

Sup. Ct.]

CARTER ET AL. V. LEMESURIER.

[Newfoundland.]

of the rights of parties, not being legally constituted as a tribunal for that purpose.

*Hon. R. J. Pinsent*, also in support of the rule:—No language can be more explicit, clear and imperative than that of the statute under which election committees are to be appointed. It is imperative; it prescribes not the mode of proceeding only in general terms, but that the adjournment shall be to the next day at a particular hour, and so on from day to day, &c. Here the adjournment was for a week. The essential character of the proceeding in principle, and the necessity of its being carried out according to the express words of the law, are manifest. If a judicial decision held otherwise, the consequence would be, for instance, that a number of persons in the Assembly in hostility to the sitting members, professing to adjourn for a week or other given time, might, after the members had dispersed, and as in this case gone to their homes at long distances, profess to hold a legal and competent House according to the statute, and proceed to the appointment of a packed committee, to try the rights of parties who were wholly unconscious of the proceedings. Here, after the House had adjourned for a week, a few persons met next day and professed to be the House of Assembly, with power to declare that something had been done the day before that had never taken place. It was an unprecedented and unheard of action of prerogative. If there be any part of the Act important and essential, this, which went to the foundation of the matter, is that part: *Debile fundamentum fallit opus*.

The learned counsel cited from May's Parliamentary Practice, page 59: "One House cannot create a disability unknown to the law;" page 87, "If orders be made beyond the jurisdiction, the enforcement of them may become a matter liable to question before the Courts of Law;" page 610 (speaking of the administration of the Election Law in England), "Every enactment is positive and compulsory; the House, the Committee, the Speaker, the members, are all directed to execute particular parts of the act; and, in short, it is not possible to conceive a legislative body more strictly bound by a public law over which it has no control, and in administering which it has so little discretion," p. 660, the Court of Chancery interferes by injunction to prevent petitioners proceeding irregularly with private bills before Parliament.

He contended that the House of Commons itself could not contravene the express mode of the statute for the formation of an election committee, without the committee so formed being subject to the process of the Courts of Westminster.

The following cases and authorities were cited in the course of the argument:—The local statutes; *Doyle v. Fulconer*, 4 Moo. P. C. C. N. S., 203; *Chambers v. Jennings*, 1 Salk. 553, as to pretended court; Vin. Abr. 50; *Bruyeres v. Halcomb*, 3 A. & E. 381, shewing that certain irregularities in the formation of election committees avoided the recognizance; *Grant v. Gould*, 2 H. Bl. 101; *Dwarris on Statutes*, 611-652, shewing the imperative meaning of the words; also, *Attorney General v. Lock*, 3 Atkyns. 166; *Reg. v. McCowan*, 11 A. & E. 869-885; *Freeman*

*v. Trannah*, 12 C. B. 407; *Reg. v. Grimshaw*, 10 Q. B. 747; *St. John's College v. Todington*, 1 Burr. 193-8; *Rez. v. Jolliffe*, 4 T. R. 288; *Reg. v. Ledgard*, 1 Q. B. 623; *Gould v. Gapper*, 5 East 362-370; *De Haber v. Queen of Portugal*, 17 Q. B. 171, and *Wadsworth v. Queen of Spain*, 17 Q. B. 196; *Manning v. Furguharson*, 30 L. J. Q. B. 22; *Addison on Torts*, 1033-40; *Arch. Prac.* 1737; *Eversfield v. Newman*, 4 C. B. N. S. 418; *Broom's Leg. Max.* 843-86.

*Hon. Mr. Little*, Attorney-General, *contra*.—The rule should be discharged on some one or all of the following grounds:

1. The committee being a part of the Assembly itself, and being appointed by that body for the purpose of conducting and determining an inquiry into the claims of certain parties to seats in the House, to prohibit it from proceeding in accordance with the orders of the House would be an illegal interference with the exclusive powers and privileges of the Assembly, for which no authority or precedent could be found.

2. Before applying for a writ of prohibition, the promovers should have appeared in the Court below, which they had not done.

3. Assuming (what he neither admitted nor denied) that there had been no call of the House prior to reading the order of the day on the 24th February, and that the House had adjourned for a week on that day, the commission in the one case, and the proceeding complained of in the other, were mere irregularities which (the words of the statute being directory only and not imperative) could not affect the constitution of the committee.

The irregular adjournment was cured by the House meeting on the 25th of February, and continuing its sittings by regular adjournments until the day when the committee was appointed. In support of this position the Attorney General cited an instance from the Journals of the Assembly of 1852, in which after having adjourned from one day until two o'clock the next day, the Assembly nevertheless met at twelve on that day, by direction of the Speaker, for the purpose of considering as to the relief to be afforded to certain distressed seafarers.

4. If, as alleged, the committee was in fact illegally constituted, it was in law no court at all, and a writ of prohibition would not therefore lie to it, and the promovers' remedy was to await its action and institute proceedings only when actually aggrieved.

At the close of the Attorney-General's argument, Mr. Whiteway again moved for the examination of the Clerk and Solicitor of the House, and the Court being of opinion, that owing to the ambiguous and unsatisfactory character of the Speaker's affidavit, some doubt existed as to the fact of the adjournment being to the third of March, such examination was ordered.

On its being entered upon, the Attorney-General, on behalf of his clients, admitted that the adjournment was for a week as alleged; but the inquiry was nevertheless proceeded with for the purpose of informing the court of the circumstances under which the House had, as was stated by the Speaker, met on the following day. It then appeared that on the 24th of February the House was not called over previously to the order of the day being read; that in conse-