

Sup. Ct.]

CARTER ET AL. V. LEMESURIER.

[Newfoundland.]

That the day and hour appointed by the Assembly for taking into consideration the petition of Messrs. LeMesurier and Woods, against the return of Messrs. Carter and Evans, was Thursday, 24th February, at 4.30 o'clock—that there were not on that day twenty members present, and on the fact being ascertained, the House resolved itself into a Committee of Privilege, and directed a "call" for March 3rd, and ordered that the petition be taken into consideration on that day;—that, having doubts about the next step to be taken, the members took counsel together and then adjourned the House to the 3rd March—that the Clerk made an entry at the time in his usual manner, upon memoranda of such adjournment to the 3rd March, and of such order to take the petition into consideration on that day, from which memoranda he is in the habit of transcribing the proceedings into the Journals of the House, but did not do so on that evening, nor send a copy of such proceedings to the Governor, by reason of an engagement, but he stated that if he had not been so engaged, he would have written the Journals conformably with the truth, and would also on that evening have sent a true copy to the Governor—that on the evening of Thursday, or morning of Friday, it was ascertained that the House should on Thursday have adjourned to the "next day," and not for seven days, whereupon recourse was had to the following expedient: the Clerk was ordered to exclude from the Journals the entry of the adjournment on Thursday for a week, and to substitute in lieu thereof an entry declaring the House had adjourned to the following day at 4 o'clock, and had ordered that the election petition should be proceeded with at 4.30 o'clock on that day; he produced in court the Journal containing these fictitious entries, and he frankly admitted that they were untrue, but that he had made them under orders; he also stated that he had transmitted to the Governor a copy of them, purporting to be the actual proceedings of the House.

It did not transpire in court by whom such orders were given, but the fair inference is that they proceeded from some authority which the Clerk was expected to obey, and it did appear that on Friday afternoon at 4 o'clock the Speaker and three other members of the Assembly whose names were mentioned, met in the Assembly Room (the Solicitor said he thought there were five or more) when the erroneous journal was read and approved by those present; and this subsequent ratification was equivalent to an antecedent command and sufficiently identified the authority—that the Speaker and members assuming to be the House, adjourned to the next day, and some members continued to meet and adjourn in the same manner from day to day, until Thursday 3rd March, when the House met—that the members were then called pursuant to the order made on the preceding Thursday, and the requisite number not being present, the House adjourned to the next day, and so on day after day till the 2nd April, when twenty members beside the Speaker being present, the order of the day to take the petition into consideration was proceeded with, and the Election Committee now under consideration was drawn, reduced and sworn—that Messrs. Carter and Evans were

notified to attend, but did not do so, and had protested against the proceedings as irregular and void.

It does not appear that the House at any time repudiated the acts of its four members, or corrected the untrue Journal; those, therefore, who tacitly acquiesced in such acts may be considered willing to divide the responsibility incurred thereby, but their acquiescence cannot rectify any error in relation to the adjournment.

I do not believe there was an intention of injuring any one by that adjournment. I think it arose from mere inexperience and in itself involved no dishonor, but for good or for evil it stands a confessed fact and cannot be varied. By no alchemy can a week be transmuted into a day. All the expedients resorted to seem to me only trifling with the matter. It is to the actual condition of things we must apply the law, and the question for our determination remains—What legal effect had that adjournment for a week, instead of for a day, upon the constitution of the Election Committee, subsequently drawn?

The plaintiffs contend that it was a substantial and fatal variance from the statute. The defendants contend, on the contrary, that it was an immaterial mistake, speedily discovered and practically remedied.

The proceedings of the House in relation to the Journals, as detailed in the evidence, are matters upon which—in their moral aspect—I have no need to express my opinion, because they do not affect my decision; but they possess a legal significance to this extent, that they demonstrate the sense entertained by the House itself of the consequences of an adjournment for a week when they have had recourse to measures so extreme to avert them.

In my judgment a strict observance of the days and times prescribed by the Act, was intended to be, and has been made compulsory; it is reasonable that such should be the case; amidst the rivalry of parties, each striving for the mastery and neither knowing whose turn might first come, it was to be expected that the consent of the whole Legislature should be given to denude the representative branch of all discretionary power to postpone the consideration of election petitions, and that an adjournment from day to day until justice should be done, would be rigidly imposed. The language used in the statute to express these intentions is plain; it is the same substantially as was used in the Grenville Act, and so strictly was that Act construed that statutable permission was required to enable the House of Commons to adjourn over Sunday, Christmas Day and Good Friday, when either happened to be "the next day."

The Attorney General, feeling the force of this enactment, submitted that the concurrence at the assembly room of the Speaker and a few members already referred to, was practically a meeting of the House, and a compliance with the law. To that proposition I cannot for one moment assent; it is alike opposed to principle and to practice. An adjournment is a public and solemn act of the whole body, done in its collective capacity. It is one which is jealously guarded and not delegated to any subordinate authority—not even a committee of the whole, although every member might be present, can