

SESSIONAL PAPER No. 18

Civil proceedings in the court of King's Bench

And in all civil proceedings carried on in the superiour court, or court of King's Bench, the forms of all actions, the stile of the pleadings used in them, the method of trial, and the rules of evidence are those which are prescribed by the English law, and are universally known by the Canadians to be so.

Civil proceedings in the court of Common Pleas.

In the court of Common Pleas the proceedings are drawn up in any form and stile that the parties, or their advocates, think proper, and sometimes in the French and sometimes in the English language, as the attornies who prepare them happen to be Canadians or Englishmen; and for this reason they are oftenest in the French language, most of the business in this court being managed by Canadian attornies.

Arrests of the body for debt.

Arrests of the body for debt are used in the first instance both upon suits in the court of King's Bench and suits in the court of Common Pleas, and even upon suits instituted before justices of the peace. This is a part of the English law that a good deal surprized and alarmed the Canadians upon its first introduction, as it carried an appearance of much greater severity than was practised under their own laws, which allowed of imprisonment only in criminal proceedings and in some few civil suits grounded on bills of exchange, or other instruments of a commercial nature, and then only in execution of a judgment of the court, and not in the beginning of the suit; but now they are grown accustomed to this way of proceeding, and frequently put it in practice against each other: and many persons of good sense and character, of both nations, are of opinion that, considering the great credit that has been given by persons in trade in this province, and the knavish and trickish disposition that has appeared in many of those to whom it has been given, there is no other method of proceeding by which the creditors can hope to obtain payment of their debts. This is more especially the opinion of your Majesty's British subjects that are concerned in trade in this province, many of whom objected some time since to the execution of even a part of the English law itself, to wit, that part of it which relates to commissions of bankruptcy, upon a supposition of it's being too indulgent to debtors to be useful in this province; yet other persons are of a different opinion, and think arrests of the body in the first instance an unnecessary piece of harshness in civil suits, and wish that it were restrained¹; and to this opinion we humbly submit it to your Majesty that we are ourselves inclined.

¹ These objections were presented to Lt. Governor Carleton in a memorial from a number of merchants of Quebec, dated Nov. 17th, 1767. See Q 5-1, p. 248. In Jan. 1768, certain Quebec and Montreal merchants, in another petition to the Lt. Governor, represented the advantages to the credit of the colony of having the English laws relating to bankruptcy in force. See Q 5-1, p. 367.