

*Copy of a Report of a Committee of the Executive Council, of the 10th December, 1841, and approved by His Excellency, the Administrator of the Government, in Council, on 13th December, on the application of Mr. Robert F. Gourlay.*

The Committee of Council, in obedience to Your Excellency's commands, have considered the application of Mr. Robert F. Gourlay, praying to be informed, what he has to expect from the Executive Government, in consequence of an Address of the Honourable the Legislative Assembly, founded upon a Report of a Select Committee of that Honourable House, of which the following is an extract. "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 transaction 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 this unwarrantable exercise of authority; and, 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."

The wrong complained of, by Mr. Gourlay, appears to have originated in an Act of the Provincial Parliament, passed in the year 1804, entitled "An Act for the better securing this Province against all seditious attempts, or designs, to disturb the tranquillity thereof."

This Act authorized the Governor, Lieutenant Governor, or person Administering the Government of the Province, the Members of the Legislative and Executive Councils, the Judges of the Court of King's Bench, or other persons authorized in that behalf, by warrant, to arrest any person or persons, not having been an inhabitant, or inhabitants of the Province, for the space of six months, next preceding the date of such warrant, and not having taken the oath of allegiance, who, by words, actions, or other behaviour or conduct, hath or have endeavoured, or hath or have given just cause to suspect that he, she, or they, is or are about to endeavour to alienate the minds of His Majesty's Subjects of the said Province, from his Person or his Government, or, in any ways, with a seditious intent, to disturb the tranquillity thereof; and, upon such arrest, and upon examination, to order such person to leave the Province."

The same Act provides "that, upon any such person being found at large within the Province, without license to return granted by the Government, he should be committed without bail, until released by the Government, or be delivered by the Court of Oyer and Terminer, in due course of Law, and that he should be liable to imprisonment and banishment, from which banishment if he should again return, without license, he should be liable to suffer death, as a felon."

This Act has been long since repealed,—in the opinion of the Committee, most wisely and properly, by the Legislature; but, in the consideration of the present question, the Committee feel bound to look to the Law as it stood at the time of the events complained of.

It appears that Mr. Gourlay, upon information given upon oath, by a Member of the House of Assembly, was arrested and brought before two Members of the Legislative Council, upon a charge of having endeavoured, by words, actions and behaviour, to alienate the minds of His Majesty's subjects from the King's Person and Government, and to raise a rebellion against the King's Government in the Province; and, not being able to give full and complete satisfaction to the gentlemen who issued the warrant, on these points, he was ordered, by them, to quit the Province, within a time limited.

Mr. Gourlay chose to disregard the order thus given, and, by his disobedience, rendered himself liable to the penalties of the Act; and, being found at large within the Province, contrary to its provisions, he was arrested, tried, and convicted, upon the Statute; and sentenced to be imprisoned and banished. Mr. Gourlay now claims redress, and is desirous to know the intentions of the Executive Government respecting his case.

It appears, that, in accordance with one part of the Address, Your Excellency has directed a payment to Mr. Gourlay of Fifty Pounds.

It is further required by the Address, that, the Government should repudiate the transaction.

The proceeding against Mr. Gourlay does not appear to have been an act of the Executive Government, but of a tribunal exercising extraordinary and extensive power, and having the widest discretion as to the mode in which it should be used. In assenting to the repeal of the Act itself, the Government has already expressed its opinion, in the strongest manner, against the continuance of such arbitrary power in any person, or body of persons; but, the Committee do not see how the disavowal of the act of persons, over which the present Government of the Province had no controul, can, in anywise, help Mr. Gourlay's case.

If the legality of the proceeding be called in question, on the ground that the Statute was not intended to apply to British subjects, a reference to the Act itself will shew, that actual residence in the Province, and the taking the oath of allegiance, were the necessary qualifications which would exempt any person from the operation of the Law. The being a natural born subject of the Crown does not enter into the question.