I must therefore hold, that this case comes within the rule laid down in *Ransom* v. *Dundas*, 3 Bing. N.C. 123, above cited, namely, that if the appointment of the committee takes place in a manner contrary to or inconsistent with the essential requisites of the statute, there is no court, and the jurisdiction and all proceedings under it fail, ahd therefore, that the House of Assembly in adjourning to the third of March, committed a fatal error, working what in a suit at law is known as a discontinuance, which terminates the suit; that the subsequent appointment of the committee was invalid; that the taking of the oath of office by its members with the purpose of proceeding to try the case was nugatory, and that all subsequent proceedings had by them would be *coram non judice* and inoperative.

It is contended, however, by the Attorney General, that, admitting the adjournment for a week to be a violation of the Act, this error could be and was cured by the Speaker, officers, and some of the members assembling next day at the usual time and place, and continuing to meet from day to day until the appointment of the committee was completed

No authority was cited for this position, and I have been unable to find one. The only cases at all bearing upon the point are some in relation to corporations, pointing to a contrary conclusion — (see *Rex* v. *Chetwynd*, 7 B. & C. 695, and *Rex* v. *Langhorn*, 4 A. & E., 538, whence it appears that a defect in summoning even a single member of those entitled to be present could be cured only by all being actually present and consenting to waive the defect) and a statement in a newspaper brought under our notice since the argument, by the parties in this cause, to the effect that the House of Commons was unable to assemble during an adjournment. Newspaper statements, however, are for the most part, too general to be of much value as authorities in matters of law, and cases of corporation practice depend too much upon the terms of the respective charters of these bodies to be often applicable. In the absence, therefore, of all authority, I have to consider this point upon general principles.

When an Assembly is first elected, it cannot of its own accord meet for the despatch of business; it must be called and assembled by lawful authority, the Governor's proclamation, and so after being prorogued, it cannot again meet without the like authority. The same principle, it seems to me, must apply to adjournments. When being lawfully assembled, it adjourns to a future day, the House by a formal resolution declares that it will not meet or transact business until the time named, and discharges all parties from further attendance until then; and when that time arrives it meets and is lawfully assembled by virtue of the order lawfully made at the time of the adjournment.

If the Speaker and any number of members whether three or a quorum, could by voluntarily assembling in the mean time, reconstitute the House for the despatch of business (and if they could do this for one purpose they could for another, no matter how important) they would in effect rescind and overrule the resolution of the House made when lawfully assembled. But by a rule of law familiar to every student, the authority to undo an act must at least be equal to the authority by which it was done—and the Speaker and members would not be of equal authority with the House unless lawfully assembled. Where, then, is the lawful authority to assemble them, outside the Governor's proclamation, during an adjournment? The Speaker has it not, that I am aware of, nor have any number of the members, nor the Speaker and members conjointly. It follows that when voluntarily assembled they have no power in law, political or legislative, and consequently cannot overrule a former resolution of the House. In the commissions and instructions of our several governors, down to those of Sir Alexander Bannerman, there was contained a clause empowering the Governor to adjourn as well as to prorogue and dissolve the legislature. No one will contend that if, in the exercise of this power, the Governor had on any occasion adjourned the Assembly, the Speaker and members could assemble and proceed with business before the time appointed by the Governor for their reassembling, as such a proceeding would be in direct violation of the instrument to which the assembly owed its existence; and in what respect does the legal effect of an adjournment by the House itself differ from an adjournment so made by the Governor? It is not denied that within the law, the Assembly has power to regulate its own proceedings, but no rule of the House has been made to authorize the Speaker to call the House together under the circumstances here supposed. The solitary precedent cited from the Journals of 1852 is not in point, as no private rights were thereby affected, and the meeting of the members before the time fixed for their assembling was in fact but a declaration by the members present of their readiness to vote a sum of money for a benevolent object. The practical operation of such a power as the Speaker here attempted to exercise would be embarrassing and unjust, as the proceedings of the quorum called together at one time, might seriously conflict with the proceedings of another quorum composed of different members assembled at another, the right of absent members would be ignored, and the advantage of a formal adjournment, connecting in time and place each meeting with those preceding and following it, would be altogether lost.

Unless, therefore, I am shown some authority for this position of a character so weighty as to supersede all reasoning upon it, I cannot assent to it; nor can I concur with the Attorney General when he insists that it was incumbent upon the sitting members to have appeared and pleaded before the Committee before applying for this writ. There are, no doubt, many authorities to this effect, but there are also many to the contrary, and in a most recent case upon this point, *The Mayor of London* v. *Cox* (L.R. 2 H.L. Cas. 239) above referred to, all the authorities were reviewed, and it was held that where the Court below has no jurisdiction over the subject matter of the suit, it is not necessary to appear there, and that a party aggrieved may apply to the Superior Court in the first instance. It is not therefore necessary to consider the effect of the protest made by Mr. Whiteway against the committee proceeding.