

# P E T I T I O N .

*To the Honourable the Legislative Assembly of the Province of Canada :*

## THE PETITION OF ROBERT FLEMING GOURLAY,

### HUMBLY SHEWETH :

That in the case of Your Petitioner, a Report was submitted to Your Honourable House, September 11, 1841, as follows:—" Report of Select Committee, to whom was referred the Petition of Robert F. Gourlay, Esquire, have the honour to Report :

" Your Committee having investigated the Petition, and examined witnesses in relation to the same, and procured affidavits from persons cognizant of the matters and allegations contained therein, find the following facts fully proven.

" The Petitioner, Mr. Gourlay, first visited Canada, in the year 1817, where he had acquired property by marriage, and also by purchase; and commenced statistical enquiries into the capabilities of the Province; in the course of which he became aware of the existence of various abuses. He then proposed that a Commission should be appointed to proceed to Great Britain, to have these abuses rectified; and held public meetings for that purpose, accounts of the proceedings at which were published in a pamphlet, which was generally approved of by the people of the Province; but, by those in power, was considered as having a seditious tendency, and he was therefore arrested, and put on his trial for sedition, at Kingston; but, being acquitted, he was again tried at Brockville, with, however, a similar result. He, then, had to proceed to New York on business; and, on his return was imprisoned in the gaol at Niagara, where ill treatment, in being confined in a cell for five weeks in the dog days, debarred from the sight of or communication with his friends, his Counsel, and the Magistrates of the District, threw both his body and mind into such a state, as to render him totally unfit to defend himself, upon his trial, or even to comprehend his arraignment. The result of the trial was, that he was banished from the Province (for life.) under pain of death, should he return,—his alleged crime being that he neglected to quit the country upon the order of a single Magistrate (two Legislative Councillors) acting under an unjust construction of an unconstitutional Statute, most illegally exercised.

" Your Committee do not think it necessary to comment on such proceedings.

" From the evidence adduced, which will be found in the Appendix to this Report, Your Committee are of opinion, that the arrest and imprisonment of the Petitioner, in Niagara, in 1819, was illegal, unconstitutional, and without the possibility of excuse or palliation.

" That, debarring him from an interview with his friends, or his Counsel, was also illegal, unjust, and unconstitutional; that, preventing Magistrates of a County or District from visiting the gaol of that County or District is a violation of all propriety; and, if persisted in, would lead to the most pernicious consequences.

" Your Committee are further of opinion that his trial and sentence, when in a state of bodily and mental weakness, from sufferings which he had undergone, which prevented him from defending himself, was unjust, unconstitutional, and cruel.

" Your Committee cannot but express a hope that Your Honourable House will do the Petitioner that justice, which has been so long denied him, and pass an Address to His Excellency, the Governor General, declaratory of the above opinions, in order that the Crown may repudiate the transactions by which the Petitioner has been persecuted to his ruin; and, that the Legislature may declare his (sentence of) banishment null and void; and cause him to be compensated for the losses he has sustained by the unwarrantable exercise of authority. In the mean time, that some allowance be made to him to defray his personal expenses while in attendance before the Legislature defending the rights of a British subject.

" Your Committee are in possession of proofs, that during the (late) rebellion, when the Petitioner was resident in the United States, His Excellency, Sir Francis Bond Head, then Lieutenant Governor of Upper Canada, derived from him the most important intelligence of the movements of the brigands, then organizing for an attack on the Province. This, Your Committee humbly suggest, should neither be overlooked nor forgotten.

" All which is respectfully submitted.

" W. DUNLOP,

*Chairman.*

" Kingston, September 11, 1841."