

Sup. Ct.]

CARTER ET AL. V. LEMESURIER.

[Newfoundland.]

The last objection taken by the Attorney-General was of greater weight; and were this point not *res judicata*, as after much consideration I think it is, would in my opinion be fatal to this application.

The Attorney General argued that the writ of prohibition could only go to a duly constituted court of recognized powers and authority, which had exceeded or was about to exceed its jurisdiction, and that if the committee was illegally appointed, it was in fact no court, and Messrs. Carter and Evans' only remedy would be by an action at law for any injury they might hereafter sustain by its proceedings. In support of this view the case of *Ex parte Death*, 18 Q. B. 647., may perhaps be cited where a prohibition was refused as against the Vice Chancellor of the University of Cambridge, for alleged illegality in the conduct of an enquiry made by him, with a view to putting in force a statute of the University, but the circumstance that there the inquiry was purely voluntary, distinguishes that case from the present one, which in my opinion falls within the principle of *Chambers v. Jennings*, 2 Salk. 553; s. c., 7 Mod. 125; *Carter v. Firmin*, 4 Mod. 51, and *Bishop of Chichester v. Harward*, 1 T. R. 650; and *In re The Dean of York*, 2 Q. B. 1.

In *Chambers v. Jennings*, as reported very briefly in Salkeld, an action for words was brought in a Court of Honor, and a prohibition being moved for, Holt C. J. doubted if there was such a court, but said that the writ should go to a pretended court, and in the same case, as more fully reported in 7 Mod., while the legal existence of the court seems to have been questioned, the prohibition went, not only because an action for words would not lie in a Court of Honor, but because that court was then held before the Marshal only, and not before the Constable and Marshal, as it ought to have been, if held at all—that is to say, a prohibition lay because for one reason the court below was illegally constituted, which is the very ground upon which the present application was based.

This case is referred to as an authority in Bao. Abr., Com. Dig., and *In re The Dean of York*, 2 Q. B. 1.

In *Carter v. Firmin*, the court were of opinion that a prohibition ought to issue to an inferior court in the city of London, originally constituted for temporary purpose, which had been satisfied some years before, but the jurisdiction of which an attempt was improperly made to revive.

In the cases of *The Bishop of Chichester v. Harward*, and of *The Dean of York*, prohibitions issued to certain ecclesiastical functionaries, to restrain them from the exercise, to the prejudice of third persons, of visitatorial powers which they did not legally possess.

These cases seem to establish the principle that a prohibition will go to restrain the colorable assumption of judicial authority, such as that which the committee in the present case are about to exercise, and if so, they dispose of the objection I am now considering.

For all these reasons, I am of opinion, that this court has the power which has been ascribed to it, of restraining the committee from further proceedings, that sufficient grounds have been

shown for the exercise of that power, and that this rule should therefore be made absolute.

ROBINSON, J.—In deference to the novelty and importance of the legal questions arising in this case, it seems proper to state the reasons which have influenced my judgment; and before doing so I wish to acknowledge the material assistance I have derived from the arguments and research of the learned counsel engaged in the cause.

To support the plaintiff's right to a writ of prohibition the following propositions must be established: 1st, That an election committee under the statute either was or assumed to be "an inferior Court;" 2nd, That the Supreme Court has authority to examine the constitution of such inferior tribunal, and to confine its action within the limits of law; 3rd, That the Committee now under consideration has not been created in pursuance of the statute, and is therefore inoperative.

It is true that the application for a writ of prohibition to an election committee has not been supported by any direct precedent, but it should not on that account alone be refused; in every series of decisions there must be a beginning, and the first must be determined, as we desire to determine this case, by the application of general principles. It may however be observed, that since the beginning of the present year, the Court of Queen's Bench in England, issued to the Bridgewater Election Committee a mandamus, which is a kindred writ to a prohibition, and did so unhesitatingly, although its authority to interfere with a Parliamentary Committee was questioned by the Attorney General of England.

Reference was made at the bar to some alleged privileges of the House of Assembly of the colony, which the action of this court, in granting a rule *nisi*, was supposed in some way to have invaded; but what those privileges are, or how the House was at all affected by our interference was not shown. As however the matter has been mooted, I think it would be unbecoming to evade an expression of our opinion upon it, and without in the least desiring to abridge the legitimate power of the Legislature, I would observe, that I am not aware of the existence of any privileges or immunities which the law confers upon either branch of our Colonial Legislature beyond those enjoyed by all legally constituted bodies who meet for a lawful purpose, and pursue it in a lawful manner.

Both Houses of the Assembly possess, as incident to their existence, all rights necessary for the due discharge of their legitimate functions, but the judgment of the Judicial Committee of the Privy Council, in a case which arose in Newfoundland thirty-two years ago, *Kielley v. Carson*, and has been affirmed by several other decisions in the same High Court of Appeal, has denied and for ever set at rest the pretensions which once were raised by Colonial Legislatures, that, under the assumption that the "Law of Parliament" applied to them, their will was law, and their proceedings were unexamined by the Superior Courts. It is altogether visionary to imagine that any Legislative Assembly, body or person, possesses under British rule supremacy over the law in any particular whatsoever. Even the prototype of Colonial Legis-