

SESSIONAL PAPER No. 18

OPINIONS OF MEMBERS OF COUNCIL ON EXECUTING THE INSTRUCTIONS OF 16TH JULY 1779.¹

The question now is,

Whether it is expedient to put in execution His Majesty's additional Instruction To His Excellency the Governor dated in July last, requiring alterations to be made in the courts of Appeals and Common Pleas.

Every Member of this Honorable Board is, no doubt, well inclined to pay all due obedience to the King's commands—The alterations required by His Majesty are expressly said to be for the purpose of benefitting his

principally to be attended to:" The three points are,—“First—to interpose such an Authority between the Sword & the People, that they may not be oppressed by any Person using the Generals name.” &c. 2dly, “To divide the supreme Judicial from the Legislative Authority which are now conjoined in precisely the same Persons, viz the Council.” &c. 3rdly “To establish some Judicatory for small causes arising at a great distance from the Seat of the Ordinary Court in each district.” These features, and especially the latter two, are discussed at some length, with detailed suggestions for bettering the system. See Q 16—1, p. 3. On May 6th the Lords of Trade sent an official communication to Richard Jackson, the Counsel of the Board, saying that it had under consideration “what Amendments it may be expedient to propose to His Majesty in the constitution of the Courts of Common Pleas within the Province of Quebec.” Hence they “desire your opinion for their Lordships information, ‘whether it is not fitting and expedient for the better distribution of Justice in Matters of Property, that the Chief Justice, (whose function is at present confined to the cognizance of Criminal Causes only) should also preside in the Courts of Common Pleas established for the Districts, into which the Province is divided; and if so, at what, and how many periods in the course of the year his presence should be required so as best to satisfy the convenience of Parties resorting to his judgment, and least to interrupt and obstruct the other Duties of his office; also whether any objection lies against his sitting as a member of the Council upon Appeals from Courts, where he has presided in judgment upon the causes; and if so, what regulations you would recommend as to his interference in the Council upon such Appeals, whether by barring him from Vote, or even from Debate, unless called upon to give information in the same, likewise whether any regulation is advisable as to the persons composing the Council in cases of Appeal; and whether in such cases the Council, shall proceed to examine and correct all Errors both of fact and Law, and admit new or further Evidence.’” Q 18—B, p. 157. Jackson reported in favour of the proposed change, and most of his suggestions were embodied in the Instruction. C.O. 42, v. 9, p. 106. On July 1st the Board of Trade reported to the King in Council on the system of justice in Quebec and the Ordinances passed there in 1777, “and we thereupon humbly beg leave to represent to your Majesty, that, however it might have applied to your Majesty's Governor and Legislative Council, that these Ordinances would be adequate to the Salutary purposes for which they were framed, we find on the best information, that they are in many instances insufficient, and particularly for that the official duty of the Chief Justice is thereby confined to matters criminal and cases of Appeal; and that the frequency of Appeals from the Courts of Common Pleas, under their present Establishment, is attended with every manifest inconveniences to your Majesty's Subjects.” Q 18—B, p. 160. After this follows the substance of the Instruction here given. On Oct. 24th, 1779, Haldimand acknowledged the receipt of this Instruction and promised to lay it before the Council, though he doubts the wisdom of making any changes under the existing circumstances of the Province. He promises during the winter to give his views on such alterations as appear to him practicable. See Q 16—2, p. 621.

¹ Canadian Archives. See Minutes of Leg. Council, vol. D, p. 62. On February 11th, 1780, Colonel Caldwell moved that the following question be put, “Whether it is the opinion of the Board, that an Ordinance, such as is directed by the King's additional Instruction of the 16th of July, 1779, would be for the advantage of this Province, and would tend to a more speedy and equal distribution of Justice?” Ibid. p. 61. On February 14th, the motion was voted upon and defeated by 12 to 6. It was then formally “voted and resolved that an Ordinance such as is directed by the King's additional Instruction of the 16th July, 1779, would not be for the advantage of this province, nor tend to a more speedy and equal distribution of Justice.” Whereupon, “Mr. Finlay, Mr. Cuthbert, Mr. Pownall, Mr. Allsopp, Mr. DeLery, and Mr. Grant, moved that their reasons, for their voices upon this Question might be incerted in the Minutes, resolved accordingly.” Ibid. p. 62. Their opinions are recorded as here given. Follow-