

Sup. Ct.]

CARTER ET AL. v. LEMESURIER.

[Newfoundland.]

quence of there not being twenty members present besides the Speaker, the House had adjourned to the 3rd of March; that after the House rose the legality of this adjournment was doubted, and that in consequence, the Speaker and certain members (three or four, as deposed by the Clerk, at least ten, but not twenty, as stated by the Solicitor) met the next day at the usual time and place, with the view of correcting this mistake, and continued to meet and adjourn daily until the 3rd of March, from which day the House regularly met and adjourned from day to day until the 2nd of April, when, the required number being present, the committee was appointed. It further appeared that the original notes of the proceedings of the 24th of February as taken officially by the clerk, correctly stated the adjournment according to the fact; but that the full journals untruly stated that the House had adjourned to the next day; that the journals were so made up by the Clerk, not of his own accord, but by direction of some whose orders he felt bound to obey, but whose names, the disclosure being objected to by the Attorney General, as irrelevant, did not appear, and that the succeeding Journals up to the 3rd of March were made up on the assumption of continued regular adjournments of the House from day to day.

After the evidence had been given Messrs. Whiteway and Pinsent, in support of the rule, were heard in reply. The Court reserved its decision until the 20th May last, when the following judgment was delivered:—

HOYLES, C. J.—The questions raised for determination, though not of so much difficulty as might at first be supposed, are yet novel and important. Novel, because for reasons presently to be noticed, no case strictly analogous to the present can be found in English jurisprudence, and I cannot learn that any one of a similar character has occurred in any of the colonies; and important, not only because it is supposed to concern the powers and privileges of the House of Assembly, but also by reason of the interests immediately involved in it, since if the rule be discharged, the sitting members may be compelled to defend their seats before a tribunal in which they profess to have no confidence; while if it be made absolute, the petitioners may, without any fault of their own, be deprived of the opportunity of having their claim to seats in the legislature investigated and possibly allowed.

With the novelty or importance of the case, however, we have nothing to do, further than as these circumstances should stimulate us to a more thoughtful consideration of it. Nor may we concern ourselves with the consequences of our decision. Our duty is simply to declare the law as we believe it to be, and in now doing so, it is satisfactory to reflect, that if we should be mistaken in our conclusion, a tribunal is at hand by which our errors may be corrected.

The application which has been made to us is for a writ of prohibition to be directed to an election committee of the House of Assembly to restrain it, and those who are suitors before it, from further proceeding with an enquiry into the Burin election.

This writ is defined to be, "a writ issuing out of Superior Courts at Westminster, directed to

the Judge and parties to a suit in any inferior court, commanding them to cease from the prosecution thereof, on the ground that the case does not belong to that jurisdiction" (3 Steph. Com. 686); and it is grantable *ex debito justitiæ* (though not of course) upon sufficient grounds: *Jackson and Beaumont*, 11 Ex. 300; *Barber v. Veley*, 12 A. & E. 263.

By sec. 1 of the 5 Geo. IV. cap. 67, commonly known as the "Judicature Act," the Supreme Court has within this Colony and its dependencies the same jurisdiction that the Courts at Westminster have in England. An election committee constituted under the local act 23 Vic. cap. 11, for the trial of controverted elections, being a place where justice is judicially administered (Coke on Litt. 68), is undoubtedly a court, and having only a limited jurisdiction (*Mayor of London v. Cox*, L. R. 2 H. L. Cas. 239) is an inferior court.

It necessarily follows, that if in the present case sufficient grounds have been shewn for this writ, we are bound to grant it, unless, as is contended by the Attorney General, there is something in the character or constitution of this inferior court, as emanating from the House of Assembly, which limits and supersedes our ordinary authority in this respect.

The case, then, resolves itself into this inquiry, —Is our authority here restricted, as the Attorney General maintains it is, and if not, have sufficient grounds been shown for the issuing of the writ?

To consider these questions in their order—An election committee, although composed entirely of members of the Assembly, chosen and put in motion by that body, is essentially a creature of the law, owing its existence and constitution wholly to an act of the Local Legislature, which declares and defines its functions and duties, and bestows upon it all the powers it possesses. *Prima facie*, then, like all other inferior legal tribunals, it would be subordinate and subject to the control of the law as administered by the Superior Courts. What is there that exempts it from their jurisdiction?

The argument of those who contend for such exemption is, that by reason of its composition, and the subject matter with which it deals, the election of members to the House of Assembly, it is responsible to the Assembly alone, and no other power can lawfully interfere with its proceedings; and it is said that during the whole time, nearly a century, during which the Grenville Acts were in operation, no instance occurred of a prohibition being even applied for against a committee appointed under their provisions, and that in this particular an analogy exists between the Assembly and the House of Commons.

It is to be observed, however, that in *Bruyeres v. Halcomb*, 3 A. & E. 38, cited with approval in *Ransom v. Dundas*, 3 Bing. N.C. 123, the Court of Queen's Bench reviewed the appointment of an election committee of the House of Commons, chosen under the Imperial Act of 9 Geo. IV. c. 22, on which our act is substantially based; and although it is true that no case can be cited of a prohibition issuing to an election committee of the House of Commons, that is so because, by the *lex et consuetudo Parliamenti*, itself part of the law of England, that House has always, and