

SESSIONAL PAPER No. 18

We at this moment enjoy all the benefits arising from the Habeas corpus act.¹

The Legislative Council have repeatedly refused to grant Jurys in civil cases. Say the people, there is no Judge on the Bench capable of determining a Commercial point so well as a Jury of Merchants, nay 'tis absolutely impossible that Right can be done to the subject by Judges not bred to the Law, under that anticommercial ill-understood System la coutume de Paris, without the intervention of Juries—Jurys are an Englishman's birth right.—Why refuse optional Juries? asks an old subject—because, answer the Judges, they are too burthensome on the people. No replys the Englishman, Jurys are not burthensome where the Courts are properly regulated by terms, but here you have weekly Courts, as inconvenient as injurious since they tend by their frequency to deprive the Subject of trial by Jury, a right which an Englishman never can give up, and which His Majesty was pleased by His 13th Instruction strenuously to recommend, but the Judges who have had most influence with our Governors have found means to prevent our having Jurys in the Civil Courts, as they have been looked on as a pernicious check on the power of the Bench.²

It has been remark'd that men never wished for more power than the Law gives them, unless they intend to use it—On trials for Damages, the want of Juries may be severely felt.

May I, Sir, refer you to a sensible man Mr. Grant³ of St. Roc, (a Member of the Legislative Council) for ample information concerning our Courts of Justice—he lives at No 42 Newman street.

¹ In his speech to the Legislative Council at the opening of the session, on March 22nd, 1784 Governor Haldimand stated that he had regretted that the condition of public affairs had not hitherto permitted of his recommending an Ordinance for the better security of the liberty of the subject, now, however, he would present one to them. See Minutes of Leg. Council, v. D. p. 144. While this ordinance was being considered, Mr. Grant of St. Roc moved that the following clause should be incorporated: "And it shall be clearly understood at all times hereafter, that the Common and Statute Law of England in as far as the same is favourable and productive of personal Liberty, Safety and Security is the Right of all His Majesty's faithful Subjects in this province; and as such shall be the Rule whereby to decide every case and situation not provided for by the present Ordinance." Ibid. p. 168. This was defeated by nine to seven. But inasmuch as the preamble to the ordinance recited the 13th article of the Instructions to the Governor the same minority supported a motion, introduced by Mr. Finlay, to the effect that the ordinance as passed did not fulfil the conditions of the 13th article. The minority consisted of Messrs. Grant, DeLery, Collins, Levesque, Dunn, Finlay and Lt.-Gov. Hamilton; and each of these, except Mr. Collins, recorded his dissent from the vote of the majority. See *ibid.* pp. 170 and 172-6. The Ordinance introduced by Haldimand and passed was 24 Geo. III, cap. 1. "For securing the Liberty of the Subject, and for the prevention of Imprisonments out of this Province." Ordinances made and passed by the Governor, &c., p. 57. See also Ordinances 1763-91, p. 139.

² Repeated efforts, extending from 1777, had been made to secure an ordinance granting the right of trial by jury in civil cases, but not until the departure of Haldimand, Nov. 16th, 1784, was there any prospect of its being passed. Under Lt.-Governor Hamilton's administration, however, in the spring of 1785, this feature was embodied in the Ordinance for Regulating the Proceedings of the Civil Courts. See below, p. 780.

³ William Grant, 1752-1832. He was Attorney General for Quebec Province 1775-1777; appointed to the Legislative Council, August, 1777; also Deputy Receiver General of the Province, 1777-1784. Born in Scotland, he graduated at Aberdeen University and afterwards studied Civil Law at Leyden. He came to Canada, 1775, and took part in the defence of Quebec; returned to England, but kept up a close connection with his friends in Canada. Under the auspices of Pitt, he entered the British Parliament in 1791 and assisted in the preparation of the Constitutional Act for Canada. Solicitor General under Pitt, 1799, and knighted the same year; Master of the Rolls, 1801-1817. He was regarded by all parties as a statesman and lawyer of exceptional ability and fairness. See Dictionary of National Biography.