

many occasions, and frequently forgets the respect he owes to my present station."<sup>16</sup>

But he knew a more certain form of revenge: Russell after he became Administrator continued the practice followed by Simcoe, and gave himself a Commission to sit as puisne Justice of the Court of King's Bench with the accruing profits of £500 sterling per annum. Elmsley on his arrival in the autumn of 1796 being spoken to by Russell as to this, had no objection, "but would on the contrary be pleased with it, and my friends here advise me to solicit the situation as the only probable means I may have of procuring an income upon which I can possibly live in this dear country."<sup>17</sup> But while Russell sat without objection through Easter Term, April, 1797, when Trinity Term came and the Court sat at York July 1797, the Chief Justice demanded to know by what right he gave himself a Commission. While Russell sat during most of this Term with Elmsley, the Chief Justice was so offensive that Russell did not sit for the last two days of Term—and he never ventured to give himself a Commission thereafter. Russell complained to Portland, and was told that he was now receiving a sufficient salary and he should not try to sit as a Judge being also the Executive.<sup>18</sup>

Elmsley's hopes of a return of the Capital to Newark were dashed by the receipt by Russell of a despatch from Portland that "the selection of York for the capital was made upon the most mature reflection."<sup>19</sup> And the Court remained at York as well. It may be mentioned that when Osgoode Hall was built, and it was arranged (1831) that the Court should sit there, the Hall was not in the Town of York, which came only north to Lot (now Queen) Street, but was in the Township of York: it was necessary to obtain

<sup>16</sup> See letter mentioned in note 14.

<sup>17</sup> See letter Russell to Simcoe, Niagara, December 31, 1796. Wolsford Manor Papers, Vol. 8, p. 358.

<sup>18</sup> The last previous time at which the Head of State attempted to sit as a Judge was probably in the times of James I.

<sup>19</sup> Canadian Archives, Q. 253, p. 132, letter from Portland to Russell, Whitehall, September 11, 1797.