

SESSIONAL PAPER No. 18

to extend to his Majesty's new Subjects those Privileges, which exist in the principles of a British Constitution. But the exercise and operation of this Legislative Power having been rendered impracticable by inserting in the Commission, without sufficiently adverting to the state of the Colony the restriction,¹ that no person should sit in the Assembly, who had not subscribed the Test, required in this Kingdom by the Act of the twenty fifth of Charles the second, the powers of Government became confined to the Governor and Council, whose authority not extending to cases, which might affect either the life, limb, or liberty of the Subject, or to the imposing Duties and Taxes, was incompetent to those regulations, which the situation of the Colony required ; and consequently no provision has been made for establishing such a reasonable Revenue, as may be adequate to the necessary expences of Government, the whole of which is now a burthen upon His Majesty's Treasury here. The Roman Catholic Religion, though barely tolerated by the Treaty, remains without any regulation, reform, or control whatever, and that of the Mother Country without any provision or support.

Besides these capital objects, there are many other constitutional establishments, and necessary services, for which no provision either has been, or can be made in the present state of the Colony ; and it has even been found necessary to disallow several Ordinances of the Governor and Council, in Matters merely of local regulation, and internal œconomy, from a consideration of the Want of a due authority to enact them.

These wants and defects are of themselves sufficient to evince the necessity of having a complete legislative power, for the establishment of which it is humbly conceived the Faith of the Crown stands fully pledged, both by the Commission under the Great Seal, and by the Proclamation ; but the state of the Colony, in respect to the Administration of Justice in civil cases, is a circumstance, that does above all others mark the necessity of some form of Government more perfect and effectual.

On the seventeenth of September 1764 the Governor and Council promulged an Ordinance² for establishing and regulating Courts of Justice, by which the plan of Judicature is made to consist of a Superior Court, having the Jurisdiction of the Court of King's Bench ; an inferior Court, having the Jurisdictions of the Court of Common Pleas, and Courts of Oyer and Terminer, Assize, and Goal Delivery ; and it is declared by this Ordinance, that all matters, Civil and Criminal, shall be heard and determined in these Courts agreeable to the Laws of England.

According to the construction put upon this Ordinance by those who framed it, it was to be understood, that not only the proceedings in these Courts were to be carried on according to the modes and forms established in the Courts in Westminster Hall, but also all the principles of the Law of England, relative to Descents, Tenure, &c., which totally, or in part differed

¹ See p. 175.² See p. 205.