

and in *Coke's Entries* are many precedents of such informations against persons for usurping the same sort of franchises, as claiming to be a corporation to have waifs, strays, holding a Court leet, Court baron, pillory and tumbrel, markets, prison, or for usurping a public office, as conservator of the Thames, and coal and corn meter. It is only in more modern times that informations have been filed by the King's coroner and attorney. The first reported case is that of *Rex v. The Mayor, &c., of Hertford*, 1 *Ld. Raym.* 426. And it is a mistake to suppose that these informations were founded on the statute of 9 Anne, ch. 20: *Rex v. Gregory*, 4 *T. R.* 340n.; and *Rex v. Williams*, 1 *Burr.* 402, where the right to file an information at common law, by the coroner and attorney, against a person for holding a Criminal Court of Record was recognized. After the Statutes 4 & 5 W. & M. ch. 18, which restrained the filing of informations by the coroner and attorney, the sanction of the Court was required, and after that statute and the 9 Anne, ch. 20, it exercised a discretion to grant or refuse them to private prosecutors according to the nature of the case." Per Tindal, C. J., in *Darley v. The Queen*, 12 *Cl. & Fin.* 520, 537.

It is also a mistake to suppose that at common law the information in the nature of a *quo warranto* is restricted to offices conferred by the Crown or in which the rights of the Crown are directly concerned.

In 1795, on an information *quo warranto* against several persons acting as trustees under a private Act of Parliament for enlarging and regulating the port of Whithaven, it was argued that the Court never grants these informations, but in cases where there is an usurpation on some franchise of the Crown, but it was resolved by the Court, "that the rule was laid down too general, for that informations have been constantly granted where any new jurisdiction or a public trust is exercised without authority": *Rex v. Nicholson et al.*, 1 *Str.* 299.

In some later cases, such as *Rex v. Ramsden et al.*, 3 *A. & E.* 456; *Rex v. Beedle et al.*, *Ib.*, 467; and *In re Aston Union*, 6 *A. & E.* 784, there were contradictory decisions and great differences of opinion among the Judges.

But since *Darley v. The Queen*, 12 *Cl. & Fin.* 520, it must be taken that the law as to *quo warranto* is settled, and settled on a basis quite in accordance with the expanding wants of society and the demands of law considered as a progressive and expansive science.

In that case, Tindal, C. J., who delivered not only his own opinion but the opinions of the eminent Judges, Patteson, Williams, Coleridge, Coltman, Maule, Wightman, Cresswell, Parke, Alderson, and Platt, said, at p. 541, "After the consideration of all the cases and dicta on this subject, the result appears to be, that this proceeding by information in the nature of *quo warranto* will lie for usurping any office whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will or pleasure of others."

In the same case Lord Brougham in affirming the opinions of the Judges, said: "I do not think it necessary now-a-days to show, that because a *quo warranto* was formerly only held to lie where there was a usurpation of a franchise or of a matter proceeding from the prerogative of the Crown, therefore an information in the nature of a *quo warranto*, which, generally speaking, follows the same rule, is to be confined within the same strict rules. I think if you take the whole weight of the authorities, the balance is much in favour of the extension which this appears to be beyond that limit."

In *Regina v. The Guardians of the poor of St. Martin's in the fields*, 17 *Q. B.* 149, 163, Mr. Justice, afterwards, Chief Justice, Erle, said: "Three tests of the applicability of a *quo warranto* are given by *Darley v. The Queen*. *Cl. Fin.* 520, the source of the office, the tenure, and the duties. The source here is a statute; the tenure, secure enough to satisfy the rule; as to the duties, no definition of public duties has been given. All we can do is, to follow such guidance as we have from the last cited case. If the execution of an office secures the proper distribution of a fund in which a body of the public (the contributors to a parish rate) have an interest, the office may be deemed public."

In *Hill and The Queen*, 8 *Moo. P. C.* 138, where the office was that of surgeon of the district prison of St. Catharine, in the island of Jamaica, (created by acts of the Local Legislature), it was intimated that a *quo warranto* was the proper remedy to try the right to office.

In *Regina v. The Bank of Upper Canada*, 5 *U. C. R.*, 335, it was doubted if a trading corporation, such as a bank, would be the proper object of a proceeding by *quo warranto*.

In *Regina v. Hespeler et al.*, 11 *U. C. R.* 222, it was held that the office of director in a railway company was not an office for which an information in the nature of *quo warranto* would lie.

In *Regina v. Acazon*, 2 *B. & S.* 795, the right of the defendant to

the office of superintendent registrar, under stat. 7 Wm. IV., and 1 Vic. ch. 22, was tried by *quo warranto* without objection.

In *Regina v. Hampton et al.*, 6 *B. & S.* 923, it was held, applying the tests given in *Darley v. Regina*, that *quo warranto* lies for the office of guardian of the poor, elected under 4 & 5 Wm. IV., ch. 76, sec. 28; but in a subsequent case the Court refused to grant a *quo warranto* to enquire into the election of an assistant overseer: *Regina v. Simpson*, 19 *W. R.* 73 *Q. B.*

In *Bradely v. Sylvestor*, 25 *L. T. N. S.* 459, the Court of Queen's Bench, on an application for a *quo warranto* against the clerk of the school board, refused the rule, considering that the majority of the board might, without assistance, remedy the impropriety, if any, and that the office was one during the pleasure of the board.

In *Regina v. The Poor Law Commissioners*, 3 *Ir. C. L. R.* 147, it was decided that *quo warranto* does not lie in any case for an office held during pleasure; and in *Rex v. Cousins*, 28 *L. T. N. S.* 116, it was held that, before the Court will grant the information, it must be satisfied that there is a substantial grievance.

In *Ex parte Smith*, 8 *L. T. N. S.* 458, leave was refused in the case of a committeeman of the Licensed Victuallers Association, the Court saying, "Here the office is one in a society of a purely eleemosynary kind."

If the tests suggested in *Darley v. The Queen*, and applied in *Regina v. The Guardians of the Poor of St. Martin in the Fields*, 17 *Q. B.* 149, and following cases, be applied to the office of school trustee as known in this Province, it will be found to stand the tests. The source here is a statute, the tenure is secure enough to satisfy the rule, and the duties are of a public, not of a mere private or eleemosynary character.

There is no instance of any information in the nature of a *quo warranto* being brought against a corporation as a corporation for a usurpation of the Crown, but by and in the name of the Attorney-General on behalf of the Crown: *Rex Corporation of Carmarthen*, 2 *Burr.* 869. If any number of individuals claim to be a corporation without any right so to be, that is an usurpation of a franchise, and an information against the whole corporation as a body, to shew by what authority they claim to be a corporation, can be brought only by and in the name of the Attorney-General: *Rex v. Ogden et al.*, 10 *B. & C.* 230; *Regina v. Taylor*, 11 *A. & E.* 949. But the Court will grant a *quo warranto* at the instance of a private relator against a member of an alleged corporation on grounds affecting his individual title, although it be suggested that the same objections apply to every member, and, therefore, that the application is in effect against the whole corporate body: *Rex v. White*, 5 *A. & E.* 613. It cannot be stated as a proposition of law or as a settled practice of the Court, that leave to file an information will not be granted merely because the effect may or even will be to dissolve the corporation: *Rex v. Parry*, 6 *A. & E.* 810, 820. See also *Regina ex. rel. Lawrence v. Woodruff*, 1 *C. L. cham. R.* 119.

Whenever the information comes from the Attorney-General on the part of the Crown, no leave of the Court is required; but when filed on behalf of some individual, the master of the Crown office is the proper person to represent the Crown. The statute 4 & 5 W. & M. ch. 18, was passed to restrict the last-mentioned informations being filed without the leave of the Court first obtained for the purpose. The statute 9 Anne ch. 20, rendered the proceeding more easy in respect of annual elections to corporate offices: *Regina ex. rel. Hart v. Lindsay*, 18 *U. C. R.* 51.

Upon the whole, I feel no doubt that an information in the nature of *quo warranto* will lie in the case of school trustees in this Province: that it may either be filed by the Attorney-General against the Corporation, or by a relator, with the leave of the Court, against all or any of the individual trustees; and that this is the direct and appropriate remedy for settling a controversy such as presented by the pleadings now before us in this case.

In my opinion, the decision appealed against must be affirmed with costs.

MORRISON, J., and WILSON, J., concurred.

Judgment accordingly.

The cause was subsequently taken to trial, and the issues in fact were tried at the last Spring Assizes for the county of Kent, before Morrison, J., without a jury.

The defendants, besides the second and third pleas involved in the demurrer, which are set out ante p. 345, 346, pleaded:

1. That they did not take the said goods or any of them, as alleged.

4. That the grievances were committed by the defendants after the passing of the Consol. Statutes *U. C. ch. 64*, and the 28 *Vic. ch. 49*, and under and in pursuance of the duties imposed upon de-