

Sup. Ct.]

CARTER ET AL. v. LEMESURIER.

[Newfoundland.]

adjourn the House—and when once adjourned to a certain day there is no power in this Colony, except by the agency of a prorogation, that could legally convene it on an earlier day. A statute was passed in the 39th year of Geo. III. to enable the sovereign, by proclamation, to convene the English House of Commons in an emergency, upon an earlier day than that to which it had adjourned, but no corresponding enactment is in existence here.

That three or four members, voluntarily meeting at a time different from that appointed by the House, and it might be secretly, behind the backs of other members, could—by calling themselves “the House”—override the deliberate action of the whole body previously adopted in open session, is a doctrine that—if tenable—would involve consequences of the gravest, most dangerous character. I do not believe it has the slightest foundation in law, but as it has been openly propounded I will cite a few authorities upon the subject. In Tomlinson’s Law Dict. adjournment is defined to be “putting off until another time, and the substance of it is to give license to all concerned to forbear their attendance *till such time*.” In a corporation, which is a body possessing functions analogous in some respects to those of a Colonial Assembly created by Royal authority, corporate business can only be transacted at corporate meetings; and in 4 Com. Dig. Tit. *Franchise* (F. 33), a case is reported, wherein a burgess was removed for continuing in Court and attempting to make an order “after the Court had adjourned.” (*Yates’ Case*, Styles 48.)

In *The Mayor of Carlisle’s Case*, 1 Stra. 384, it was determined by the Court of King’s Bench in England, that the Mayor and Aldermen must meet in their distinctive capacity to enable them to discharge a duty they were empowered to perform, and although they were all present in another meeting, yet could they not then and there execute their functions; an irregular adjournment of a court of justice is sometimes fatal to a proceeding before it, and it was solemnly decided by the High Court of Parliament in *Lord Delamere’s Case*, 36 L. J. Q. B. 313; 17 L. T. N. S. 1, that an unauthorized adjournment, even by that supreme tribunal, would render “all proceedings after such adjournment void.”

To one other argument urged by the Attorney General I will briefly advert—he asked, if this Committee be no court at all, why should this Court take any notice of it, and issue a writ to prohibit its action? The answer seems to be that whenever a body of men, with some plausible show of jurisdiction, assume to exercise judicial functions, whereby the rights of the subject are endangered, the Queen, who is the fountain from which alone all justice in the realm flows, will, through her Superior Courts, stay such usurped authority, by granting a prohibition, as Lord Chief Justice Holt did to a “pretended Court” in *Chambers v. Sir John Jennings*, 2 Salk. 553.

The defendants contend that whatever may be the strict law, the parties litigant before the House have not sustained any practical damage from the error of the Assembly; although I might perhaps agree with them on that point,

there may possibly be a different opinion entertained by the plaintiff, but be that as it may, a court of justice cannot speculate on such points. We are bound by the law and cannot dispense with its provisions. In all such cases a suitor may claim that if he is subject to the penalties, he should also be entitled to the protection of a statute, and I can discover no reason to warrant a denial of such claim. The case of *Freeman v. Trainah* 12 C. B. 406, cited at the bar, is in point where, in a case of admitted hardship, the Court would not, because it could not properly, strain the law to afford redress even upon a point of practice.

Lastly—It may be said, why interdict the proceedings of this Committee until it has done some act to the prejudice of the plaintiffs? The answer is that no man is bound to wait to be injured where peril is plainly impending. Moreover, the mere fact of a court that possesses no jurisdiction over a question assuming to exercise judicial functions therein, is of itself a wrong against which the law will protect the party concerned by a prohibition: *Eyerley v. Windus*, 7 D. & R. 564.

It has been objected that the House did not observe the prescribed mode of procedure on being called over. “previously to reading the order of the day,” and that it transacted other business and did not “adjourn forthwith.”

Upon the first point there is some conflict of evidence, in which conflict the House is, in my opinion, entitled to the benefit of the doubt, upon the legal maxim, “*omnia presumuntur rite acta*,” Upon the second point I am not satisfied, that under our statute, which in this respect differs from the Grenville Act, the House might not legally have transacted some routine business before adjourning.

My conclusions from the whole case are that the adjournment for a week was a substantial violation of the statute—that the meeting of the Speaker and some members on intermediate days was illusory and utterly inefficacious—that the subsequent proceedings of the House to constitute an Election Committee were null and void; that the supposed Committee had therefore no legal existence, and its attempt to exercise jurisdiction was an unlawful assumption of judicial functions to the possible prejudice of the subject which this Court, being moved thereto, is bound *ex debito justitiæ* to prohibit. In reference to this case I say advisedly *ex debito justitiæ*, for whilst it is incumbent upon the Judges of a Supreme Court of Judicature to administer justice and maintain truth to all persons and at all times, it is in an especial manner a sacred duty imposed upon them to interpose the shield of the law between public bodies and private individuals whenever judicial power is illegally claimed by the strong over the weak, and sure I am that if such a tribunal did not exist, and was not ready whenever necessary to exercise its authority with independence, it would be recreant to the trust confided to it; neither person nor property would long be respected, legal rights would be speedily assailed, and civil society would soon lose those characteristics which every one living under British law has a right to expect.

The plaintiffs are entitled to the writ of prohibition, and the rule should be made absolute.