was illegal for me to take the vote.

And neither of them objected?—Neither of them objected.

When did you ask him for whom he was going to vote?—Immediately after having spoken to the scrutineers.

Were you watching him at the window all the time that he was coming down?—No, not all the time.

Had you been looking out of the window?—I sat looking out of the window; I could see from the window any man coming up.

Mr. Robson.

18th Sept., 1871.

You kept watching him as he came along?—I saw him as he came along.
By Mr. Fitzherbert: What sort of a clock is it you have?—An eight-day dial. It is a very good one, and keeps time pretty well.

Who is the maker?—It is a London clock; I do not know the maker's name. It was purchased by the School Committee some years ago.

What has been the time it kept generally; has it been a losing rate or a gaining rate?—I am not prepared to say.

Has it ever stopped?—Yes, for want of cleaning.

Is it such a clock as you can depend on to a minute?—Yes; it is a clock I am most accustomed to. I call it Moutere time; I am particular to keep the time.

The poll, you say, opened at 9 o'clock; this is a question of half a minute past 4; can you be quite sure that seven hours and half a minute elapsed?—I feel sure it was over seven hours; I have not the least doubt about it.

By the Chairman: When did you regulate the clock before?—Really I could not say; it kept regular time.

By Mr. McGillivray: I should like to know whether it was fully 4 o'clock when you saw Starnes coming?—Oh yes. I saw him through the window, coming up to the door. It only required half a minute for him to come from where I saw him to the polling place. It might not have been exactly half a minute.

By Mr. Fitzherbert: Have you been Returning Officer before?—Yes, for many years.

Have you any form by which to declare the poll closed; do you shut the door?—The way in which we declare the poll to be closed is to turn the key in the lock.

Had you done so on this occasion?—I had not.

Witness withdrew.

Mr. Gibbon.

18th Sept., 1871.

William Gibbon sworn and examined.

By Mr. Travers: Your name is William Gibbon?—Yes.

You reside at Motueka?—Yes.

What is your occupation?—A sheep farmer.

Were you acting as scrutineer on the part of Sir David Monro, at the late election for Motueka?—Yes.

At what polling place?—At the Lower Moutere.

Who was acting as Returning Officer?—Mr. Robson.

Was there a scrutineer present on the part of Mr. Parker?—Yes, there was.

What was his name?—William Coppins.

Do you know Stephen Starnes?—Perfectly well.

Did he vote on that occasion?—Yes.

Now, will you state the circumstances under which he gave his vote in regard to time?—Yes; I will do that. About a few minutes to 4 o'clock, we were waiting for the voters to come up, and we did not see any more coming. Accordingly, Coppins and I went out from the schoolroom on to the road, and we saw a man coming. We did not know who he was, and we waited till we saw it was Stephen Starnes. He was some distance from us. As soon as he was sufficiently near, we cooed and beckoned to him. We called out to him, if he did not make haste he would be too late to vote. He came up running as quick as he could, and Coppins and myself took him into the polling place. I went in first, and then Coppins and Starnes. We were all there together.

When you entered the schoolroom, did anything take place?—As soon as we entered the school room, Mr. Robson says, "Gentlemen, it's past 4 o'clock." He said that to the three of us.

Now, did you see the clock?—I did.

Was it or was it not past 4 o'clock?—It was past 4 o'clock.

Well, what took place then?—A consultation took place between me and Coppins and the Returning Officer, to know what to do. We, to oblige Starnes, let him vote. Mr Robson said immediately afterwards it was past 4 o'clock then.

Did Robson say anything to Starnes?—Yes, when it was agreed between Coppins, myself, and Robson, Mr. Robson sat down and stamped a paper, and turned round and said to Starnes, "Who do you vote for?" Starnes immediately said, "Parker." Mr. Robson immediately rose, and said, "Dear me, I have made a mistake." He took the man behind the curtain, and what was done there I know nothing at all about.

Did Coppins on that occasion refer to his watch?—He had a watch; whether he referred to it or not I do not know.

Was there any discussion as to whether it was or was not past the hour?—No, not any.

This was to oblige the elector?—Yes.

Did you know at that time how he was going to vote?—Not exactly.

By the Chairman: Whose scrutineer were you?—Sir David Monro's.

By Mr. Allan: Had the voting been slack about that time?—Yes, very slack.

You and Coppins went out to see if there were any more electors coming?—We did.

You did not know, of course, before you went out, that Starnes was coming up?—Certainly not.

Did you look at the clock before you went out?—Yes.

What time did you make it before you went out?—It wanted a few minutes to 4.

How far off was Starnes when you saw him first?—Well, as far as you can see a man plainly, and not know who he was exactly.

Have you good sight?—Very good sight.

How far off could you see a man, without knowing plainly who it is?—Well, knowing Starnes as I do, I might know him if I saw him about 300 yards off. I recognized Starnes by his dress; I supposed it was Starnes.

About 300 or 400 yards off?—Yes, full that.

Where was this schoolroom; was it standing by itself?—Standing by itself on the rise of the hill.

When you came in, did you look at the clock?—I looked at the clock as soon as Robson said it was past 4.

Did you look at the clock before Robson said anything?—When we came in, Robson informed us it was past 4 o'clock.

Did you look at the clock when you came in?—I did.

When did you look at the clock?—As soon as Robson informed us it was past 4.

You had not looked at the clock before?—I had not.

When you came in, what was the clock?—It was half a minute past 4 o'clock.

Had the poll been closed then?—No, it was not closed.

Mr. Robson never said anything to you about closing it?—No.

When Starnes came in, what did Robson say?—When Starnes entered with me and Coppins, he informed us that it was past 4 o'clock.

Was he sitting?—He met us as we came in at the door.

Had anything been said by any of you before Robson told you it was past 4 o'clock?—No, not a word.

He did not decline to take the vote?—He certainly refused it, but he afterwards took it; he said it was past 4 o'clock.

Where was the clock in the room?—The clock was beside the entrance door. He said, "Gentlemen, it's past 4 o'clock," pointing to the clock.

Am I to understand you that he met you at the door?—He met us at the door.

And then you looked and saw it was half a minute?—It was half a minute.

You calculated it carefully?—I saw the clock.

You are certain it was half a minute?—Perfectly certain.

Did you object or consent to the vote being taken?—A consultation took place as I have before stated, between Coppins, the Returning Officer and myself, and after some little talk about it to oblige the man we allowed his vote to be taken.

How long were you holding this conversation?—Perhaps it might have been a minute.

When Starnes came in did not Robson say that he could not say it was past 4 o'clock; and he was bound to take the vote?—As soon as we entered, he told us it was past 4 o'clock.

Did he say he was bound to take the vote, as he could not say it was past 4 o'clock?—He said it was past 4 o'clock; there was nothing further said.

When did you first speak about Starnes having voted after 4 o'clock?—I did not speak of it at all.

Did you mention it to Sir David Monro, that he had voted after 4 o'clock?—Not to the best of my recollection.

When were you asked to come here and give evidence?—I received a letter from Mr. Pitt.

When was that?—The first letter I received was about a month ago.

Was that telling you that Sir David Monro was getting up evidence trying to show that this man had voted after 4 o'clock?—It merely asked me whether Starnes had voted after 4 o'clock.

Did you know that Pitt was Monro's agent?—Yes.

Did he say anything more in the letter?

Mr. Gillies: The letter ought to be produced.

Mr. Allan: I did not understand we were to be guided by the strict rules of evidence; if so, we will require the letter.

The Chairman: What is this examination tending to? You have got the evidence of the officer himself and the scrutineer.

Examination continued.

By Mr. Allan: Did Pitt tell you that he was trying to get up evidence for Monro?—No.

Did he merely say that he wanted to know whether it was after 4 o'clock or not?—Yes.

Had you known before that they were trying to get up evidence?—No, I think not.

Never heard of it?—I might have heard of it.

By Mr. McGillivray: You have said that you consulted with the Returning Officer and Coppins as to whether you would receive the vote?—I consulted with Coppins, the scrutineers for Mr. Parker, and with Robson. We thought it best to accommodate the man and allow him to vote. It was past the time. Robson said, "Gentlemen, it is past 4 o'clock."

What I wish to know is this: Did you observe how much it was past 4 o'clock when the vote was taken, after this deliberation?—I know the vote was taken after 4. I know it was past 4 o'clock when the man came in. I cannot say anything further about it.

By Mr. Travers: What the honorable Member has asked you is, whether you know what time had elapsed from his coming in and his actually voting?—Well, I would say about a minute and a half.

By the Chairman: You say that the Returning Officer, after asking the man for whom he intended to vote, had said he had made a mistake. Did he say the mistake was made with reference to previous practice?—He said, when he asked the man he spoke it out so quick, and could not stop himself. He said, "I have made a mistake." That was the only mistake that occurred during the day.

You did not state what the mistake had reference to?—It was as regards his asking Starnes for whom he would vote.

By Mr. Fitzherbert: Were you present at the commencement of the poll?—I think I was a little behind the time. I am not quite certain of the time the poll was opened. I was a few minutes behind the time.

Did you observe the state of the clock when you entered?—Well, I might have looked at it, but I could not say.

By Mr. Travers: The poll was open when you arrived?—The poll was open, but no votes had been taken.

Witness withdrew.

18th Sept., 1871.

Mr. Travers : That is all the evidence I have to produce. I understand my friend wishes to call evidence to contradict the evidence given to-day. I would apply for an order to have the paper deposited by Starnes produced, as that will show how he voted.

The Chairman : Does that much signify, if he voted for Sir David Monro ?

Mr. Bunny : That would not help your case.

Mr. Travers : But, if he voted for Mr. Parker.

Mr. Bunny : We take it for granted he voted for Mr. Parker.

Mr. Allan : I have two witnesses to examine to rebut the evidence given as to Starnes coming into the polling booth after 4 o'clock. I am bound to call every sort of evidence we have got.

After the Committee had deliberated for a short time,

The Chairman said : The Committee consider that the vote of Starnes, under the circumstances, ought not to be struck off; and, therefore, that it is unnecessary for the petitioner to call evidence upon this point.

Mr. Travers : I would ask the Committee whether they would allow an adjournment, in order to enable me to produce evidence with regard to Tomlinson.

Mr. Allan : I shall object to any further adjournment; I do not see what is to be gained by it.

The Chairman : Is that the only evidence you wish to produce ?

Mr. Travers : That is the only evidence, to show that Tomlinson's claim, in 1867, was a *bonâ fide* claim. We understand that he made a claim in 1869 as well.

The Chairman : Do you wish for the adjournment for the purpose of calling evidence on that point also.

Mr. Travers : We understand from him that he did so, and we are informed that he made this claim in 1867. The Committee will understand that our object in calling the evidence is to show that the man was not guilty of personation; that when voting he was doing so under the implicit belief that he was on the roll.

Mr. Allan : We are not indicting him for a criminal offence. The charge is that he voted in the name of another man, when he had no right to do it.

The Chairman : The Committee will deliberate upon that point.

After a brief deliberation,

The Chairman said : The Committee consider that they have sufficient evidence with regard to Tomlinson to satisfy them that he did not knowingly personate and pretend to be any other person than himself.

The Committee adjourned.

19th Sept., 1871.

TUESDAY, 19TH SEPTEMBER, 1871.

The Committee met at half-past 10 o'clock.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and *Mr. Travers* for the sitting Member, Sir David Monro.

Minutes of last sitting read and confirmed.

Mr. Travers : Sir, before addressing the Committee, I have to ask that the string with which you have tied up the parcels received from the Returning Officer should be untied, so that I may see the indorsement on the various packages.

The Chairman untied the parcel, and separated the packages.

Mr. Travers : I will not dispute with my friend that it is my duty to address the Committee in the first instance.

Mr. Allan : The general practice in England is, that the petitioner opens his case; and if the sitting Member chooses to call evidence, his Counsel addresses the Committee, after which the petitioner's Counsel has the right of reply.

Mr. Travers : I am not prepared to dispute the right of my friend to reply, and I will at once address the Committee on the case presented to them. This Committee is, as I need not say, appointed to inquire into and determine upon the allegations contained in the petition of Mr. Charles Parker against the return of Sir David Monro, and is acting under the provisions of "The Election Petitions Act, 1858," and "The Election Petitions Act Amendment Act, 1862." I would refer the Committee to the subsection of the second section of the Amendment Act, in reference to the allegations contained in the petition—"Every petition shall allege the specific grounds on which the return is impugned, and no other grounds than such as are stated in the petition shall be investigated." I apprehend, Sir, that that subsection essentially narrows the inquiry in the case to the actual specific charges made on the face of the petition, and that these charges must be substantiated by sufficient evidence in order to justify the Committee in coming to the conclusion sought for by the petitioner. I do not propose to address myself to the allegations relating to bribery, treating, or undue influence; and, indeed, if I rightly comprehend the decision of the Committee yesterday, in reference to the case of Tomlinson, that also as an allegation is absolutely disposed of, because the Committee have determined in the direct negative of that allegation; the resolution of the Committee, as recorded on their minutes, being in effect a direct and positive negation of the allegation contained in the petition. The allegation is,— "That at such election a person named Henry Tomlinson, not being a duly qualified registered elector, or qualified to vote for the said district, did knowingly personate and pretend to be the Henry Tomlinson on the electoral roll for the said district, and did falsely assume to vote and did vote as such Henry Tomlinson at the said election for the said Sir David Monro." Now, Sir, if I rightly apprehend the resolution of the Committee, they have decided that he did not knowingly or falsely pretend to be the Henry Tomlinson on the electoral roll. If my memory serves me, these are the very words of the resolution, and they certainly amount to an express and direct negation, and as I humbly think, rightly so, of the petitioner's statement.

The next and only allegation which remains to be considered, is the allegation "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, 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

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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

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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

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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

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—

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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

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Tomlinson on the roll, still that would not in the slightest degree validate his vote. It has been proved that James Hagan knew that he was not a registered elector, and not qualified to vote at the election. It has been proved that he tendered his vote and voted in the name of James Hagan, his father, who was on the electoral roll for the District of Motueka. Therefore that is a clear Parliamentary offence. He assumed to vote, and did vote, not being an elector. That, also, is the case with respect to Tomlinson. Even though it may not appear that he did knowingly personate, still it has been shown before you that he did personate another Henry Tomlinson, who was on the roll. With these proofs before you, are you to be told that the allegations in the petition have not been sustained? Are you to be called on to act on cases which are not Parliamentary cases, but in the nature of penal proceedings, and based on Statutes which are only Borough Statutes in England? Are you to be called upon to say that a man's vote is to be received because it happens to be stated in the petition that he knowingly personated, and it may appear that at the time he did not actually know he was personating? Surely not. My friend has raised the question about the ballot papers. Of course the practice has always been where there has been a poll, and a subsequent scrutiny has been demanded, to give in evidence the poll books. The parties, then, who wish to take any objection have the right to have the poll books referred to, to show whether their objections are well sustained.

The Chairman: That is in open voting in England.

Mr. Allan: The poll books are put in and not referred to beyond that, unless the person who objects calls the attention of the Committee to them. In this case, if it had been stated it is untrue what Hagan says, that he voted and his vote was received, the Chairman might have at once asked to have referred to these papers, to see whether that was the case or not. It has been said that the Committee had no right to receive those poll books, because the Statute had not been complied with. It has been laid down that, whether the Statutes have been complied with or not, as to the way in which the poll books are to be kept, they may, nevertheless, be received. I applied for the papers to be produced that they might be received in evidence, and they have been admitted.

The Chairman: You produced the electoral roll; but you have not produced the rolls made up and returned by the Returning Officer.

Mr. Allan: These papers contain the electoral roll, and also the ballot papers. They therefore stand in the same position and on the same ground as the polling books do and would have done if the old system of voting had been in existence. I called for these ballot papers under the provisions of the Act, and I produced them before the Committee. An objection was taken as to their not being sealed; they were, however, received in evidence, and left in charge of the Chairman.

Mr. Travers: As packets.

Mr. Allan: I do not care whether as packets or not; they were received, and could be referred to by any party. I asked to refer to them afterwards, and it was stated, "No, it was not considered essential." Both Hagan and Tomlinson stated that they voted; that their votes were never objected to; that they were given ballot papers, and that they struck out the names.

Mr. Travers: There is not a word of evidence either by Tomlinson or Hagan as to the mode in which they used the ballot paper.

Mr. Bunny: There was evidence of voting.

Mr. Allan: Everything is supposed to be rightly done until the contrary is proved. I have never heard such an objection before; it seems to be the last effort, but it will have no effect. There is evidence that they attended the polling booth; that they received papers; that they voted; and that the papers were deposited in the ballot box.

Mr. Travers: There is no evidence of that.

Mr. Allan: All that goes to show that these men recorded their votes. They stated that their votes were recorded for Sir David Monro. That being the evidence before the Committee, it was for the other side, if they intended to impugn it, to have asked for the packages to be opened and the voting papers examined. From the very first I asked to have the books examined, and it was stated that it was unnecessary.

The Chairman: As to these two votes.

Mr. Allan: I have conducted this case entirely on the ground and on the assumption that the discussion of the Committee was to the effect that the voting on behalf of Sir David Monro by these men had been proved, and that nothing more was required to be shown.

The Chairman: You must not go so far as that; what the Committee assented to was this: that there was no occasion to open the ballot papers to show that these parties had voted for Sir David Monro on that occasion. The Committee did not go beyond that.

Mr. Allan: I asked for these papers to be opened to have the votes examined, and the Committee stated it was quite unnecessary to do so.

The Chairman: You wanted the papers opened to prove that they had voted for Sir David Monro. The parties having admitted that themselves, the Committee said there was no occasion for doing so.

Mr. Allan: Then, I say there was an end of the matter. We had the Registration Officer here, who told you that 193 votes were polled on each side. He was never asked whether the votes of Hagan and Tomlinson had been registered. On the other hand you have the evidence of Hagan and Tomlinson that the votes were received, and that no objection had been taken to the votes. After receiving that evidence, the Committee considered that it was unimportant to examine the papers. I say that this objection is quite futile. Should the Committee have any doubt about it they can examine the papers themselves.

The Chairman: The Committee would like to hear you upon the important points raised by Mr. Travers. The first is, that admitting that the two parties had voted for Sir David Monro and had placed their ballot papers in the box, yet it is not shown that those votes were amongst those recorded in favour of Sir David Monro, and were not rejected.

Mr. Allan: I say it is not necessary.

Mr. Travers: It is not shown how either Hagan or Tomlinson had voted.

The Chairman : The other point is as to the power of the Committee, after the case has been closed by their own mere motion, to open the papers.

Mr. Bunny : The case is closed, and the evidence is before you.

Mr. Allan : The Committee have power to do what they like.

The Chairman : These are the two points.

Mr. Allan : The Committee have clearly the power to examine into the ballot papers themselves, if they have any doubt about it. We have proved certain numbers to be polled; that they were counted up; and that these two men were persons who had voted. Therefore, if any objection was going to be taken, after what the Committee laid down, that it was not necessary for me to go into the ballot papers, the objection ought to have been taken earlier. If objection was going to be taken that these two men were not amongst the persons whose votes were taken into the calculation, evidence ought to have been called to contradict it; and further, if there is any doubt upon the mind of the Committee, they have the power to open these papers. I have always treated it that the Committee had the right to refer to the papers, and to see whether the votes of Hagan and Tomlinson were among the 193 votes given for Sir David Monro. We are told that I was afraid to call another Henry Tomlinson to show that he had voted; I never heard of such a thing. Supposing he had come and voted, that would not have made any difference; he would have been among the 193.

Mr. Travers : No; his paper would have been rejected.

Mr. Allan : If his paper was rejected, he would not be among the 193; and if not rejected, he would have been among the 193. So it was in the case of Starnes; no objection was ever raised, as it was considered the Committee had the power to refer to the papers, if there was any doubt about it.

Mr. Travers : In Starnes' case application was made to have the ballot papers opened, and the Committee decided, on other grounds, that the vote was good, and it would make no difference.

This closed the case, and the Committee deliberated until half-past 2 o'clock, when they adjourned without having come to any decision.

WEDNESDAY, SEPTEMBER 20, 1871.

20th Sept., 1871.

The Committee met at 11 o'clock,

Mr. Brandon in the chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker; and *Mr. Travers* for the sitting Member, Sir David Monro.

The Committee, after deliberating for two hours, arrived at their decision.

The Chairman : The Committee have come to the following resolutions :—

1. That Sir David Monro was not duly elected as Member for the District of Motueka.
2. That Charles Parker, Esq., was duly elected, and ought to have been returned for the District of Motueka.

With reference to the question of costs, the Committee have decided that, under the circumstances, each party ought to bear his own costs.

Mr. Allan : The decision will be reported to the House.

The Chairman : Yes, I will report the decision to the House to-day.

The Committee adjourned.
