

any such suggestion. In the above case of *The Mayor of London v. Cox*, Willes, J., referring to the writ being issuable at the suit of a stranger, says: "In this respect, Prohibition strongly resembles mandamus, where the Court of Queen's Bench exercises a discretion as to whether the writ shall go, *but the writ once granted* must be met by a return, shewing a legal answer," and he adds: "The writ, however, although it may be of right in the sense that upon an application being made in proper time, upon sufficient materials, by a party who has not by misconduct or laches lost his right, its grant or refusal is not in the mere discretion of the Court, is not a writ of course like a writ of summons in an ordinary suit, but is the subject of a special application to the Court upon affidavit, which application and the proceedings thereupon are now regulated by the Act 1st Wm. 4th, ch. 21."

Before that Act, the declaration in prohibition was *qui tam* and it supposed a contempt in disobeying an imaginary precedent writ of prohibition.

The Act of Wm. 4th enacted that:—

"It shall not be necessary to file a suggestion on any application for a writ of prohibition, but such application may be made on affidavits only, and in case the party applying shall be directed to declare in prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not as heretofore on behalf of the party and of His Majesty, and shall contain and set forth in a concise manner, so much only of the proceeding in the Court below as may be necessary to shew the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue; to which declaration the party defendant may demur or plead such matters by way of traverse or otherwise, as may be proper to shew that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given that the writ of prohibition do or do not issue as justice may require, and the party in whose favour judgment shall be given, whether on non-suit, verdict, demurrer or

"otherwise, shall be entitled to the costs attending the application and subsequent proceedings and have judgment to recover the same."

The practice under this statute seems to have been in accordance with the ancient usage that when upon the affidavits filed for and against the application, it clearly appeared that the jurisdiction of the Inferior Court to adjudicate in the particular case could not be questioned, the Court would neither grant the rule nor put the parties to the expense of a declaration and proceedings in prohibition, so in like manner, if it should clearly appear that the writ ought to go absolutely, it was granted at once, without requiring a declaration in prohibition; but if it appeared open to doubt whether the writ should or not be finally granted absolute, if the question was agreeable, and always upon the demand of the party against whom the application was made, then the applicant was ordered to declare in prohibition, in order that the points to be argued should be brought before the Court, in the shape of a precise issue either of law or of fact upon records.

See *Lloyd v. Jones*, 6 C. B. 81; *In re Chancellor of Oxford*, 1 Q. B. 974; *In re Dean of York*, 2 Q. B. 39; *Mossop v. G. N. Ry. Co.*, 16 C. B. 585; *In re Aykroyd*, 1 Ex. 487; *Rennington v. Dolby*, 9 Q. B. 178.

Subsequently the practice upon applications for writs of prohibition to issue, addressed to judges of the County Courts, was regulated by 13 & 14th Vict. ch. 61, and 19 & 20th Vict. ch. 108, the 42nd section of which latter Act enacts that "when an application shall be made to a Superior Court or a judge thereof for a writ of prohibition to be addressed to a judge of a County Court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed."

Now the practice in the Province of Quebec is regulated by the code of civil procedure, the 1031st article of which code enacts that writs of prohibition are applied for, obtained and executed in the same manner as writs of mandamus and with the same formalities, thus placing the proceedings for writs of prohibition in all respects upon the same footing as writs of mandamus, which, in