

C. L. Cham.]

HATCH V. ROWLAND—CARTER ET AL. V. LEMESURIER. [Newfoundland.

transferred it to the defendant. On the same day the defendant transferred it to the claimant, both the latter transfers being entered in the stock book of the company. This transfer to the claimant was in satisfaction of a judgment which the claimant had recovered against the defendant.

On the 10th January, 1870, the sheriff of Northumberland and Durham served on the secretary of the company a copy of the writ of *feri facias* against the defendant's goods in this cause, at the suit of the plaintiff, which was then in the sheriff's hands, and had been in his hands continuously to that time from a day previous to the 18th October, 1869, and gave the notice of seizure, pursuant to sec. 8, cap. 70, Con. Stat. of Canada.

Rae appeared on behalf of the sheriff.

Mr. Greene (Patterson & Beatty) for the execution creditors.

McCauley for the claimant.

Mr. DALTON.—The question is, whether the stock, under the circumstances, was bound from the receipt of the writ by the sheriff; and I think it was not.

By Con. Stat. of Canada, cap. 70, sec. 1, "all shares and dividends of stockholders in incorporated companies shall be held to be personal property."

By sec. 3, the sheriff to whom any writ of execution is addressed, with directions to seize stock, "shall forthwith serve a copy of the writ on such company, with a notice of seizure, &c.; and from the time of such service, no transfer of such stock by the defendant shall be valid, until the seizure has been discharged."

Sec. 4 enacts that if a company has a place of business other than that where such notice has been served, such notice shall not affect the validity of any transfer or payment of any dividends or profits duly made and entered at such other place, so as to subject the company to pay twice, or to affect the right of any *bond fide* purchaser, until there has been time to transmit the notice.

As the first section of the act (and section 255 of the C. L. P. Act is to the same effect) declares shares to be personal property, and liable as such to be attached, seized and sold under writs of execution, it would probably be held, but for the other enactments of the statute, that the delivery of the writ of *feri facias* to the proper sheriff would bind the property, as in the case of other personal property; but the second and third sections seem to show clearly that such is not the intent. It is the necessary implication that until the seizure, in the manner pointed out in the third section, the receipt of the writ by the sheriff cannot affect the rights of a *bond fide* purchaser, though he may purchase after such receipt. I should understand by the expression, *bond fide* purchaser, a purchaser for good consideration, without notice. I understand the claimant to be such purchaser.

Robinson v. Grange, 18 U. C. Q. B. 260, is consistent with this, though it does not expressly decide it.

I must therefore make an order declaring the property to be in the claimant Stanton, and protecting the sheriff as against the execution credi-

tor; the execution creditor to pay the costs of the sheriff and of the claimant.

Order accordingly.

NEWFOUNDLAND REPORT.

SUPREME COURT, NEWFOUNDLAND.

Before the Honorables HOYLES, C. J., ROBINSON and HAYWARD, JJ.

(Reported by D. GIROUARD, ESQ., Advocate, Montreal.)

CARTER ET AL V. LEMESURIER.

Election committee—Amenable to judicial authority—Writ of prohibition.

Held: That an election committee illegally constituted by the House of Assembly to try the return of members sitting therein, will be prohibited from proceeding in the said enquiry by a writ of prohibition.

[St. Johns, Newfoundland, May 20, 1870.]

On the 6th April last, *W. V. Whiteway*, Q. C., moved for a writ of prohibition to be directed to Thomas Talbot and others, forming a committee appointed by the House of Assembly of Newfoundland to try the return of F. B. T. Carter and Edward Evans, members for the District of Burin; also to Henry LeMesurier and John Woods, upon whose petition the committee had been named, prohibiting the said committee from proceeding in the said enquiry, and the said petitioners from prosecuting the same.

The grounds of the motion were, that the House of Assembly on the 24th February last, the day appointed for considering the petition of Messrs. LeMesurier and Woods against the return of Messrs. Carter and Evans, omitted to call the House before proceeding with the order of the day, and upon finding that there were not twenty members present besides the speaker, adjourned for a whole week instead of to the following day, as required by law; and that by reason thereof, the said select committee had been illegally constituted and should be restrained from taking further proceedings in the matter.

The court refused to order the immediate issuing of the writ, but granted a rule *nisi* upon the petitioners and the committee, with a stay of proceedings in the meantime. An application was then made by Mr. Whiteway for the compulsory examination of the Clerk and Solicitor of the Assembly. This also was refused, but with an intimation, that if the affidavits of these officers were not produced by the other side, the application might be renewed during the progress of the case, should their evidence appear to be necessary for establishing the truth upon any material points in controversy.

Upon the return of the rule, being the last day of April Term, the Attorney General appeared for the petitioners and the committee, and after protesting against the authority of the court to interfere with what, as he alleged, were the proceedings of the Assembly in a matter of which they alone had cognizance, took a preliminary exception to the rule *nisi* as not being in accordance with the terms of the sixth of the practice rules of the Supreme Court, which prescribes