

6-7 EDWARD VII., A. 1907

The laws of England are generally thought to be in force in this province.

The commission of the chief justice refers to them.

So does the ordinance of the 17th of September 1764.

Purport of this ordinance.

In the first place, we beg leave to observe to your Majesty, that the laws of England are generally supposed to be in force in this province. All criminal proceedings have been carried on according to these laws: and in civil matters no other laws are cited, or appealed to, or allowed to be of any weight in the courts of justice; though in one or two causes certain customs that prevailed here in the time of the French government have been admitted as the grounds of the decisions, because the causes of action in those litigations had arisen either in the time of the French government, or during your Majesty's government of this province by your military commanders, during which period the ancient laws and usages of the country were supposed to be in force. But since the establishment of civil government your Majesty's chief justice of the province has acted by virtue of a commission¹ that commands him to decide all matters that come before him *according to the laws and customs of that part of your Majesty's kingdom of Great Britain called England, and the laws, ordinances, rules, and regulations of your Majesty's province of Quebec hereafter in that behalf to be ordained and made:* so that he is not at liberty to allow of any other laws or customs but those of England, unless they are expressly introduced or revived by some of the ordinances of the province made since the establishment of the civil government. And further, besides this commission, there is an express ordinance of the province which obliges both your Majesty's chief justice and the other judges of the province to follow the same rule of judgment. This is the ordinance of the 17th of September 1764,² passed by the governor and council of the province upon the introduction of the civil government, to erect and constitute the courts of justice by which the said civil government was to be carried on. This ordinance erects, in the first place, one superior court of judicature, called the King's Bench, in which it directs that your Majesty's chief justice of the province shall preside, *with power and authority to hear and determine all criminal and civil causes, agreeable to the laws of England and to the ordinances of this province:* and, in the second place, an inferior court of judicature, called the Court of Common Pleas, with power and authority to determine all property above the value of ten pounds, with a liberty to either party to appeal to the superior court, or court of King's Bench, where the matter in contest is of the value of twenty pounds, or upwards; and directs that the judges in this court shall determine the matters before them agreeable to equity, *having regard nevertheless to the laws of England as far as the circumstances and situation of*

¹ See Commission of Chief Justice Hey; p. 273.

² See p. 205.