in a manner peculiar to itself, had and exercised the sole and exclusive power of enquiring into and determining upon the election of its own members: 2 Steph. Com. 368.

But it has been decided too often to be now a matter of doubt or controversy, that the *lex et consuetudo Parliamenti* has no application to Colonial Legislatures. (See *Doyle* v. *Falconer*, and cases there cited, 4 Moore, P. C. C. N. S. 203.) And that the powers and privileges of these bodies are such only as, either expressly or by necessary inference, are conferred by the charters, Royal instructions, or other instruments to which they owe their origin, or are given by local enactments in amendment of these instruments (1 Chalmers' Opinions, 233, 263, 296); and I can find nothing in the commission and instructions under which our Legislature was first assembled, or in any of the acts passed in relation to it, which exempts either the Assembly itself or any of its committees from the control of the law or from responsibility for a wrongful act where they exceed their powers; and in the interests of public justice, I feel constrained to add, that having regard to the evidence before us of the manner in which the Journals of the Assembly have been dealt with in this case, and the danger to which, were such proceedings necessarily tolerated, the rights of individuals might be exposed, it would in my opinion be a very great misfortune if either branch of the Legislature had power to commit a private wrong and the courts of justice were powerless to afford redress.

The general principles of the common law, then, giving to the Supreme Court jurisdiction over an election committee, and the special exemption from control which prevails for election committees in England having no existence in this Colony, it is manifest that the Attorney General's contention in this respect cannot prevail, and I have now only to consider the grounds upon which our interference is sought.

The grounds relied upon are, that on the 24th February, the day on which, by the order of the House, the petition was to be taken into consideration, the House was not called previously to reading the order of the day; and that upon its appearing that the required number of members was not present, the House was improperly adjourned until the 3rd of March, instead of to the next day; and these grounds depend for their validity upon the true construction of the 5th sect. of the Local Act, 23 Vic. c. 11, which is as follows: "Previously to reading the order of the day for considering the petition, the House shall be called; and if there shall be less than twenty members present, the House shall forthwith adjourn to a particular hour the next day, when they shall proceed in like manner, and so from day to day, till there be twenty members present at the reading of such order, in which number the Speaker shall not be included."

While it is admitted as a general rule that powers given by statute must be strictly pursued (Viner's Abr., *Tit. Authority*; *Atkins* v. *Kelby*, 11 A. & E. 777; *Roberts* v. *Humby*, 3 M. & W. 125), there is yet a clear distinction between matters merely *directory* and matters *imperatives*: *Reg* v. *Loxdale*, 1 Burr. 447. The former, although they ought to be followed, are yet not so necessary as that their non-observance will render void all subsequent proceedings, while matters imperative are such as cannot be dispensed with, without producing that result. To determine whether an enactment is imperative or directory, we must consider the consequences that would flow from disregarding it, whether it is of the essence or substance of the proceedings, or merely formal, and what appears to have been the intention and object of the Legislature with respect to it.

The Attorney General contends that the directions to call the House, and in a certain event, to adjourn to the next day, are not imperative, and that notwithstanding a mistake in or departure from either, the House could at a subsequent time proceed to perfect the committee, and so far as regards the calling of the House, I am at present disposed to agree with him.

The expression "the House shall be called," means, as is evident from the context, not that every member shall be previously summoned, but that the names of those then present shall be called aloud, that it may be certainly known if the number requisite for the appointment of the committee are in attendance. If they are (a fact which may be ascertained with sufficient certainty without a name being mentioned), the object of the Legislature, the securing a competent number from whom to choose, is satisfied, and no possible injury, it seems to me, could arise from their names not having been enumerated aloud. It is not necessary, however, that I should determine this point, because as to the direction to adjourn to the next day, I have a clear and decided opinion that it is absolute and imperative, and of the very substance of the enactment.

This, I think, plainly appears; 1. From a consideration of the importance attached to time throughout the statute; thus, no petition can be presented after so many days; not only a day, but an hour is fixed for its consideration; if the petitioner is not *then* present, the petition shall be further proceeded with; 2. From the evident intention of the Legislature that the proceedings upon the appointment of the committee should be continuous and uninterruped; 3. From the implied prohibition against the transaction of any other business while the appointment of the committee is pending; 4. From a regard to the probable difference in the composition of a committee chosen on one day from what it might be if chosen on another, in consequence of its being to be taken from the members present, who might not be the same on one day as on the next; 5. From the obvious facility with which, by preconcerted adjournments, a committee might be packed, if the time of appointment were in the discretion of the majority present; 6. From the language of the statute being, with reference to the adjournment "*from day to day*," *de die in diem*, that is, from the day then passing to the day next succeeding, the word being used in its natural, legal sense, which would authorize an adjournment only over a *dies non*, such as Sunday; and, 7. From the fact that it seems to have been necessary specially to amend the English Act, to enable the House of Commons to adjourn over certain holidays, in the event of the day preceding them being the day of appointment, and of the requisite number of members not being present on that day.