

Sup. Ct.]

CARTER ET AL. V. LEMESURIER.

[Newfoundland.]

latures does not claim for itself any such power, for in a recent work of no ordinary ability upon Parliamentary Government in England, I find the following passage: "No mere resolution of either House, or joint resolution of both Houses, will suffice to dispense with the requirements of an Act of Parliament, even although it may relate to something which directly concerns but one Chamber of the Legislature." Todd's Parliamentary Government, 260.

It is unnecessary to advert to the inherent authority which the House of Assembly might have exercised in conducting its own internal proceedings with relation to its own members alone, and in determining the right of persons to sit within its walls, provided no act of the whole Legislature had limited that authority and prescribed a particular mode of procedure with reference to controverted elections, but as such an act has been passed, it regulates the action of the House, and to its requirements that body, and all persons in the colony, must of necessity conform.

The statute to which I refer was passed in 1860, and is entitled, "An Act to regulate the trial of controverted elections, or return of members to serve in the House of Assembly," 23 Vic. c. 11.

This act was framed upon the model of the Grenville Act, many of the provisions of which it adopted; it prescribes the time within which petitions must be presented, the mode in which recognizances must be perfected, the method by which a Committee of seven members shall be constituted, and the manner in which such tribunal—when duly constituted—shall discharge its functions. It directs that the members thereof shall be sworn "well and truly to try the matters of the petition, and a true judgment give according to the evidence." And it invests the committee with the power to summon witnesses, administer oaths, hear counsel, and "make a final determination upon the matter."

If there had been no precedent upon the subject. I should have held, that such a committee—when created in accordance with the statute—would be, to all intents, a court of justice, and as such would immediately become subject to all the incidents that attach to courts of that description. In May's Parliamentary Guide *passim*, and in *Ransom v. Dundas*, 3 Bing. N. C. 123, such a tribunal is expressly recognized as a court.

2ndly. Now one of the characters of all inferior courts, of what nature soever, in England is, that they are subject to the superintending control of the Queen's Superior Courts at Westminster, whose especial duty it is to take care that such inferior courts keep within their bounds—Bac. Abr. 583—and where such courts are proceeding, or assume the right to proceed in a matter, or in a manner in which they either never had any jurisdiction at all, or have exceeded that which they had, prohibition may be awarded: 6 Bac. Abr.; *Bierley v. Windus*, 7 D. & R. 564.

It is also an indispensable element in the very existence of an inferior court emanating from an act of Parliament, that the essential requirements of such an Act be strictly observed, otherwise, there is no court at all, and every thing done by it is *coram non iudice* and a mere nullity—*Bruyeres v. Hulcomb*, 5 N. & M. 149; *Ransom v. Dundas*, 3 Bing. N. C. 123.

Such being the law in England, the question arises, does the Supreme Court here possess the same powers as the Superior Courts there, and this will be determined by a reference to the Imperial Statute which established this court. The 5 Geo. IV. cap. 67, authorized the King to institute a Superior Court of Judicature in Newfoundland, and declared that it should be called "the Supreme Court," and should be "a court of record, and should have all civil and criminal jurisdiction whatever in Newfoundland, as fully and amply to all intents and purposes as his Majesty's Courts of King's Bench, Common Pleas, Exchequer and High Court of Chancery in England have, and the Judges of the said Supreme Court should respectively have and exercise the like powers and authorities in Newfoundland, as any judge of any of the said courts, or as the Lord High Chancellor of Great Britain hath or exercises in England."

Pursuant to that Act a Royal Charter instituted this Court with the jurisdiction and obligations aforesaid, and has imposed upon the judges thereof the duty of entertaining and determining the question now before us. Nor is this a novel assumption, for so far back as the year 1720, I find it authoritatively affirmed in 2 Chal. Op. 209, "that the power of granting writs of prohibitions is one which may be, and constantly has been exercised by the Superior Courts in the Colonies."

3rdly. The last point that remains for consideration is—whether the Committee has been brought legally into existence? If it has, we have no power—from anything as yet appears—to interfere with it in the discharge of its functions; if it has not, it possesses no functions to discharge.

A brief examination of the statute will shew what necessary preliminaries are prescribed, and how far an observation of days and times in the procedure of the House to constitute an election committee, is made essential.

The first section directs, that when a petition complaining of an undue election, &c., shall be presented, an order shall be made by the House appointing a *day* and *hour* for the consideration thereof, and at such time the petitioner shall appear under penalty of the order being discharged. The 2nd section limits the time within which recognizances shall be perfected, under penalty of the dismissal of the petition.

The 5th sec. directs, that *on the day* appointed, previously to reading the order of the day for considering the petition, the House shall be called, and if there be less than twenty members present exclusive of the Speaker, the House shall forthwith adjourn to a *particular hour* the *next day*, when they shall proceed in like manner, and so on from *day* to *day* until the requisite number of members shall be present, when the committee shall be drawn, &c.

How far this carefully prescribed order of procedure has been observed is a matter of fact, and will be seen by the evidence laid before the court in the affidavits of the plaintiffs' agents, in the admission of the Attorney General on behalf of the defendants, and in the *viva voce* examination of Mr. Stuart, the Clerk, and of Mr. Hayward, the Solicitor of the House, by which the following details are established—