

# ROBERT (FLEMING) GOURLAY

AS SHEWN BY  
HIS OWN RECORDS

BY

WILLIAM RENWICK RIDDELL, LL.D., F. R. Hist. S., etc.  
Justice of the Supreme Court of Ontario

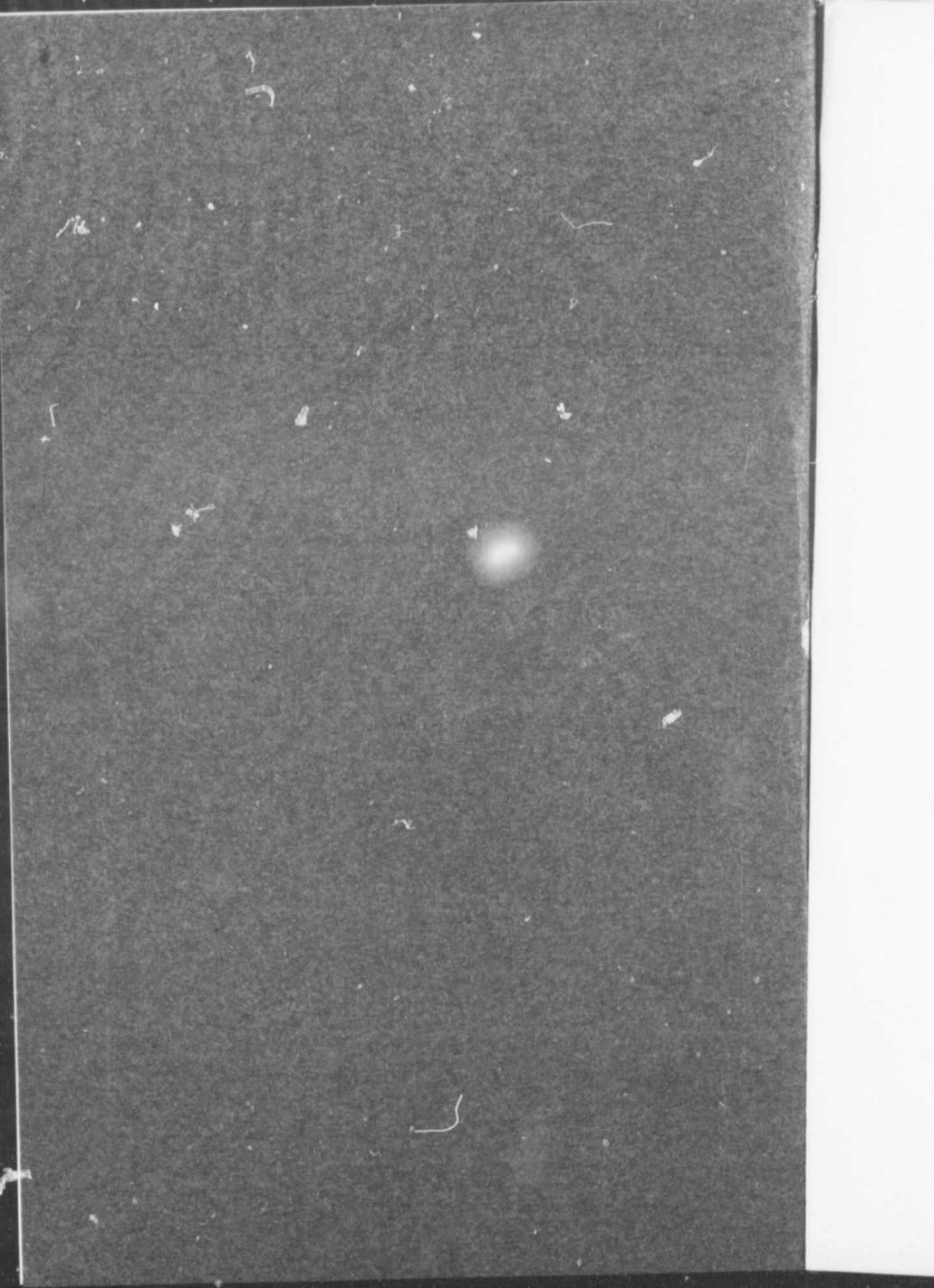


Reprinted from "Papers and Records," Vol. XIV., of the  
Ontario Historical Society.

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TORONTO  
Published by the Society  
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Man is a Recording Animal.—Gourlay.

Great wits are sure to madness near allied  
And thin partitions do their bounds divide.—Dryden.

Good sense, which only is the gift of Heaven  
And though no science, fairly worth the seven.—Pope.

An honest man's the noblest work of God.—Pope.

Meden agan.—Greek Proverb.

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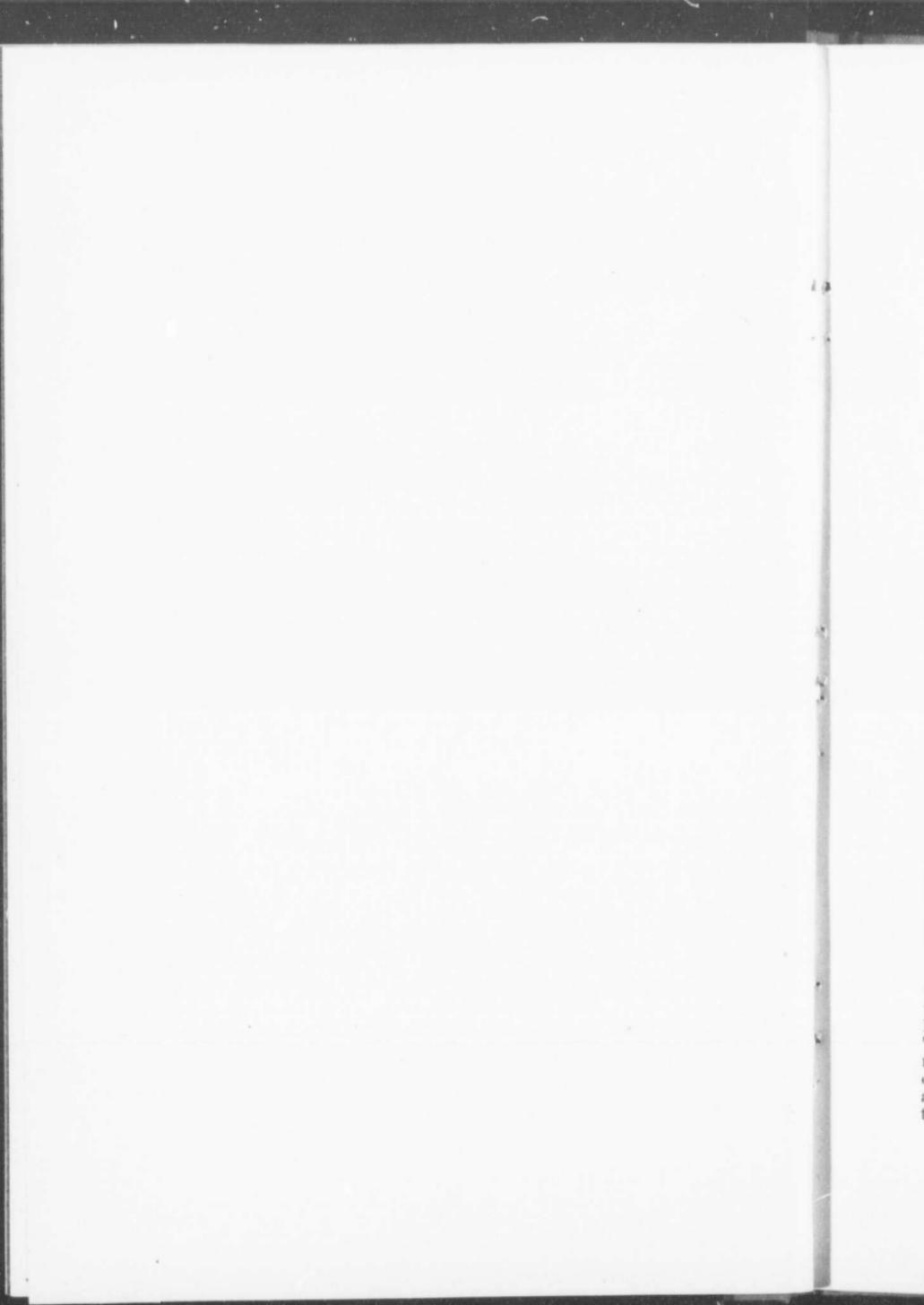
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ROBERT (FLEMING) GOURLAY.

By the Honourable William Renwick Riddell, LL. D., F. R. Hist. S.,  
etc.

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PREFACE

The story of Robert (Fleming) Gourlay is full of interest from more points of view than one.

The alienist will recognize a typical case of want of mental equilibrium approaching and sometimes indeed trenching on actual insanity. Of a neurotic temperament, "touchy," self-opinionated, wholly unable to understand why he should not be ever on the centre of the stage, why his methods should not always be adopted, Gourlay in his judgment of men and causes while undoubtedly honest must be regarded with very great caution.

Were this the only side to his character and his career, the author would not have written this monograph, or the Ontario Historical Society printed it.

It is not without reason that Dent begins his story of the Upper Canadian Rebellion with a chapter on The Banished Briton. For, much as Gourlay detested disloyalty and much as he despised William Lyon Mackenzie, it was the work of Gourlay, and, more, his treatment by the authorities which helped to rouse the people of Upper Canada and incline them to listen to a call to vindicate their rights, if necessary, by arms. It would be to expand this brochure to much too great a volume, were the endeavour made to trace the threads connecting the efforts of Gourlay and the success (such as it was) of the "Patriots" of 1837-8: that, it is to be hoped, may be done by someone with an intimate knowledge of Upper Canada in the first four decades of the 19th century, and a sympathy with the desires of many Upper Canadians of those times to be freed from official tyranny, intolerance, incompetence and greed.

It is probably worth while to show the extraordinary power long possessed by one man, the Reverend Dr. John Strachan. It seems plain that it was from the circumstance that Gourlay treated him with contumely and did not try to conciliate him, that much of Gourlay's troubles arose. The Reverend Councilor seems to have been at first the only one to scent mischief in Gourlay's scheme for a statistical account; and the injudicious defiance by the new-comer increased the suspicion—which the divine was able to make certainty in the minds of practically all in authority at that time.

ROYAL SOCIETY  
CANADA

It is also worth while to clear the name of the earliest lawyer-judge, one of the earliest Chief Justices, of our Province, from the odium cast upon it by uninformed and credulous writers. Some day, it is to be hoped, the part taken by William Dummer Powell in the development of this Province (in the Courts and elsewhere) will be worthily commemorated and fully acknowledged.

The vivid light cast upon early Upper Canada, politically, socially, legally, by the events of Gourlay's career should be welcomed by all who take an interest in our early history; while some of the antics of Gourlay in the old land are as amusing as a romance. His whole life is a study in agitation; he was a "crank," but just failed of being that kind of a crank which produces a revolution, by making himself and his wrongs the important matter, not an oppressed class and the wrongs of that class.

He was a kind-hearted man, devotedly loved by his own, intensely conscious of the woes of the poor in England and desirous of bettering their condition (but in his own way only); truthful in matters of fact, incapable of telling a wilful falsehood, his ardour led him into misconception, suspicion, injustice; the *perfervidum ingenium Scotorum* he had to almost as great a degree as the Dean of St. Patrick's, and he but just escaped the penalty paid for the *saeva indignatio* of Swift.

It is confidently hoped that no errors of fact are here contained; if such there be, correction will be welcomed. It is too much to expect that all will agree in the conclusions drawn from these facts.

WILLIAM RENWICK RIDDELL.

Osgoode Hall, February 22nd. 1916.

## Part I.

## CHAPTER I.

## Early Life in Great Britain.

The name of Robert Gourlay is one of the best known in the early annals of Upper Canada. He prided himself on his saying, "Man is a recording animal," and true to his definition he recorded in his own way what seemed to him of importance in his life; he wrote a very useful book and a large number of pamphlets of more or less value. There does not seem to be any reason to doubt his perfect sincerity, and from his records a reasonably accurate account of his career can be drawn up.

He was born March 24th, 1778, <sup>(1)</sup> in the Parish of Ceres in Fifeshire, Scotland, "an cleve of the oldest and least attainted family of Fifeshire." <sup>(2)</sup> The family is said to have come to Fife at an early date and claimed descent from Ingleramus de Gourlay, who came to Scotland with Prince William (the Lion) about 1174. <sup>(3)</sup> Gourlay is proud that one of his forefathers, Norman Gourlay, burned with David Straiton at Edinburgh in 1534, was a martyr for the cause of religious liberty. <sup>(4)</sup> His father, Oliver Gourlay of Craigrothie, had been a Writer to the Signet for more than a dozen years; but having acquired considerable wealth and thinking "he could not continue his business and be an honest man" <sup>(5)</sup>, he bought a good deal of land in Ceres Parish, Fifeshire, and devoted himself to the improvement of his property by scientific farming. He was a Magistrate of the County for many years before his death.

Robert was educated at St. Andrews, being seven years in school and college there, and taking the ordinary course of philosophy in the University. He had as fellow-students several men who afterwards made their mark in the world, amongst them Dr. Chalmers and Wilkie, the painter. <sup>(6)</sup> Afterwards he took a two-years' post-graduate course in the University of Edinburgh in Agriculture and Chemistry, attending the lectures of Dr. Coventry, the first Professor of Agriculture, and "the profound Mr. Robinson." <sup>(7)</sup> He says that there was no need for him to do anything as his father could well support him, and that he engaged in agriculture from the love of it. We find him in 1794 after leaving Edinburgh, in Midlothian for some months studying the general practice of husbandry in that district. <sup>(8)</sup> His father prevented him from following his own earlier profession, although he got "a smack of Scots' law from the lips of Professor Hume in 1797" in Edinburgh. <sup>(9)</sup>

He then, for fifteen months, in 1800 and 1801, made an extensive tour in England and Wales; falling in with the celebrated Arthur Young, Secretary of the Board of Agriculture, he was through Young's influence employed by the Board for some months to examine into the success of the plan in Lincoln and Rutland of furnishing the poor with

cows and a small plot of land and to report upon plans for bettering their condition. He made a report in March, 1801, which the Secretary published in 1802 without consulting him or giving him an opportunity to revise it. This excited Gourlay's anger at the time, but afterwards he speaks of this publication with great pride, and notes Young's "singular pleasure in inserting it" in his "Annals of Agriculture." (10). He tells us that in 1801 he devoted his life to bettering the condition of the poor in England, (11) and there is much in his after-life which indicates his honesty in this assertion.

He returned to Scotland in 1801 and accepted the farm of Pratis from his father; he was "the young laird" and his father's heir (12) and became an extensive farmer. In 1799 (October 10th) he had received a Captain's Commission to command a Corps of Volunteers in Fifeshire, but by reason of his long absence he had resigned it. When war was declared in 1803 he preferred to join a troop of Yeomanry Cavalry as a private to receiving a renewed Commission in the Volunteers. In 1807 the officers of the Yeomanry failed to appear for duty, and Gourlay withdrew from the troop after vainly endeavouring to persuade his comrades to deposit their arms in the County Hall, informing the Government at the same time that they would resume them on a moment's notice and those who were under arms would cross over to France to put down the power of Bonaparte. (13) His Commission as Commandant, Gourlay appeals to time and again in his after career.

In 1807 he married Jean Henderson, a widow, whose mother was a sister of the Hon. Robert Hamilton of Queenston, and she, herself, a second cousin of William Dickson and of Thomas Clark. She owned about 400 acres of land in Dereham Township, County of Oxford, Upper Canada, and in 1810 Gourlay bought from the heirs of her first husband and paid for in Edinburgh an equal quantity of land adjoining hers. (14) On his marriage his father settled £300 a year upon him and also gave a "heritable bond" for £4,000 in favour of the children of the marriage, Gourlay joining therein, although he claims that as he was his father's heir it was not necessary.

In 1808 he fell out with the Earl of Kellie. (15) The Earl, whose predecessors had sold all the estate except the Manor House, was a heritor of Fife; occupying the chair at a meeting, February 15th, 1808, of the heritors, he adjourned the meeting while Gourlay was speaking. This Gourlay took as an insult, and at the next meeting demanded a public apology; this being declared out of order, he withdrew. At the next meeting he put a written question to the clerk whether a president could adjourn a meeting *proprio motu*; this the chairman, Mr. Wedderburn, waved aside. At the next meeting Lord Kellie was in the chair, and Gourlay asked the same question; and entered his protest upon the books against Lord Kellie's irregular conduct towards him.

The matter rested for some months. In October, 1808, when Gourlay was about to leave the country, he sent a written demand to the Earl for a public apology "in terms clear and explicit," saying "it is

absolutely necessary that your apology be inserted in the newspaper." The Earl replied that he was not sensible of having insulted him, "therefore I can make no apology," and added: "Had you stated in what manner you considered yourself insulted, I should have answered you." Gourlay thereupon published a letter, already prepared, extending to 63 octavo pages.<sup>(16)</sup> He denies that "he has been guided by petulance and kept in irritation by a spirit of self-importance and vanity" (p. 11), but it is hard to accept this statement in view of the extraordinary contents of the letter—it was "a most daring outrage" (p. 12); the Earl, "hurried by foolish passion . . . had the presumption to adjourn the meeting" (p. 15), "a gross violation of decorum" (p. 16), and does the Earl think his character worthy of being called to the chair? (p. 17), the nobility is doomed (p. 22) and the Earl had better resign. A few pages are devoted to the ostensible subject of the letter, but no one can read the production without recognizing that its main object was an attack on the gentleman who had offended him months before. And thus early appear several characteristics of Gourlay which are noticeable throughout his career, unbounded self-confidence and self-consciousness, inability to understand that anybody could honestly differ from him, never-dying remembrance of anything which he considered to be an insult or other injury, unsparing attack on every offender, lack of judgment in such attack, and withal, thorough conscientiousness throughout.

He lived in respectability in Fifeshire for eight years, having, as he says, "a standing invitation to dine with the Lord Lieutenant"; and his farming is spoken of in the highest terms.

In 1802 the Duke of Somerset invited farmers from Scotland to occupy his estate in England for the purpose of introducing improved methods of farming; in 1803 he expressed a desire that Gourlay should become his tenant, and in 1804 offered him a farm in Wiltshire; but it was not then convenient for Gourlay to accept. In 1809 Gourlay had been advised to remove to England because of his health,<sup>(17)</sup> it is possible that his quarrel with Lord Kellie had made his residence in Scotland less pleasant, and he made an agreement with the Duke. The reasons given for removal are varied, health, a finer scope for his exertions (this, given by Sir John Leslie, Gourlay repudiates "In Scotland I had finer scope, my father having twenty ploughs going on his own property"<sup>(18)</sup>), to study the poor-law system,<sup>(19)</sup> etc.—probably all contributed to the result.

A written agreement was drawn up by the Duke's agent and signed, May 17th, 1809, by the Duke and Gourlay for a lease of the Deptford Farm of 700 acres in Wily Parish, Wiltshire, for 21 years from October 10th, 1809, Gourlay to be allowed for putting the buildings into repair and for certain improvements. Other clauses not now of importance are to be found in the agreement. The tenant went into possession of the land on the day fixed, and afterwards of the buildings, and made improvements. A lease was drawn up according to the agreement and signed by the Duke, October, 1811; Gourlay was asked to sign the counterpart and accept the lease, but he refused "stating that he con-

sidered the agreement sufficient for him." (20) He says he had been assured by the Duke's solicitor that "he would see him through any Court in England with that agreement" (21); but he was soon to learn the difference in English law between a lease and an agreement for a lease. The Duke complained of his digging chalk, cutting down timber, pulling down buildings, sub-letting part of the farm, etc., etc., and served a notice to quit for October, 1812. Now, Gourlay took advice and learned the result of his folly in refusing to carry out his agreement and execute the formal lease. Under the English law a tenant who enters under an agreement for a lease is a mere tenant at will till he pays rent, and then a tenant from year to year whose tenancy can be put an end to by a proper notice to quit. This folly was the cause, direct or indirect, of much of his subsequent trouble. He was forced to file a Bill in Chancery to compel the Duke to give him the lease he had himself refused. Some writing about this suit speak of it as the Duke throwing the case into Chancery and the like, and look upon it as an act of oppression. Gourlay himself suggests but nowhere says explicitly that the suit was the act of the Duke, and it certainly was not. An injunction was obtained against the Duke ejecting Gourlay by process of law under the notice to quit, and, December 10th, 1812, the case came on for argument at Lincoln's Inn Hall before Lord Eldon. Gourlay retained Sir Samuel Romilly and another; the defendant was represented by three Counsel, and the Lord Chancellor decided instanter in favor of the plaintiff. The Bill had claimed not only the lease but also damages for not obtaining possession of the buildings on the day set. These damages were sent down to the County of Wilts to be assessed by a jury. The case came on at Salisbury in June, 1816, when Gourlay was represented by Sir Robert Gifford, Solicitor-General, but soon to be Attorney-General and finally (as Lord Gifford) Chief Justice of the Common Pleas and Master of the Rolls: a special jury allowed £1,325 certain and £625 subject to the opinion of the Court. This latter sum was disallowed by the Master of the Rolls later in the year. The Master made a "short order" for £1,325, but a "long order" was necessary. Sir Samuel Romilly moved in February, 1817, before Lord Eldon for this "long order." The Lord Chancellor proposed a delay of six weeks, whereupon Gourlay, who was present in Court, rushed in between Sir Samuel and the Court, and spoke for himself so earnestly and effectively that the "long order" was granted at once. (22) This scene seems to be the only foundation for the statements later on in some of the London newspapers about Gourlay insulting Lord Eldon day after day and putting him in bodily fear.

In the meantime the "reference" as to the lease was going on. The matter was brought at least once before the Master of the Rolls, Sir William Grant, (23) who directed the case to be settled entirely by the Master of the Court. We shall see more of this suit later.

Gourlay was not neglectful of the interests of the poor. In March, 1815, he published a small pamphlet of fifteen pages on the Tyranny of the Poor Laws, (24) in which he relates shocking cases of the cruel operation of the poor-laws, compares the condition of the labouring classes

in Scotland and England very much to the disadvantage of the latter, and promises in a few weeks to draw up a petition to Parliament for the poor in Wilts. The petition was drawn up and somewhat numerous signed; it was presented on May 30th, 1815, to the House of Commons by Mr. Methuen, the local member, and shortly thereafter to the House of Lords by Lord King. It asked that overseers of the poor—Gourlay himself had become an overseer—should not have the power to call out children under 12 to work during the winter half-year, when the parents put them to school during that time. The petition had no effect.

In the following year, 1816, he published another pamphlet, "Poor Laws No. 2" (25) of twenty-one pages, in which he pursues the same subject and sets out the former petition at length. He urges further petitions to the same effect. From this pamphlet it appears that the average rate of pay in Wiltshire at that time ranged from 6 shillings to 8 shillings per week, and wheat was 20 shillings a bushel.

In 1817 he became more ambitious. In a pamphlet of forty pages, published in that year, (26) he advances a project that each parish should acquire one hundred acres of land, to be divided into two equal parts, fifty acres for a common pasture, and fifty divided into half acre allotments. An allotment was to be given to each male parishioner paying forty shillings rent and agreeing to keep it in good garden culture: As soon as he paid £100 he should have a house built for him on his lot, and he was to have the right to pasture a cow on the common. There are some other provisions of less importance. He urges petitions along these lines, one from each parish. Such a petition, signed by ninety-eight persons, was presented to the House of Commons, February 28th, 1817, and ordered to lie on the table. A copy had been sent by Gourlay to over six hundred members of the House. Sir Francis Burdett had been expected to present it, and it was handed to him by Gourlay. On February 10th he rose to present it, but did not, as he had not time to read it. Then Gourlay saw Lord Cochrane, and he declined. Paul Methuen, the local member, was waited on, but he had to be out of town; then Lord Folkestone was applied to, and he refused. Methuen ultimately presented the petition, and Gourlay proceeded to publish another pamphlet, Poor Laws No. 4, from which the above facts are taken. (27) He does not spare Burdett, Cochrane or Folkestone, and urges the poor to keep on petitioning. A broadside addressed to the Labouring Poor of England, along the same line, was issued about the same time.

He had also a controversy over tithes with the Archdeacon of Wilts, the Reverend William Coxe. (28) Having published a pamphlet, "An Apology for Scotch Farmers," and sold a number of copies in London and elsewhere, he wished to advertise it in the Salisbury Journal. The proprietors refused the advertisement; he entered a vigorous protest and published the correspondence together with a letter on the Corn Laws, also rejected by the Journal. (29) He had been a member of the Bath Society, an association of country gentlemen and farmers, but he was

expelled from that society apparently not so much for his radical views as his manner of expressing them <sup>(30)</sup>; he always afterwards spoke of the society and its members with the utmost contempt.

Although Gourlay claimed that he became a farmer under no necessity of living by farming, and, that when he came to Canada he had not only a fine farm but an income of £500 in addition to a provision for his children, it is obvious that by the end of 1816 he was in deep water financially. His "fine farm" was owned by the Duke of Somerset, and landlord and tenant were at daggers drawn—they had been at law for five years and more. He was somewhat largely indebted, and was being pressed by his creditors, though he seems to have had sufficient assets to pay all his debts if prudently administered. He was rather in disrepute with the gentry from his habit of speaking of and to those who considered themselves his superiors in a familiar and disrespectful way, but he was, no doubt, much esteemed by the labouring class. His father had disinherited him in 1814, influenced, it would seem, by injurious and anonymous accounts of his son's doings in Wiltshire. Gourlay found after his father's death two "franks" by the Duke of Somerset, which he is confident were used to carry these accusations. <sup>(31)</sup>

It became evident that he would be wise to seek another residence, and he bethought himself of Upper Canada. From boyhood he had lively views of this new land, he had in 1807 become allied by marriage with a family of prominence and wealth in Upper Canada, his wife had 433 acres of land there which was thought to be of great value. After the death of the Honourable Robert Hamilton of Queenston, who was Mrs. Gourlay's uncle, William Dickson, one of Hamilton's executors, took Hamilton's children by his second wife to Scotland for education. He came to Gourlay's place in Wilts early in 1810 to consult with Mrs. Gourlay's mother, the aunt of the orphans, who was living with her daughter. Dickson, who was Mrs. Gourlay's second cousin, suggested emigration to Gourlay, and expatiated on the delights of Upper Canada and the opportunities for the acquisition of wealth. <sup>(32)</sup> Although Dickson was not successful in inducing him to emigrate at this time, Gourlay always afterwards claimed that he was the cause of his coming to Canada.

Thomas Clark, another relative of Mrs. Gourlay, came in 1814 with his wife to the Deptford Farm, "wounded and faint," and remained there some time. He related to the husband of his kinswoman how he had made his fortune in Upper Canada.

The Duke, failing to pay the amount directed by the "long order," Gourlay put in execution his house with the desired result; and his affairs being as he thought in order, he left home for Canada. The reasons he gives for coming to Canada are different at different times; perhaps those given in 1844 may be accepted as not far from the fact: "1st.—Hoping that the Duke might in my absence submit to part with me finally on reference (to arbitration as to the farm). 2nd.—That Mr. Clark in Canada might aid, and 3rd.—That Mr. Wilson might." <sup>(33)</sup> Mr. Alexander Wilson was a cousin who was in partnership in the bank-

ing house of Anderson & Company, London; that house failed and Wilson lost his all, shortly after visiting the Gourlays in Wilts. One day in London he disclosed to his cousin the fact that he had won a lottery prize of £40,000. Gourlay was at the very time on the quest for money to meet a pressing debt of £400; he was arrested on mesne process, and Wilson paid off the debt and costs, thereby becoming Gourlay's creditor for £429.8.10. He afterwards paid the Duke for Gourlay a year's rent, over £300—for these sums, Gourlay gave bills. In January, 1817, he wrote Wilson that he could not pay either him or his other creditors, and suggested that Wilson should take over the farm and arrange with the creditors. This Wilson declined, and added that Gourlay was certainly possessed of effrontery beyond any he had ever met and was unworthy of his friendship. Gourlay replied, saying that Wilson's letter contained "the aspersions of a distempered imagination," and then thought that if he left England Wilson might be moved to aid. (34)

His leaving England with his affairs in a precarious shape assisted in bringing on many of his subsequent troubles.

Before leaving England, he wrote proposing that the Duke should agree to take the farm off his hands on terms to be determined by arbitration; this was not acceptable, and in October, 1817, a seizure was made for rent. This was paid by Mrs. Gourlay, who obtained loans from various sources. She was, however, so much frightened that she accepted an offer on the part of the Duke whereby one Andrews took over the lease and the stock, the lease for nothing and the stock on a valuation. The stock, which Gourlay claims to have been worth £3,000, was valued at £1,500, and that £1,500 was deposited as security that Andrews would carry out the terms of the lease (35). The assignment was signed by Gourlay's solicitor, acting under a power of attorney drawn up in New York by Andrew S. Garr, and there executed by Gourlay. Gourlay asserts that he did not know the facts of the transaction till long after, and violently assails all concerned except his wife; but he also makes it plain that on Sir Samuel Romilly advising that his solicitor had no power to execute the assignment, the document was sent out and executed by himself late in 1818. (36) It is difficult to understand how he could have been ignorant of what was going on unless he was wilfully blind. All this, however, was after his departure for Canada.

## CHAPTER II.

### Life in Canada and First Addresses to Land Owners.

He left Deptford Farm April 2nd, 1817, intending to be from home only about six months (37), and in fancied security that his affairs in England would go well in the meantime. From Liverpool, to which he travelled by way of London, he wrote his solicitor about arrangements to be made with his landlord. (38) He arrived at Liverpool, April 5th, just too late to catch a ship to New York (37); awaiting a ship to Quebec, he visited a friend near Chester, and there saw and read his countryman Mellish's Travels in America. It occurred to him that the information there set out could best be obtained by queries, and during the ensuing voyage he drew up certain questions with the purpose of having them answered by his friends in Canada, as he then intended remaining in Canada only a week or two, proceeding westward to Detroit and the Ohio, then by way of Philadelphia and New York to England. (39) He sailed from Liverpool for Quebec, April 19th, and arrived at the end of May. He spent four days in Quebec and eleven in Montreal waiting for Thomas Clark, and he not appearing, Gourlay left for Upper Canada alone and on foot. On his journey he examined with care the banks of the St. Lawrence with a view to determining the locations for necessary canals. This examination enabled him to construct the diagram which afterwards appeared in his Statistical Account of Upper Canada. He adds characteristically: "Had that diagram and my map of Niagara District indicating the practical courses of navigation between Lakes Erie and Ontario been attended to, millions of money might have been saved." (32) (40).

He entered Upper Canada, June, 1817. In that month he went to the new settlement of Perth on the Rideau with the intention of obtaining a land grant in that district, and received much attention at the hands of Captain Fowler, Superintendent of the Settlement. Captain Fowler told him that he could not receive a grant of more than 100 acres, which did not suit his purpose, "having been accustomed to large operations" (41) and having large ideas. Gourlay drew up at Perth, July 1st and 2nd, 1817, the Table of Emigration and Settlement, which was afterwards made part of his Statistical Account, and which is to be found at pp. 524, 525 of Volume I of that work, showing the commencement and progress of improvement in thirteen months of the emigrant settlement at Perth. He got to Kingston early in July, and went to Queenston to Mr. Clark's house, where he arrived by the middle of the month. There he was confined to his bed for two months. A nervous weakness which had got hold of him at Liverpool, but which his voyage and travels had dissipated, so much increased during his confinement, that he found himself totally unable to speak with Clark on the state of his affairs, "the prime object of my crossing the Atlantic." He accordingly wrote Clark, Sept.

1, 1817, with a statement of his affairs, and frankly asked for help. Clark manifested every disposition to give him help, but his means were locked up and land had become unsaleable in Upper Canada. (42) In Gourlay's statement of assets he inserted not only his own land in Upper Canada, but also his wife's "one-third of 2,600 acres of land in Canada." This was afterward made a matter of reproach to him, but she, upon application for that purpose, promptly ratified her husband's position. No trace of dishonesty was ever found in Robert Gourlay, and he "feared no man, either body or soul." (43)

Nothing daunted by his failure to obtain assistance from Clark, as soon as he was able he crossed to Lewiston, visited the American side of the Falls, spent a week in Buffalo, and made a foot-tour through the Genesee country for three weeks. We find him on October 9, writing from Auburn, N.Y., to his brother-in-law, Thomas Henderson, asking him to help his sister, Mrs. Gourlay, by consulting with other friends and say what should be done. (44) Unfortunately, he was leaning on a bruised reed, as was soon made manifest. Mrs. Gourlay was allowed to enter into the arrangements we have already seen, with disastrous results to her husband's financial position. He had in the preceding month, September, written the Commander of the Forces, Sir John Sherbrooke, at Quebec, asking if the Government would grant him land at Perth to any extent, proportioned to the clearance made, buildings erected and number of people settled, but had received an unfavorable reply. (45) In October he came from Queenston to York and interviewed the Administrator, Hon. Samuel Smith, and John Small, Secretary of the Executive Council, about a grant of land, and seems to have had some indefinite assurance that his wishes would be complied with. He lodged a formal petition asking how much land he could receive and left for the west, going through the Talbot Settlement in November and December (46), arriving back home at Queenston, January 5, 1818, as he states in a letter to his wife of that date.

In September, 1817, he had sent copies of the Perth Statement, (already mentioned) to his wife in England, accompanied by a letter "to the Editor of any British newspaper," with instructions that these should be published in the newspapers and a copy presented to Lord Bathurst. (47) They were published in a number of British newspapers in November, 1817. (47), (48).

His journeys through the country had convinced him of the value of the information which would be obtained from answers to the queries he had drawn up on shipboard. He accordingly in October drew up his celebrated address "To the Resident Landowners of Upper Canada." He had intended to publish this in the Niagara Spectator, but changed his mind because of what he considered an improper article in that paper. He then, October 19, went across the lake to York to have the address inserted in the official organ, the Upper Canada Gazette, there. (49) He consulted several of the most important people in York, and received the approval of his address from the Administrator, the Chief Justice William Dummer Powell, Dr. Grant Powell (his son), D'Arcy

(afterwards Mr. Justice) Boulton and his three sons, the Messrs. Jarvis, Col. Cameron, Col. White, Capt. FitzGibbon, with many others. (50) "The inflammatory nature of this paper and the dangerous mode of proceeding which it suggested, were not perceived by the President of the Province or by any of his Counsellors except one of them, who highly disapproved of Mr. Gourlay's paper, and of its being published in a journal, which gave it a sort of official authority." So says James Strachan, brother of the Reverend Dr. John Strachan, in a chapter in which Gourlay found "32 falsehoods, 38 untruths, besides misrepresentations throughout." (51) The astute counsellor was Dr. Strachan, whom Gourlay makes the mistake to characterise as "a monstrous little fool of a parson—ROGUE would have been nearer the truth." (52) Strachan was neither fool nor rogue, and Gourlay never wholly realised the tremendous extent and weight of his influence. Beyond any doubt Dr. Strachan looked upon the Address as of mischievous tendency, and calculated to stir up discontent with the existing regime which in his view was perfection itself; and there is no doubt that he at once exercised all his very great power to foil the efforts of Gourlay. Gourlay complains of his intolerance, and he was intolerant—quite as much so as Gourlay himself.

Read at the present day the Address does not convey any suggestion of sedition. It begins with stating the intention of the writer, a British farmer, to become a settler, and continues by taking it for granted that certain political restraints to improvement will be speedily removed, but adds that the address "waives all regard to political arrangements," and contemplates only correspondence concerning the natural resources of the country. No authentic account has ever been furnished to men of capital and consequently most settlers have been poor men driven from home by despair. What is most needed is capital. There are thousands of British farmers who would come to Canada if they knew the truth; England could spare 50,000 annually and must find vent; a liberal system of colonization there would render the exclusion of American citizens of small moment. Government should encourage emigration. The first thing to do was to draw up and publish a well-authenticated statistical account of Upper Canada, and for that purpose queries were submitted, 31 in all, and if each township would reply, the work would be far advanced. But correct information was all important, and a meeting should be held in each township to draw up replies. The queries ask the name, extent, first settlement of each township, the number of churches, preachers, medical practitioners, schools, stores, taverns, mills, the character of the soil, timber, minerals, whether brick or lime can be manufactured, the wages of tradesmen and laborers, cost of mowing, reaping, fencing, clearing, value of horses, cows, oxen, sheep, etc., seasons for sowing, reaping, etc., amount of grain sowed to the acre, time of sleighing, ploughing, etc., price of wild lands and quantity now for sale, state of public roads. Question 31 is perhaps that against which most objection was taken: "What in your opinion retards the improvement of your township in particular or the Province in general, and what would most contribute to the same?"

The Address and queries were published in the Upper Canada Gazette at York, October 30, 1817. Eight hundred copies of a circular containing them were despatched, one to the officers of each township in the Province lest they should not see the Gazette; and Gourlay was on his way home by steamboat well pleased with his work when he heard to his utter astonishment "that a member of the Executive Council had declared himself displeased with my sentiments and had called it presumption in me, a stranger, to come forward as I had done." (53) The Address was copied into the Niagara Spectator, and, Nov. 10, Gourlay wrote that paper to "guard the public against murmurs which may retard the promotion of the best interests of the Province." (53) He always asserted that he had not in view Parliamentary Reform or anything political; but in this letter he gives his opinion of the exclusion of American citizens from Upper Canada, a burning question at the time. He says: "The veto issued against the admission of such people I am clearly convinced was subversive of a Constitutional Act which no one branch of Government has a right to infringe." (54) This was not the way to mollify an angry and powerful councillor, nor were matters improved by a letter to the Niagara Spectator, January 8, 1818, mentioning Dr. Strachan as the unfriendly councillor, and rather suggesting that he was one of the "men who will run in the face of common sense and discretion to gratify their envy and their spleen." (55)

Two days after the publication of the Address in the Upper Canada Gazette, Gourlay when on the point of going with the Administrator, Col. Smith, to his country-house, was informed that his younger brother, Thomas, was on board the steamboat Frontenac just arrived in from Kingston. He had come with the intention of becoming a settler, but without notifying his brother, who did not expect him. The two went forward by the Frontenac to their friends at Queenston, and a week or so afterwards they went on horseback to view Gourlay's land in Dereham. (32) Thomas Gourlay also applied for land in January, 1818, by a petition by which it appears that he had been bound apprentice to a Writer to the Signet in Edinburgh, merely to qualify him for the liberal pursuits of a country life in Scotland, but had changed his mind and desired to become a settler in Upper Canada and carry on farming and general commerce. (56) Neither Robert nor Thomas Gourlay ever received a satisfactory answer to their petitions—as Robert charges and as it is not unlikely, owing to the influence of Dr. Strachan. Thomas "remained a year in Upper Canada and got neither land nor answer to his petition for no reason but being my brother, while all else had land on taking the oath and paying fees. Subsequently he went to Van Dieman's Land, obtained land and did well, till indifferent health made him retire to Scotland. He had no connection with me or anyone in politics; quiet in all respects." (57)

Many meetings were held in the townships pursuant to Gourlay's Address, and more than forty sets of answers were received, many of which appear in the Statistical Account. No small number of the magistrates and of the most substantial people in the Province expressed their approbation of Gourlay's scheme.

He made no effort to placate those opposed to him, but after publishing in the Niagara Spectator a copy of the Imperial Act of 1790, inviting citizens of the United States into His Majesty's North American territories, he published in part on February 5, and wholly on February 12 in the same paper, his celebrated second Address to the Resident Landowners of Upper Canada. This was a ringing appeal quite different from the first. After starting out by saying that in his first address "to lull the spirit of party" he forebore all allusions to political concerns," he goes on: "I have changed my mind, and most unwillingly must change my course of proceeding. This country I am now convinced cannot be saved from ruin by temporising measures nor by the efforts and reassuring of any individual; if it is to be saved, reason and fact must speedily be urged before the throne of the Sovereign by the united voice of a loyal and determined people; if it is to be saved, your Parliament now assembled must be held up to its duty by the strength and spirit of its constituents. A new leaf must be turned over in public conduct. . . . Your late Governor (Gore) . . . while yet he was laughing in his sleeve at the subservience of the last Parliament . . . found the present one willing to stifle the remembrance of subserviency . . . it should have been moving impeachment against himself . . . There ought to be an immediate Parliamentary enquiry into the state of this Province, and a commission to proceed to England with the result of such enquiry. It should be pressed by petition from every quarter." "Gentlemen, the British Act of Parliament for encouraging the settlement of the colonies was made over to you with your Constitution, and your Parliament alone in conjunction with the British Sovereign had a right to alter it. The swaggering declaration of a war minister founded on the dogmas of antiquated lawyers, has said that we cannot change our allegiance; but this great question . . . was long ago set at rest by British Acts of Parliament in the face of which, declarations and dogmas are but empty sounds."

He then urges that Americans should be admitted, proceeding: "In all past time Provinces have been the sport of arbitrary powers. . . . It is an evil by no means unconquerable, and it is worthy of a British colony to be the first to surmount it. This Province indeed can no longer be trifled with. . . . Let us not cease to act; send in your petitions for enquiry, press for a commission to go home with the result, and publish this with your Township Reports in England. This will break the spell which is sinking this Province to poverty and disgrace. . . . N.B.—As many of the inhabitants of Upper Canada may never have seen the Bill of Rights . . . it may not be improper to inform them that this secures to the subject the right of petitioning the Legislature at all times . . ." He subjoins a form of petition to the House of Commons of Upper Canada asking for an enquiry why the Province "is in a state of waste and decay."

Almost immediately thereafter, he writes the Administrator setting out in full the correspondence concerning his petition for information as to land and his efforts to obtain such by personal interviews with the Surveyor-General, etc. He adds: "Refusals would have done very well,

but evasion is always despicable." He with ill-timed jesting says: "I am still waiting for an honest answer to my humble petition. O fy! shame upon it and fy! Sure you have altogether lost yourselves on some horrid Stygian shade where the souls of you have been sucked out by the thirsty vampire, or does the Council labour under a night-mare? Has it devoured too much land and gone to sleep while the erude mass is yet undigested? . . . I cannot think . . . the speech (from the Throne) was written by anyone who feels or cares for Canada. . . I am ashamed of the style. I am ashamed of resorting to vermin for a companion, but nature has made nothing in vain; and the filthy things we abhor have been called into existence to give us suitable notions of the conduct of public affairs at little York—dull, dirty and disgusting." He had already spoken of "the fault-finding of one of your Councillors," and now adds: "Awake, my dear Sir! Awaken all your Councillors; tell my friend the fault-finding Honourable and Reverend Docteur that if he will do justice to his higher duties I will lecture for him in NATURAL PHILOSOPHY and *get the school house painted*. I was a favorite student in this very branch at St. Andrews University, and afterwards studied at Edinburgh under the profound Mr. Robinson. This is more than twenty years ago, but with a little brushing up and a due assortment of **pigs and whistles**, I could soon show off as a respectable mountebank." This, as he explains later, was intended as a criticism of Dr. Strachan delivering a course of public lectures on natural philosophy, to raise money to paint the district school. Gourlay proceeds: "Colonel Smith, let us be serious . . . do justice to your country and honor to yourself." and he shows how:—(1) a general taxation of wild lands, (2) "correct the serious mistake as to paying the claims of sufferers in war out of the forfeited estates," (3) "the improvement of the St. Lawrence navigation." In the letter were enclosed extracts from a letter to him from his wife such as a loving woman would write and a man with any sense of propriety would never think of submitting to any eye other than his own. He says: "The first extract would have wrung the hearts of the poor trifling wretches there, who have been sporting with their own duty and my serious concerns, if they had hearts within them." (58)

About the same time he sent a petition to the House of Commons at York, saying that he had found his property depreciated by "the suspension of law, a general maladministration of affairs and the violation of public faith," and urges a full enquiry, asking to be heard at the Bar of the House. (59)

To understand this Address and letter, it will be necessary to consider the state of affairs then in Upper Canada.

While Americans were invited by the Statute passed in 1790, 30 Geo. III., c. 27, to "come . . . with their families . . . to any of the Territories belonging to His Majesty in North America for the purpose of residing and settling there," each white person over 14 years of age immediately after his arrival to take the oath of allegiance, etc., the Home authorities after the war of 1812-14 thought it not wise to allow Americans—presumably republicans—to enter and take up their

residence in Upper Canada. Accordingly, January 10, 1815, instructions were issued by Downing Street to prohibit all settlement from the United States. Governor Gore in October, 1815, sent a circular to all who had power to administer the oath of allegiance, "the Chief Magistrate of the place where such person shall arrive" (30 Geo. III., c. 27, s. 3), directing a report of all immigrants residing in each district and such as should thereafter arrive; and forbidding the administration of the oath to such American immigrant or to the son of a U. E. Loyalist without special authority from the Governor. Before this circular, these Americans upon taking the oath of allegiance could hold property; thereafter not being allowed to take the oath they could not, the sale of land was checked and settlement was impeded. The Honourable William Dickson, a member of the Legislative Council, a commissioner for taking oaths, etc., was also the owner of a large quantity of land which he desired to dispose of. He disobeyed the instructions, claiming—and in this claim he was clearly right—that no executive officer could over-ride an Act of Parliament. The matter was warmly debated in Parliament; the House passed Resolutions as to the Statute of 1790 and an earlier Statute of 1773, whereupon, Feb. 7th, 1817, the Governor peremptorily prorogued Parliament, it having met only February 4. An address had been voted to the Governor asking what steps had been taken to allot lands to the volunteers and militia who had served during the recent war; and resolutions were to be submitted dealing with the settlement of the Province and the admission of Americans. Gore left the Province in midsummer of 1817, and was succeeded by Samuel Smith, the Senior Councillor, as Administrator, who called together the Parliament for February 5, 1818; and this House was in session at the time of the second Address.

In considering Gourlay's reference to Dr. Strachan, it must be borne in mind that he held the latter in the utmost contempt and made the mistake of undervaluing his antagonist. "About the year 1795 this now Honourable and Reverend personage strolled south from Aberdeen, where he had received a little college learning and was for a while perceptor to the children of a farmer in Angusshire. After this he got to be school master, first at Duninno and then in Kettle, parishes in Fifeshire, attending St. Andrews College at the same time, as an irregular student. The Rev. Dr. Hamilton, of Gladsmuir in East Lothian, my wife's uncle having a commission from a friend in Upper Canada to send out to him a person qualified for a family tutor, offered £50 a year to procure one, and Strachan agreed to go out. He went, and after teaching privately for some time became again a schoolmaster . . . got orders . . . as a minister of the Church of England, was appointed to the Rectory of York . . . and finally became in addition honorary member of the Executive Council . . . but our Dominie would not rest with the performance of his many duties of schoolmaster, parson and councillor. He was not contented with whipping children, but attacked an ex-President of the United States in a virulent newspaper article to which he set his name as "Rector of York"; and published a pamphlet abusing the late Lord Selkirk for his attempt to establish a colony in the Hudson's Bay territory." (60) More than once

Gourlay refers to Strachan having been sent to Canada by his (Gourlay's) wife's uncle, and seems almost to look upon him as thus a beneficiary of the bounty of Gourlay's family. Anything said of Dr. Strachan by him must be read with care, as he undoubtedly was much prejudiced against the Councillor.

The first part of the Address was shown to the Hon. William Dickson; it expressed his own views as to American immigration, and he was greatly pleased with it, going so far as to offer the author 500 acres of land in recognition of its value, adding: "if the people of York would now but arrest me (i. e. Gourlay) the business would be completed." (61)

Major Leonard, of Drummond Hill, Niagara Falls, ventured to criticize and dissent from some of the statements in the Address, and was answered in a vigorous letter by Gourlay. Leonard was compared to a goose who went on to cackle "cackling of which a grammatical goose would be ashamed," "nonsense and perversion," a "weak and shallow production." A letter signed "A Resident Landlord," published at the same time as Leonard's, received even more severe treatment. "Jealousy and envy and pride are the chief movers in this iniquitous production," "lying spirit," "cunning spirit," "insolent protégé"; but, manner apart, Gourlay more than holds his own and has quite the best of what little argument there is. (62)

He now sees that a paper war is inevitable, and, February, 1818, causes to be reprinted in book form all his writings which had appeared in the Niagara Spectator, with foot-notes; and afterwards all that was published pro and con, week after week, till there was a volume of 167 pages. (63)

When on the opening of Parliament, Clark and Dickson had gone to York, Gourlay proposed to follow them in a short time and stay there two or three weeks to see how matters went on in the Assembly. (64) His friend, Thomas Clark, wrote him from York, February 23, 1818, saying that he was still more displeased with his Address, etc., "as is almost every gentleman in York the more it is looked at or talked of. What could have induced you to expose the President and others and particularly yourself in the manner you have done. I know not. Until this fatal error most folks here were inclined to befriend you. . . . now . . . it is my opinion every man of respectability will be shy of you should you come here; and that your feelings may not be still further hurt, I should recommend your remaining on the Niagara side of the Lake, or should you wish to go to Kingston (where there are many Reports waiting for you) that you should go by way of Sacket's Harbour." Gourlay proceeded to publish this letter—seemingly well-meant—in the Spectator, with his reply beginning, "Go by way of Sacket's Harbour!" "the Devil!" "'tis the very error of the moon!" "I'll blow Little York in the air and 'every man of respectability' with it before I go by way of Sacket's Harbour!" He rallies Clark for abandoning his duty, "whipt from your post of honor by the taws of an arrogant and paltry schoolmaster," who "by a concurrence of circumstances

certainly not from superior ability" had "got on horseback and you know how some people ride when so mounted." He had advertised "to teach philosophy to get the school house painted; what would be thought in London if an Executive Councillor was so to demean himself"; "let him get into a penitentiary; let him stick to the altar . . . in the meantime how are we to make such a man feel his misconduct but by . . . exposing him to the world, by assailing his unbounded vanity?" Then, with his faculty of getting into trouble and making enemies, he gives messages for Dickson, William Claus, Chief Justice Powell (whom he attacked as a pluralist), the Administrator (whom he attacked over the case of Angelique Pilotte), Isaac Swayzie (a member for the District). If Gourlay had been looking for trouble he could not have framed a letter with more effect. (65)

This letter was published in the Niagara Spectator of March 12th, 1818. The next issue contained a letter from a juryman who sat in the case of Angelique Pilotte. She was a young girl, the daughter of a squaw, and born near Michilimackinac: taken to France, she formed an illicit connection with a British officer and became pregnant; sent back to her home, she sailed from Drummond's Island for Fort Erie, and during the voyage, which lasted three weeks, she was delivered of a child still-born. She concealed the birth, and on her arrival on land left the infant exposed in an open field. She was arrested and put on trial for the crime, and convicted. A petition was sent to the Prince Regent, backed up by Magistrates, Officers, etc. In Gourlay's letter he in effect charged Colonel Smith, the Administrator, with delaying the Royal clemency.

The juryman's letter had said that the jury could, according to their oath, say no other than Guilty. Gourlay's letter in reply is most interesting as showing what was undoubtedly his view of the duty of jurors:—"he might appeal to the true intention and spirit of the law," "the jury might have saved the wretch from condemnation." "The extraordinary nature of the case might have justified them in refusing to give a verdict." (66) This is prophetic of contentions to be made on an occasion of much more importance to himself.

A petition of the Assembly in favour of Angelique Pilotte was transmitted in March to the Prince Regent, and was most promptly and graciously acceded to. (67)

In March Gourlay got into a controversy with Dr. John Howison, "The Traveller," Howison beginning it by a letter to the Niagara Spectator. Howison says: "The principal defect and most offensive thing in Mr. Gourlay's address was the tone of superiority which characterized it"; but he speaks highly of his honesty and the importance of his object; suggests he has too much enthusiasm, but thinks "the people of Canada . . . seem more offended with his presumption than interested in ascertaining the correctness of the charge, which he lays against their Government"; "he has been too precipitate," "his style too bold and the sentiments rather exceptionable," but withal "Mr. Gour-

lay's publications will be of service; they will excite a spirit of enquiry."

Gourlay at once replies: "The Traveller's production is a knotless thread." There cannot be too much enthusiasm for a reformer; he was not precipitate; Dr. Strachan comes in for another lashing, this time for intolerance to other churches. The first Address is defended and the second, "if the higher classes are against me, I shall recruit from among my brother farmers," and the Traveller is invited to walk out again before the public. The Traveller promptly does so, but in a rather vapid production; and Gourlay again replies; of course attacks Dr. Strachan, "the arrogant priest," attests the value of his own labours, etc. He then refers to a report of the annual Town Meeting of the inhabitants of the Township of Augusta in February, at which resolutions were passed that Gourlay's first Address contained principles inimical to the peace and quiet of the Province, and very injurious consequences might result from such information as his queries called for, being "placed at the disposal of a man of Mr. Gourlay's political principles." Gourlay attacks "John Bethune, Clerk," who was one of those signing the report, as a renegade Presbyterian, "a fool, a busy-body, and a slanderer," "the pupil and brother-priest of Dr. Strachan." "The Traveller's" reply is of no importance, nor is Gourlay's answer, except that he says "after all I have said of Dr. Strachan, I now acknowledge it possible that perhaps he was sincere and meant to do good"—the only passage I think in all Gourlay's voluminous writings where he admits even that much of his "enemy." (68)

At this time Gourlay intended to go to York for a few weeks and then returning to Queenston start for England; but he received unfavourable news regarding his affairs in England, and thought of living in Canada as a newspaper editor. He had "gone on beyond my expectations here and . . . kindled interests that Canada never knew before." All Canada had assisted him "but the Government party at York, who are jealous of everything and everybody, from a system of speculation which has been carried on among them in giving lands to their friends." So he writes his wife, March 5th, 1818, (69) and March 24th. "Every week for the last month or more I have filled a page of the Niagara Spectator and beat down all before me . . . seven-eighths of the people of the Province will back me." (70)

He was conscious that from York eastward his efforts were not generally appreciated; while to the west he had received answers to his queries from almost all of the Townships, east of York not one in ten had responded, and only three had been sent to the Kingston Post Office. He adds in his letter to the Spectator, March 27, "This is fortunate for me. Had every township been reported, the publication would have been too cumbersome for circulation." (71) The information as to the reports which had been sent to the Kingston Post Office he had received earlier in the month from the Postmaster at Kingston, John Macaulay, whom he informed of his intention (March 18) still to come to Kingston. (He had in the preceding December written the Kingston Gazette that

he would pass that way on his return to England, and directed that all communications should be addressed to him at the Kingston Post Office. (72)

The failure to obtain answers east of York he ascribes to the "unrighteous zeal" of Dr. Strachan and "his pupil and Reverend brother—Bethune." (72)

The Parliament sitting at York were informed by the President that an extended immigration had been planned, and he recommended for consideration how far it was expedient to assist the immigrant by providing means to defray the expense of a grant of land. The Houses got into a jangle over a bill for placing a tariff on goods from the United States and other matters. The President threatened prorogation; this the Assembly resented and retaliated by expressing its conviction that evil must result from legislative and executive functions being vested in the same person "as is unfortunately the case in this Province where His Majesty's Executive Council is almost wholly composed of the Legislative body (Council) and consisting only of the Deputy-Superintendent General of the Indian Department, the Receiver General and the Inspector General, the Chief Justice, the Speaker of the Legislative Council and the Honourable and Reverend Chaplain of that House." Here both Chief Justice Powell and the Rev. Dr. Strachan were struck at. The Parliament was prorogued April 1, the President "finding no probability of any concert between the Houses."

At once Gourlay issued a third Address to the Resident Land-Owners of Upper Canada, dated April 2; it opened thus: "Gentlemen: Your Parliament is broken up—a second time broken up from employment of the most vital import to the House and well-being of the Province! Good God! what is to be the end of this?" Then he proceeds: "The constitution of this Province is in danger. . . . For three years the laws have been thwarted and set aside by Executive power; for three sessions have your Legislators sat in Assembly and given sanction to the monstrous—the hideous abuse." He attacks the whole system of Government in Upper Canada—not, as he is careful to explain, the individual legislators—and urges a petition to the Prince Regent. He proposes that a meeting be forthwith held in every organized township, and names a day and place for the Township of Niagara. The people of each township should choose a representative and clerk, and the representatives should meet in each district on an appointed day and draw up a petition to the Prince Regent which could then be signed by every well-wisher. The district meetings should hold conference by Representatives in a Provincial Convention who should arrange the whole business, send Commissioners to England with the petition, and hold correspondence with these as well as the Home Government. Two or three Commissioners would suffice, and a dollar from each subscriber would defray expenses. "Every eye should be resolutely bent on the one thing needful—a radical change of system in the Government of Upper Canada." "Every man who has a spark of sincerity or patriotism in his soul has now sufficient cause to bestir himself." "I will accept

of no appointment, but persons acting on it shall have my utmost assistance, and I shall make clear to them every course to be pursued . . . though the rights of Parliament may be trifled with, those of the people of Upper Canada are not so easily to be set at defiance."

If there had been before any doubt that Gourlay was "in politics", there could be none now.

A number of township meetings were held—Niagara, Grantham, Louth, and others, attended by the most substantial men in the country, many of them Magistrates; but without delay a claim was made that such petitions as were intended were illegal. Thomas Clark (who had subscribed a dollar) distributed a handbill at Niagara, dated April 18, stating that beyond publishing a statistical account, Gourlay had not his approbation or countenance; he desired "to prevent error in and rescue from distress the heedless proselytes of Mr. Gourlay's one thing needful, viz., a radical change of system in the Government of Upper Canada"; and quoting from a text book the law against seditious meetings, added "the Act of Parliament was passed in Ireland in the year 1793 to prevent any such meetings or conventions, and a few ignorant individuals who in the same year had tried to assemble under that title in Scotland, were quickly dispersed and their leaders convicted of seditious practices for which they were sentenced to transportation. I shall conclude with recommending to all to weigh well how they attend to visionary enthusiasts."

A meeting was held at Niagara, April 13, at which Gourlay's Address was approved, and Robert Hamilton elected Representative. Hamilton immediately after Clark's handbill, circulated another in the name of the committee appointed at the Niagara meeting to forward the views of the meeting, recommending other townships "where any doubt may exist in consequence of Mr. Clark's handbill to postpone the election of their Representatives," the Committee pledging themselves to show in a few days that they were not only right in what they had done, "but that the Hon. Thomas Clark is grossly mistaken." (73)

Subsequently, April 23, Hamilton in a note inserted in the *Spectator*, advised the Township meetings to proceed; but in the meantime, April 21, Gourlay had issued an Address "To the worthy Inhabitants of the District of Niagara" on Clark's "unnatural, insidious, infamous placard," "a bugbear to frighten the people of Upper Canada out of the exercise of their most sacred right"; he demands that Clark shall bring him to trial for sedition if he thinks him guilty of it; tells of the strong necessity for strong measures in Ireland in 1793 when rebellion was nearly breaking out, and says he himself visited Ireland in the midst of that rebellion. As to the Scottish convictions, he was at the trial and they were for "secret meetings . . . administering oaths of secrecy and having warlike arms . . . for carrying their demands violently into execution." (74) He adds he is "no dependant on Mr. Clark . . . this very self-important personage," and had never been ruled by his advice or authority. Clark had the preceding day disgraced himself at

the Stamford meeting by declaiming that Gourlay was a man of no substance and that the dollar he had paid was meant for his private aid as a poor man, that he had lent Gourlay money in England which he had squandered, and that he had not a foot in land in Upper Canada. Gourlay then sets out the facts of his law suit in England (not quite correctly) and a voluntary loan of £500 from Clark and some trifling advances thereafter; that he owned 866 acres of land in Dereham, "which belonged to my wife before her marriage with me, but which she has since made over to me." He adds that the obnoxious placard was the production of the two Councillors, Thomas Clark and William Dickson; he had seen the copy before printing and had warned them that if it was published he would feel himself bound by no delicacy of exposure, and that Dickson said in that case he would never speak to him more.

Then he tells of Dickson's offer of 500 acres to him in recognition of his second Address, of Clark asking him if the abuses "would not justify rebellion?" and Dickson openly saying at the Mess in Niagara, before British officers, "that if things were not ordered better, he would rather live under the American than British Government." He then explains what he meant by "a radical change of system in the Government of Upper Canada," called for in his Address, namely, a repeal or amendment of the Act of Parliament of 1791 and a fresh Act "which would free us from such pests as legislative councillors." He strikes another blow at Dr. Strachan; says Clark has the monopoly of mill seats on the rapids of Niagara, and Dickson had 6,000 acres of land given him by the Indians under the influence of Colonel Claus. He winds up by calling upon Canadians to arouse themselves and save the Province from ruin "for constitutional right is being assailed." (75)

This was printed in the Spectator of April 23, and it may readily be conceived that it did not tend to make peace; and Gourlay was quite justified in writing as he did to his wife, June 7: "A most strange breaking out between me and your cousins Clark and William Dickson has occurred." In the same letter he asked her to "write a letter immediately to your cousin Robert Hamilton at Queenston, signifying your having made over your third of the land jointly owned by your mother and brother to me." (76)

The Address was adopted and circulated by the Niagara Committee; May 4th, 1818, the Representatives and Clerks elected at the Township meetings of the Niagara District met at St. Catharines. John Clark, J.P., of Louth, was called to the chair, and William J. Kerr, of the same Township, elected secretary. The address of April 2 was approved, a draft petition prepared, and July 6 was to be advertised for the meeting at York of the Provincial Convention and the appointment of Commissioners to go to England.

The Petition set out the tried loyalty of Upper Canadians, the neglect of Canada in British commercial treaties, and of the claims of sufferers by the war to be recompensed; the right of Militia to be rewarded with land was urged; corruption, patronage and favouritism in the disposal of wild lands were complained of, and a Royal Commis-

sion to make enquiry into all the sources of evil was prayed. (77) Not only the American papers but many of the English papers had articles upon this movement; the American papers rather freely praising it; the English papers being as usual divided in opinion, but mainly adverse.

The petitioning Representatives entrusted Gourlay with the duty of looking after the Midland, Johnstown, Eastern and Ottawa Districts, i.e., all Upper Canada below the Trent. He went east by steamboat, arriving at Kingston May 18, and found the people there warm in the cause, the Kingston Gazette having printed "all the writings which have nursed it up," thereby creating an increased demand for the paper. May 20, he proceeded to Ernest-Town and there was informed by a young lawyer, Daniel Hagerman by name, that he had acted as Clerk of a Town meeting of Adolphustown at which answers were given to the queries, that he had posted the answers in the Kingston Post Office addressed to Gourlay, but had withdrawn the letter afterwards as he had taken offence at some of Gourlay's writings. Nearly two months before, Gourlay had private information that the Kingston Post Master, John Macaulay, had been taking unwarrantable liberties with his mail, but "as I am not so hasty as some people I quietly waited for information on the spot." He told Hagerman that he would sue both him and the Post Master, whereupon the lawyer "opened the sluices of tinker eloquence."

He then went on to Prescott, May 22, calling by the way on Col. Stone, of Gananoque, "a worthy gentleman who had also withheld a statistical Report from me under the evil influences of the times and the Doctor." Then Brockville, "outwardly a delightful place, and when it contains as much honesty as pettyfogging law will be truly enviable."

Remembering the previous meeting in Augusta, he called a meeting there for May 27. A large gathering resulted, but some of those present were not residents who alone had been invited. Mr. Jonas Jones, afterwards Justice of the King's Bench, harangued against the Address to the Regent, and Gourlay and many others left the meeting. "The Judge, the Priest and the Scribe" who had signed the former report, were friends of Mr. Jones, and it is most evident that Gourlay's meeting was a dismal failure. May 28, he reached Johnstown, and next day Lancaster; May 30 and 31 through Glengarry, and June 1 reached the District of Ottawa, where he received a most hearty welcome. June 3 he retraced his steps into the upper part of Glengarry, and attended two meetings on June 4 at which he learned two things: first, that some ignorant individuals had been prejudiced against the cause, and, second, in Williamstown open war had been declared against it by leading characters. June 5, approaching Cornwall, he found that his pamphlets and papers had been burned and threats made to burn him in effigy; naturally "my stay in the village was short." On June 4 his address had been committed to the flames at a meeting of the inhabitants of Stormont, and an address against him read at the request of the Colonel and Officers of the Stormont Militia. This had spoken of the "canting

professions" of Mr. Gourlay, and had assured him that the District was not "to be affected by the deceitful declamation of interested or discontented individuals." "But," says Gourlay, "infamous as it is, it gives but a faint idea of the filthy sentiments of its promulgators or of their worse than filthy acts. The profanity of Crysler, the member of the Assembly, with the gross and blackguard conduct and designs of several of the friends and pupils of Dr. Strachan can only be believed when proved" in Court.

From May 29 an enemy had followed him in a one-horse wagon pulling down his advertisements before the paste was dry. He reached Brockville again, June 9, and there, as in Augusta and Cornwall, "personal pique, ignorance, contumacy and revenge . . . stirred up a host against" him; June 11, he again reached Kingston where a most important episode in his life took place.

Sitting at dinner with some friends at their wine, he was called out and arrested on a warrant signed by T. Markland, J.P. He found that it had been issued at the instance of the Attorney-General through the agency of Mr. Christopher Hagerman, and on the oath of Mr. Miles, editor of the Kingston Gazette. The warrant was for criminal libel. He gave recognizances in £1,000 to appear at the next assizes at Kingston. He finds some satisfaction in the fact that Mr. Hagerman is brother of the "petulant fellow . . . at Ernest Town, and of another . . . many years confined in the State's prison for forgery, now reported to be hanged"; but the occurrence is nevertheless most serious, it deranges all his plans and prevents his return to England. He rather thinks that William Dickson is at the bottom of the arrest. When Dickson returned from Parliament and ceased to be Gourlay's friend, Gourlay heard that he was anxious to have him arrested, he asked Colonel Claus to arrest him for the Address of April 2nd, but Claus told him he might as well do it himself. Then Dickson crossed over to York in the same boat with Gourlay, and may well have prevailed upon the Attorney-General "who was the apprentice of his apprentice" to take proceedings. Elizabeth-town is reached by the 20th, Kitley the 23rd, as also Bastard, Yonge Township 24th, and Augusta June 25th. There he addressed a meeting for three hours, and was followed by Jonas Jones, who seems again to have vanquished Gourlay.

At Johnstown visited next and on the same day, he was violently assaulted by Duncan Fraser, J.P., but protected by bystanders; thereupon, he (Fraser) went before another magistrate, John McDonell, and laid an information against Gourlay "as a seditious person." McDonell issued a warrant accordingly, clearly an absurd and illegal warrant as Gourlay characterises it. Gourlay was arrested and placed in Brockville gaol; Fraser demanded £3,000 bail, but McDonell accepted £500, and the prisoner was set free. Then he laid an information against Fraser for the assault; Fraser pleaded guilty to the assault at the Quarter Sessions and was fined 40 shillings!! But several of those who had protected Gourlay were also indicted, amongst them a young man of the name of Grant. Grant had tried to keep the peace, but being struck

by Fraser, retaliated; for this he was fined £5 and imprisoned for one month by the magistrates at the Quarter Sessions!!!

June 26th Gourlay was at Elizabethtown. A meeting held there, June 6th, "had been disturbed by the clamour of Brockville lawyers and of a magistrate who stripped, or was about to strip, to settle matters by the ancient process of trial by battle," but that day Colonel Sherwood, a lawyer of Brockville, made a calm and argumentative speech and could not be persuaded by Gourlay as to the law; accordingly each party got up a petition, but Elizabethtown chose a Representative—so that Gourlay had a real victory. (78)

Gourlay arrived at Kingston, June 27th, and at once got into controversy with Mr. Macaulay, the Postmaster, for delivering up to Daniel Hagerman the letter posted to Gourlay. Macaulay defended himself in the Kingston Gazette, contending that a writer may withdraw a letter which he had posted, and at the same time attacking Gourlay's "Convention." Hagerman wrote in the same issue a somewhat discursive defence of his conduct and controverted Gourlay's law. "In enquiring whether to withdraw the Report was admissible by the Law, you say that you 'know and assert that it was not.' Now in reply to this I know and assert it **was**" and "you must have had a Dolt's head." As an anonymous correspondent replied to Hagerman's "false, foolish and impertinent letter," Gourlay let the matter drop, and we need pay no further attention to the subject except to say that Gourlay was undoubtedly right in his law for once. (79)

He published a somewhat full report of his eastern trip so far in the Kingston Gazette; this contained the statement as to the Hagermans above copied. Some "evesdropper . . . overlooked the proof-sheet and ran to apprise them of what was coming forth." Both brothers begged the printer not to publish what was said about their brother saying that they had a mother and sisters whose feelings would be injured. Gourlay, appealed to, was inexorable unless Daniel Hagerman would insert a written apology in the Kingston Gazette for what he had written about Gourlay. He refused; imprecations and threats had no effect on Gourlay, and the matter appeared in the Gazette. He excuses the statement as to the brother of the Hagermans being a felon and hanged by what would be an almost grotesque excuse were it not that it constantly appears when a libel is complained of. "If the man reported to be hanged was still alive, he had reason to thank me for openly declaring what was said of him that he might at once put an end to a story so discreditable . . . by publishing the truth or making his appearance." After the paper came out he was warned that the elder Hagerman would attack him, and Hagerman did attack him without delay. For some time Gourlay acted only on the defensive, but after being struck several times with a large loaded whip by a bystander, he took active and offensive measures. He was confident that "bottom would prevail over fury" when a magistrate who had hitherto quietly stood aloof, took him by the arm and required him to keep the peace, and the wretched scene came to an end. The attacked

party caused an arrest to be made, but it would seem that the matter was allowed to drop. (80) Gourlay long after found out that many stories had been circulated regarding his rencontre with Hagerman, some saying that Gourlay had scandalized Hagerman's sisters; "others who disliked him made jokes of my licking him and causing the ugly nose. This," he adds, "I repudiated. . . . I never injured his nose, though should his head be manipulated some bumps might be found likely to mislead phrenologists." (81)

This fracas took place toward the end of June, and July 2nd saw Gourlay on his way to York on board the steamboat "Frontenac" (82) to attend the meeting in that city which had been arranged for the Representatives chosen at the District Meetings.

The "Meeting of the Upper Canadian Convention of the Friends of Enquiry" began at York, July 6th, 1818, and continued to July 10th. Representatives appeared from the Districts of Niagara, Gore and London, the Western and Midland Districts, the District of Newcastle and Johnstown District. The Ottawa District was not represented, but Gourlay had been warned when on his visit to that District in May not to expect it on account of the extreme distance from York (83) nor was the Home District; that was the stronghold of those favourable to the existing state of affairs.

The Representatives, fourteen in all, were men of high standing, a former Speaker of the Assembly, Mr. Richard Beasley, J.P. of Gore, who was chosen Chairman, among them; William J. Kerr, J.P., of Louth was appointed Secretary. Gourlay was admitted to assist in the deliberations—to speak but not to vote. Upon the opening day he made a strong address in which he pointed out that "men accustomed to draw profit from corruption or enjoyment from the exercise of arbitrary power would oppose measures tending to refresh the body politic and restrain the licentiousness of ill-regulated authority"; but "many people who had been at first staggered under ignorance of the truth and the novelty of proposed measures were fast adopting more liberal sentiments." He therefore proposed a change of plan and instead of sending a commission at once to the Prince Regent, to send a deputation to wait on the Lieutenant-Governor, Sir Peregrine Maitland (then expected from England) and to present two petitions; one to the Prince Regent which the Lieutenant-Governor would send home at once, and the other to the Governor himself praying that he would immediately dissolve Parliament, meet a new Parliament, recommend them to proceed to an enquiry into the state of the Province and send a commission home with the result for the consideration of the Imperial Parliament. He made the curious error of mistaking the new Governor-in-Chief, the Duke of Richmond, for his predecessor and uncle, the well-known advocate of Parliamentary reform, universal suffrage, etc. (who had died twelve years before), and thought his appointment as Governor-in-Chief an auspicious event. He built much upon the supposed reform sentiments of the new Governor-in-Chief and upon his influence with his son-in-law, Sir Peregrine Maitland, the coming Lieutenant-Governor.

Daniel Washburn submitted certain different proposals, but those of Gourlay were, on the third day, adopted. A committee of five, one of whom was Gourlay, was appointed to draw up an address to Maitland; they did so and the address was with some dissent adopted. It asked that the new Governor should give the people his confidence, it set out the services of Upper Canadians during the recent war waged against Canada by "an insidious, a daring and revengeful enemy," drew his attention to the "Principles and Proceedings of the Inhabitants of the District of Niagara" (84) (a copy of which would be handed to him with the address), stated that they had decided to send a commission to England asking for an enquiry, but that they delayed hoping that the enquiry might be made by the local Parliament; asked His Excellency to dissolve the existing Parliament and call another for "we must with shame acknowledge to Your Excellency that the inhabitants of Upper Canada have hitherto paid too little regard to the characters of those whom they have chosen to represent them in Parliament, and most unworthy persons have sat in the Assembly"; cited instances of trifling and antagonism to the Governor, the prorogation of Parliament, and that at the next session "an offer of recompense for sufferers in war unhappily introduced into the Speech from the Throne and only tending to insult the feelings of a large body of people was replied to in most disgusting terms of acquiescence by the representatives of these very people." The Legislative Council had assumed rights which had been long denied even to British Peers, and should a new Parliament be called, notoriously bad characters would no longer be chosen to represent the people and a new and better era would commence.

A Lower Branch Convention for Newcastle, Midland and Johnstown Districts was arranged for; also an Upper Branch Convention for Niagara, Gore, London, Western and Home Districts. The Address to the Prince Regent suggested by the Niagara District was considered satisfactory on the new plan, and the meeting adjourned till the first Monday in February, 1819. The two Branch Conventions sat August 1st and July 20th respectively, at Kingston and Newton's Inn, Ancaster. The permanent committee of the Upper Branch on the addresses, met in St. Catharines, August 1st, and directed the address to be engrossed, signed and transmitted to England for presentation to the Prince Regent, Lord Erskine to be asked to present it. Mr. Beasley accordingly on that day wrote to Erskine with a copy of the "Principles and Proceedings," and asking him to present the Petition; and Gourlay was charged with forwarding Petition and Letter. (85)

His wife writes him in July that "the York junto have already poisoned the minds of their employers as to your proceedings in Canada. Both the Courier and the Sun have got paragraphs with respect to the discontent in Upper Canada occasioned by the adoption of the principles and following the advice of a Mr. Gourlay. If you do not hasten home with all speed they will have you transformed into a rebel." (86) But he could not hasten home, he was bound over to appear to stand his trial

for seditious libel, and he had no desire to shun the test. Nothing was further from his mind than the thought of sedition or rebellion, and no more loyal Briton ever trod the soil of Upper Canada.

On July 28th we find him again in Niagara writing the Spectator about his controversy with the Kingston Postmaster, saying that he had found in the east "that not only Strachan, the School Master, had been from York to Cornwall endeavouring to blast public confidence in me, not only that his pupil Bethune was flying in the face of common sense to breed distrust of my principles, but that this other pupil of the Post Office was giving away my property," and ends by hoping that the transaction will not escape the notice of the Postmaster General. (87)

## CHAPTER III.

### **Trials for Seditious Libel.**

The time for his trial was approaching, and he went to Kingston. While he was waiting for the assizes, Sir Peregrine Maitland passed through Kingston on his way to York, and Gourlay, August 10th, wrote him a note of excuse for not paying his respects personally because of being under a criminal charge, but offering if at any future time His Excellency should desire to have an interview with him, he would be happy to have that honour. "it is little my disposition to be intruding." About the same time he explained a reference he had made to the Methodists which had been taken in ill part; he wrote to the Kingston Spectator to repudiate the interpretation which had been placed upon his words. (88)

Four days afterwards the trial came on before Mr. Justice Campbell (called "Lord" Campbell by some of the American papers), Henry John Boulton being the Crown Counsel, (89) while Gourlay conducted his own defence. The charge was that part of the Niagara Petition to the Prince Regent was libellous, a "seditious libel." The part complained of set out that the lands of the Crown were of immense extent, but scattered, the disposal of it left to Ministers at Home ignorant of existing circumstances, and to a Council resident in the Province false to their trust; that scandalous abuse had occurred, and a system of favouritism and patronage still existed; corruption exceeding any other in the Empire prevailed; all in situations of public trust sink beneath the dignity of men and become vitiated and weak; the descendants of the Loyalists find no favour; Upper Canada now pines in comparative decay; dread of arbitrary power wars against the exercise of reason and manly sentiments; laws have been set aside and legislators have come into derision. (90)

This was not much, if any stronger, than an ordinary election address at no remote day, and anyone would now laugh at the idea of its being made the subject of an indictment; but it was at that time no laughing matter in any part of the King's Dominions, and many reformers had in the Old Land suffered a long term of imprisonment and living death for language much milder and more restrained.

Gourlay admitted publication and went into his defence. He called witnesses to show that the Petition containing the alleged libel had been examined, approved and published by a committee of representatives of the Niagara District who had attached their names to it. He also called evidence to character, one of them being James Wilkie (brother of the artist), who had known him from his earliest years and had served in Fife under him as Commandant of Volunteers. The defendant made an address in part prepared beforehand; this was in the same year published in pamphlet form. (91) The address to the jury was

much admired at the time, but read at the present it gives no evidence of any great ability. He says himself: "I pleaded my own case tolerably though having been in a feverish and bilious state for a week before, occasioned perhaps by anxiety, I had not prepared as well as I could have wished." It may be observed that goaded by Boulton's attack on him he said he could impeach Boulton's father of neglect of duty—no less than the non-prosecution of a murderer when he was Attorney-General. He begins by complaining that a copy of the indictment had been denied him as was the barbarous custom of the day; and that Boulton had compared the Convention to Willecks. He contends that the "recent popular movement was due to circumstances justifying it"; gives a fair definition of libel, and quotes from Saunders' Reports the case of Lake vs. King, which showed that a Petition to Parliament is absolutely privileged however false and defamatory its contents, and then he speaks of other cases; claims that the Petition "is as true as words of Holy Writ," administers a dignified and respectful but well-merited rebuke to the Judge for saying that he "had great abilities if properly applied," saying that he knew better the honesty and propriety of his objects than the Judge knew his abilities; goes out of his way to attack the Attorney-General (John Beverley Robinson) and Dr. Strachan: "The Attorney-General of the Province is but a stripling, the foster child of a certain clerico-political schoolmaster"; "Rules of Courts of Law . . . are often the capricious and selfish decrees of men greedy of power," gives a correct statement of the rights of juries in cases of libel, and finishes with an appeal for an acquittal.

It is likely that he had received professional assistance in part of this address; Saunders is not a work a layman would read, and Gourlay had warm legal friends in Kingston; probably Washburn and Barnabas Bidwell supplied the citations and quotations from previously decided cases.

The Crown Counsel excited Gourlay's anger by letting "out his spleen against the Convention of Friends to Enquiry, by saying they were as contemptible at York as they were at home," (92) and some American papers thought his speech illiberal and vindictive (93), as might indeed be inferred from the state of official sentiment at the time. No complaint, except what has been already mentioned, was made of the conduct of Mr. Justice Campbell—the pamphlet published by the sympathizers of Gourlay said that he "exercised much patience and candour during the arguments, and delivered a learned and able charge to the jury," and at the dinner given to Gourlay the next week, one of the toasts was "The integrity of Judges and the Independence of Juries equally entitled to respect." In half an hour the jury returned with a verdict of "Not Guilty," which was received with "instantaneous and general burst of applause" (94); and of a surety a more righteous verdict was never given by any jury.

The acquittal took place on Saturday. On the following Monday, August 17th, a number of gentlemen gave him a complimentary dinner at Moore's Coffee House; some dozen or more loyal and patriotic toasts

were drunk, and sentiments honoured; and the occasion was one of joyous and "social hilarity." (94)

The Brockville Assizes coming on, he attended there to "do honour to his bail," and on the first day, Tuesday, August 25th, demanded his discharge, protesting against the illegal warrant. This was of course refused, and he was told he must abide his trial, the bail being "to answer to any charge that may there be brought against you." The second day, a presentment (not an indictment) was brought in against him by the Grand Jury upon which sat Messrs. Fraser and McDonell the complainant and committing magistrate; on the fourth day, as no indictment had been found, he again demanded his discharge, but that day an indictment for seditious libel was returned and Saturday he was arraigned. On the following Monday, August 31st, the trial began; Messrs. Henry John Boulton and Jonas Jones, M.P., of Brockville, for the Crown and Gourlay defending himself. Gourlay again admitted publication and was called on for his defence. It was along the same lines as at Kingston, but the evidence of some in the district as to Gourlay's conduct and the effect of reading the pamphlet was rightly excluded; the jury found a verdict of "Not Guilty." This verdict was equally popular with that at Kingston and of course was equally righteous.

It should be noted that this indictment was upon parts of Gourlay's Address of April 2nd, 1818, and was even less well founded than that at Kingston.

The next day, September 1, he left Brockville by Canadian steamer; at Cornwall, hearing that the Duke of Richmond would pass upward that day or the next, he sent a card to him with copies of his four pamphlets, "Principles and Proceedings, Etc.," "Narrative," "Transactions of the Convention of Upper Canada Friends to Enquiry," and "Speech to the Jury at Kingston." Arriving at Montreal, Sept. 3, he went thence, Sept. 7th, by way of St. Johns, Whitehall and Albany to New York, where he arrived Sept. 11. There he had a power of attorney drawn up to settle his affairs in England and Scotland, and sent that week the petition of the Convention to England, the latter for delivery to Lord Erskine. (95) He also wrote to Sir Peregrine Maitland sending him pamphlets, and adding: "Should the general impression made on your mind generate suspicion that I am unworthy of confidence, the mere acknowledgement of the receipt of this letter by one addressed to me at Queenston will be sufficient. If otherwise, and you should incline to have a conference on the subject, I shall willingly proceed to York and wait upon your Excellency." (96) He left New York, September 20th, and made a tour through New England, visiting Stamford, New Haven, Hartford, Boston, Salem, Cambridge, Worcester, Brookfield, Northampton, Pittsfield, Lebanon Springs (then the Shaker Settlement), and to Pittsfield again to attend the meeting of the Berkshire Agricultural Society. Being recognized, he was treated as one who was opposed to British connection, but this he repudiated as he had a similar compliment in New York a few days before. (97) Proceeding by way

of Albany, Schenectady, Watervliet (where he attended the meeting of Shaking Quakers), Utica, Rome, Sackett's Harbour, he went across Lake Ontario to Kingston, which he reached October 17. (97)

It was high time for him to return; Sir Peregrine Maitland had called together the Parliament for October 12; on that day in the Address from the Throne he had said: "In the course of your investigation you will, I doubt not, feel a just indignation at the attempts which have been made to excite discontent and to organize sedition; should it appear to you that a Convention of Delegates cannot exist without danger to the Constitution, in framing a law of prevention your dispassionate wisdom will be careful that it shall not unwarily trespass on the sacred right of the subject to seek a redress of his grievance by petition." In other words, "Gourlay and his friends have not been frightened by the statement of Clark and others that their proceedings are illegal, pass a law in the sacred name of the Constitution to make them illegal."

On the 14th, the Legislative Council presented an address to His Excellency, saying: "We shall at all times feel a just indignation at every attempt which may excite discontent or organize sedition"; and added a promise to protect the sacred right of petition. The Assembly on the 19th went much further in their address, saying: "We feel a just indignation at the systematic attempts which have been made to excite discontent and organize sedition in this happy colony. . . . and deeply lament that the insidious designs of one factious individual should have succeeded in drawing in to the support of his vile machinations so many honest men and loyal subjects to His Majesty"; but they, too, would be careful of the sacred right of petition. His Excellency was naturally gratified and doubted not their wisdom to enact salutary laws. (98)

Gourlay was still in Kingston when the Governor's speech and the reply of the Houses were made; he at once drafted a petition to the Houses of Parliament and wrote October 20 his next address, an Address to the Upper Canadian Friends to Enquiry. He begins: "Gentlemen: Behold the Lieutenant-Governor's speech; behold the reply of your House of Assembly! We are all libelled as seditious and our acts have excited indignation." He asks them to be calm, says that he is on his way to York in the face of every danger, and while he is not a street-boxer or a duellist, if the great principle of constitutional right require a martyr, not only his liberty but his life will be freely offered—he will address them again and thrust from him the infamous slander officially promulgated against him.

The Petition to the Houses of Parliament protested against the proposed measure, and presented arguments in support of the protest. October 21 he advertised a meeting of the inhabitants of Town and Township of Kingston for the following Saturday at "Moore's Coffee House." This advertisement began: "The unexpected and ill-advised speech of Sir Peregrine Maitland, together with the servile reply of the Assembly, not only threatening to curtail public liberty but descending

to personal abuse of myself"; and the meeting was "to consult . . . as to measures for declaring the real sentiments of the people and for maintaining the cause of the truth." The meeting was held at Waterloo instead of Kingston, October 24th, and was very favourable to Gourlay's views, as was another held at Ernest Town, October 26. This success induced him to hold meetings through the Midland and Newcastle Districts, and so far as the circulation of the Kingston Gazette extended, the results were flattering: Fredericksburg, Adolphustown, Hallowell, Sophiasburg (Nov. 3), Ameliasburg, Sidney and Rawdon, Cramahe (Nov. 7), Haldimand (Nov. 9), all protested against any charge of sedition, and most sent in addresses to Sir Peregrine Maitland deploring that selfish and wicked men had got his ear and induced him to believe that the people of the Province were seditious; and they asked him to dissolve the existing Parliament and call another which would represent the people at large so that the enquiry into the state of the Province might be carried into effect. (99)

When he got as far west as Hamilton Township, immediately above Haldimand, he met a severe check. A meeting of the inhabitants of that township was held November 11 at "the village of Amherst" (now the "Court House" at Cobourg); about fifty very respectable people attended. Gourlay addressed them for nearly three hours, and was replied to by Charles Fothergill. What purports to be Fothergill's speech on the occasion but "smells of the lamp" and rescension, was published in pamphlet form in York the same year.

This speech is chiefly noticeable from the attempt to prejudice the audience against Gourlay by hinting that he was an agitator who desired to make Upper Canada a part of the United States—a charge that everyone who has attempted to better the form of Government in this Province has at some time had to meet, from the time Simcoe charged Cartwright and Hamilton with being republicans. A more unfounded charge than this against Gourlay was never made.

A set of resolutions was adopted at the Amherst meeting adverse to Gourlay; though he contends that his petition was not rejected but that some farmers signed it, it never made its way to the Governor. This was beyond question a bitter drop in Gourlay's cup.

The next day he met a similar reverse at a meeting of inhabitants of Hope Township, but he attributes these defeats to the alleged fact that "towards the middle of the Newcastle District few of the farmers are in the habit of reading." (100) He does not seem to have held meetings west of Hope.

November 27 an address was forwarded by the inhabitants of the Township of Cornwall still more adverse to Gourlay, deprecating the sedition and discontent in the garb of patriotism which had originated with "such an individual." (101)

In the meantime the Committee of the Friends of Enquiry had drawn up their Petition to the Lieutenant-Governor and waited upon his Secretary for an opportunity to see him. His Excellency sent for

them and asked what they wanted. They said that they desired to wait upon him with an address from the representatives of a numerous and respectable body of His Majesty's loyal subjects in the Province. He asked if they conceived he would receive a Petition from so unconstitutional a body. They answered that the meeting was not unconstitutional, at least in Upper Canada. He said it was, and that they had his answer. They made their bow and retired. Being anxious that he should not take any hasty step but have full time to consider, they sent the petition, October 23, to his Secretary, Major Hillier. An answer came the same day that His Excellency refused to receive it for the reasons already given. The Committee reported the result forthwith, October 24, to their Constituents. (102)

Parliament implemented the promises made in the addresses of the two Houses and passed an Act introduced by Jonas Jones, 58 George III., cap. 11, forbidding assemblies, committees or other bodies or persons elected or otherwise constituted or appointed to meet under the pretence of deliberating upon matters of public concern or of preparing or presenting petitions, complaints, remonstrances, declarations or other addresses to the King or Parliament "for the alteration of matters established by law or redress of alledged grievances in Church or State." This extraordinary piece of legislation was of course aimed solely at Gourlay and the movement originated by him; and no one now doubts that it was a disgrace to the Governor, his advisers and Parliament—"the members of Convention had met at York prior to any law to prevent the meeting of delegates; they had met in compliance with the desire of many thousands of their fellow-subjects, and were wholly unconscious of evil; they were men of tried loyalty; they had held militia commissions during the war; some had been wounded; some had been taken prisoners and all had behaved well." (103)

When Gourlay heard of the first reading of this Act he exclaimed, "Gagg'd, gagg'd, by jingo," and wrote some doggerel. This much pleased a Magistrate of his acquaintance, and remembering that Molière used to read his comedies to his old house-keeper to test their effect on the public, he made up his mind that these words having pleased the Magistrate would please the Canadian public. Accordingly when he wrote the next Address, December 3, 1817, appearing in the Niagara Spectator, he headed it "Gagg'd—Gagg'd, by Jingo":

"GAGG'D—GAGG'D, BY JINGO."

"Dear, sweet Canada! thou art gagg'd at last.  
A babe of mighty Wellington, come o'er the sea  
Has, with thy own foul fingers, gagged thee."

He continues: "Our union is broken up and our boasted right of petitioning is now little better than an old song." Quoting the Act, he justifies what had been done by himself and his friends, and urges all to see to the representatives in the next House of Assembly being what they should be; to hold meetings to protest against the Act; tells the people that the Petition to the Prince Regent is on its way to him

and that it must have some effect in alleviating the evils complained of. (104)

This Address had unpleasant results for the editor of the Spectator, Bartimus Ferguson. Isaac Swayzie, a member of the Assembly, swore to an information against him for a false, malicious and seditious libel against the Governor and Legislature of the Province; William Dickson was the Magistrate who issued the warrant. Ferguson was arrested and imprisoned in the Niagara gaol, but this prosecution was dropped and Ferguson released.

Gourlay published a spirited article upon this: "It is . . . evident that persecution and terror are now on foot to deprive the people of this Province of the inestimable liberty of the Press." (105) In the same issue he printed an open letter to those who had met in May at St. Catharines as representatives of the inhabitants of the townships; informed them that they might still meet as individuals, and asked them to meet him on Saturday, December 26, at St. Catharines for a conference; he also suggests a meeting of the Townships of Niagara, Grantham and Louth to consider instructions to their member. (106) Before that day arrived he was himself in gaol.

Isaac Swayzie laid an information against him under the Act of 1804, 44 George III, c. 1, a Sedition Act occasionally but improperly called an Alien Act. Much misunderstanding as to the statute and no little of Gourlay's animadversions have their origin in this mistake. Some colour indeed is given to the supposition that the Act was an Alien Act from its history which can be read in the proceedings of Parliament now available through the valuable publications of the Ontario Archives.

The Lieutenant-Governor, General Peter Hunter, in his Speech from the Throne, February 1, 1804, recommended Parliament "by some wise and salutary law . . . to protect the King's Government against aliens." The Legislative Council in their answer, February 8, promised to attend to framing such salutary measures as might be calculated to protect the King's Government against aliens; and the next day the Legislative Assembly promised "timely precautions against the insidious designs of hostile aliens."

The Legislative Council took action first. February 14, Mr. Baby moved, seconded by Mr. Duncan, for leave to bring in a Bill, "the Alien Bill," and did so. The Bill was read a second time the following day, and was referred to the Committee of the Whole, who dealt with it that day and the 23rd and 24th (when we meet for the first time, a change in the name of the Bill, i.e., "for better securing the Province against all seditions, attempts or designs to disturb the tranquility . . . ) The Bill was read as engrossed, February 25th, when it was recommended and considered in the Committee of the Whole and also February 27, when it was passed and sent to the House. The House passed it without amendment, February 29, voting down an amendment to limit its operation to four years. March 9th the Governor gave his assent and the Bill became law. (See also Note 107.)

There can be little doubt that while at first the object of fear was the large number of American citizens with republican principles who were coming into the Province, the Council during the passage of the Bill were impressed with the necessity of protecting the people against a totally different class; that is, the United Irishmen who flocked to Upper Canada after the rebellion of 1798 and the succeeding troubles in Ireland. Most of these were sworn enemies to British rule, none too firmly established in the Province. It was at least in part against these that the Act was aimed—there can be no kind of question that the Act was aimed at British-born subjects as well as aliens; no distinction is made and no reference to allegiance. The Act (set out in full in the note) provides that the Governor, Lieutenant-Governor, Administrator, Members of the Legislative and Executive Councils, the Judges of the King's Bench, and any person duly authorized for that purpose, might issue a warrant to arrest any person "not having been an inhabitant . . . of this Province for . . . six months next preceding the date of such warrant, or not having taken the oath of allegiance to our Sovereign Lord, the King, who hath . . . endeavoured or hath . . . given just cause to suspect that he . . . is about to endeavour to alienate the minds of His Majesty's subjects of this Province from his person or Government, or in anywise with a seditious intent to disturb the tranquility thereof." When such accused person is brought before the person issuing the warrant, if he "shall not give to the person . . . granting such warrant . . . full and complete satisfaction that his . . . words, actions, conduct or behaviour has no such tending or were not intended to promote or encourage disaffection to His Majesty's person or Government," an order is to be made in writing to the accused person to depart the Province within a time named. If he did not obey, he might be committed to prison "without bail or mainprize," unless freed by the Lieutenant-Governor, until he could be tried "for such offence" at the Assizes or by Special Commission. If he should be convicted, he was to be ordered to leave the Province, and if he refused or should return without licence from the Lieutenant-Governor, should "suffer death as a felon without benefit of clergy." It was further provided that if any question should arise as to the accused having been an inhabitant of the Province for six months or having taken the oath of allegiance, the proof should "lay" on him; and any action for anything done under the Statute must be brought within three months after the act complained of. (107)

Twelve months before, Gourlay had been warned by Thomas Clark that he might be arrested for publishing his Addresses. Upon asking him to produce the Act of Parliament authorizing such an arrest, Clark produced this Act, 44 George III, cap. 1. Gourlay, after examining it, said triumphantly: "That, sir, is only applicable to aliens! I am a Roman, touch me if you dare! I am a Roman and will appeal to Caesar." Clark examined the Statute with care, and confessed that he had laboured under a mistake, and that the Act applied only to aliens. (108). This seems to have confirmed—if indeed it needed or admitted of confirmation—the opinion of Gourlay as to the application of the

Statute, for which there is no shadow of justification either in the Act itself, in its name or in its history; this seems to have been the first time the Act was applied to a British subject, though several Americans had been banished under its provisions.

Who the draftsman was is not certainly known. Gourlay with an unfairness which characterizes all his references to Chief Justice Powell, insinuates without actually charging that he was the cause of it being passed: "There can be no doubt . . . the . . . statute was framed in the Cabinet of London and sent abroad to be palmed on the poor sycophantish wittlings of the Province by some **pawkie**, well-paid politician, perhaps trebly installed in power with a seat in the Executive Council, a seat in the Legislative Council and on the Bench. (109) It is to Powell that he always applies the expressive adjective "pawkie," unnecessary to define to a Scotsman, impossible to define to any other. (110). But Powell was not **persona grata** in 1804, he was not a member of either Council, and moreover we have his private correspondence with Sir Francis Gore about this very Act when he could have had no possible motive for concealing the truth. He says: "I almost persuade myself that the English lawyer who drew the Bill, wrote in one of the clauses 'or' for 'and' which makes all the difference between a just enactment and an almost absurd tyranny which ever disgraced a Legislative Act." And he points out that the enactment "subjects Earl Bathurst if he should pay a visit to this Province and his Looks should offend Isaac Sweezy to be ordered out of the Province by the enlightened Magistrate, and if that Disobedience which constitutes the offence is found by a Jury, to be banished, under penalty of Death should he remain or return without the Slightest Enquiry into the Cause or Justice of the worthy Magistrate's suspicion that he was a Suspicious Character." (111)

It is probable that a Bill was drawn up in England and sent out for the consideration of the Local Parliament; that that Bill applied only to aliens, but that it was extended in passage to cover the case of British subjects as well.

An examination of this most extraordinary piece of legislation discloses that anyone might at any time lay an information against any person British subject or not, loyal or not, of whatever standing, socially, financially, politically, charging sedition or causing suspicion of sedition; that, e.g., any Legislative Councillor might thereupon issue a warrant and bring the accused before him; that when the accused was so arraigned he must, if he desired to establish that the Act did not apply to him, prove that he had been an inhabitant of Upper Canada for six months before the date of the warrant, and that he had taken the oath of allegiance. If he did so prove by legal evidence, he was free; but if for any reason he did not (and no one accused could give evidence on his own behalf), he must then prove to the "full and complete satisfaction" of the Councillor that his words, actions, conduct or behaviour were innocent; if he did not succeed he might be ordered to quit the Province; if he failed to do this he could be jailed (and no Court could bail him),

tried for the offence of not leaving; if found guilty of this offence he could be banished; if he did not leave the Province or returned without a licence, he could be hanged. Nothing but the most urgent necessity could justify placing such an extraordinary power in the hands of one man without appeal and without the right being reserved to the sufferer to the assistance of the Courts. And nothing could justify the setting in motion of that law years after all necessity for it had ceased and in a case which did not require its application.

Gourlay at the time and constantly thereafter charged William Dickson, the "jumble-brain," with being the instigator and author of the prosecution; and no denial has ever been made. Swayzie he treats with the most perfect contempt, calls him a spy, a horse-thief, a perjurer. and so dismisses him from consideration. (112)

## CHAPTER IV.

### Final Prosecution and Banishment.

He was arrested and immediately (December 21, 1818) brought before Dickson and William Claus, another Legislative Councillor, Dickson presiding; there were present other magistrates and others. Dickson asked him if his name was Robert Gourlay? Did he know Mr. Cobbett? Did he know Mr. Hunt? Was he at the Spa Fields meeting? Was he ever in Ireland? Was he lately in the Lower Province? Was he lately in the United States? Was it he who wrote the article in the Spectator headed "Gagg'd, Gagg'd, by Jingo"? and received an affirmative answer to each question. He thereupon announced his opinion that Gourlay was a man of desperate fortune, and would stick at nothing to raise insurrection in the Province. In this he was supported by Thomas Clark and William Claus, Legislative Councillors, Mr. Alexander McDonel (brother-in-law of President Smith), and Dr. Muirhead. The Act was read and Gourlay insisted that it did not apply to him, a natural-born British subject. He said, moreover, he had been an inhabitant of the Province for eighteen months, and that he had taken the oath of allegiance. Dickson said he had not done so in Upper Canada, and Gourlay did not pretend he had. It seems to have been the opinion at the time in administrative and legal circles that the oath of allegiance contemplated by the Act was an oath taken after arrival in the Province. Perhaps this interpretation was to a certain extent based upon the provision of the Act already mentioned, 30 George III., cap. 27, but it is doubtful whether this construction would now be placed upon the Act. In that view there can be no doubt that Gourlay was amenable to the Act; and indeed his main contention to the end of his life was that the Statute did not apply to a native-born subject.

He must then give to Dickson and Claus "full and complete satisfaction that his words . . . were not intended to promote or encourage disaffection to His Majesty's . . . Government." It is probable that an angel from heaven could not have proved this before that tribunal, but could Gourlay have proved it before any tribunal? "Gagg'd, gagg'd, by Jingo!; our boasted right of petitioning is now little better than an old song . . . this law . . . gives some plea for sedition . . . those fine resolutions so fondly treasured up by Sir Peregrine Maitland" who "came out full charged with prejudices against the people. . . . From the Governor's speech we may infer that both Houses of Assembly have surrendered their contested privilege to the Crown. Sir Peregrine would have done a mighty deal of good by initiation, had the public mind been tranquil. . . . The Commons of this country if they had common sense and firmness need not truckle in any way to power," urging petition to the Prince Regent as the only way to safety, etc., etc. Is not all this plainly encouraging dis-

affection to the Government, harmless though it may have been, wholly proper and even laudable according to our modern notions as it is?

After having been remanded for an hour to the gaol, Gourlay was brought again before the Councillors and received a formal written order to leave the Province on or before January 1st, 1819, a ten days' respite. He refused; he had made arrangements to enter business in Upper Canada as a Land Agent, and it would be ruinous for him to leave; besides, "*Civis Britannicus fuit*," and he stood on his view of the law.

On the 4th of January, a warrant for arrest was issued by Dickson and Claus, and he was again thrown into Niagara gaol.

He thereupon applied for a writ of Habeas Corpus, engaging a lawyer to prepare the papers, but not taking any advice as to his rights, which he believed then and at all times he knew without assistance from any source. A petition was drawn up in proper form, presented by the attorney to the Chief Justice, who ordered the issue of a writ accordingly, January 20, 1819. The sheriff obeyed the writ, took Gourlay by land around the head of the lake to York before the Chief Justice, February 8. The Chief Justice asked Gourlay: "Have you brought any person with you?" meaning, of course, "Have you any counsel?" though Gourlay says he does not know the object of the question. The material upon which the application was founded is still extant: an affidavit of Peter Hamilton and one of Robert Hamilton that Gourlay was understood to be a native-born subject, the former knowing his connections in Britain, and the latter adding that he had been domiciliated in Niagara District for nine months. Then Gourlay's own affidavits that he had "taken the oath of allegiance to our Lord the present King, and that he hath been an inhabitant of the Province of Upper Canada now more than a year." No argument was advanced in support of the application and the Chief Justice endorsed the writ. "The within-named Robert Gourlay being brought before me at my Chambers at York required to be admitted to bail as not being a person subject to the provisions of the Act of His Majesty, Chapter 1st: and the warrant of committment appearing to be regular according to the provisions of the Act, which does not authorize bail or mainprize, the said Robert Gourlay is hereby remanded to the custody, etc., etc." Under this, Gourlay was taken by the sheriff to Niagara and there placed in the gaol, travelling the same weary road round the head of the lake.

There are two grounds of complaint alleged by Gourlay at the time against Powell in this proceeding, first, "he could as well have expressed his opinion to my attorney . . . before he granted the writ of Habeas Corpus as to myself after being obliged to travel ninety miles to hear the award." Had the Chief Justice expressed his opinion before granting the writ, it would have been grossly improper and a righteous ground of complaint. It was his plain duty which he understood as well as any Judge on the Bench, to hear all that could be said in favour of the discharge of the prisoner. Had he done as Gourlay suggests, it is

quite certain that not only would Gourlay not have stayed his application, but he would most strenuously have protested against such a prejudging of his case.

Then it is said that the Judge said that Gourlay "required to be admitted to bail," which he says he did not. This complaint arises from a misunderstanding of the law. The Imperial Act of 1816, 56 George III., cap. 100, was not in force in Upper Canada (113) and all the law was to be found in the original Habeas Corpus Act of 19 Charles II., cap. 2. Under that Act every application to Court under a Writ of Habeas Corpus was an application to be admitted to bail.

Later Gourlay makes another and a graver charge against the Chief Justice, namely, that he violated the law in refusing his discharge. Dent says (Story of the Upper Canadian Rebellion, Vol. 1, p. 29), "there could hardly have been a clearer case." Kingsford, History of Canada, Vol. 9, p. 233, after paying a tribute to Powell's knowledge of law, "Powell was an unusually good and sound lawyer," adds: "On this occasion he permitted himself to countenance a wrong which must ever bring discredit on his good name. The highest authorities in England pronounced his proceeding to be illegal. Sir A. Piggott subsequently declared that it was his duty to have released Gourlay from imprisonment. . . . He refused all justice, not by reference to any principle, not by one of the enunciations of law which make law the highest of sciences and the first of blessings in securing us liberty and prosperity, but on the miserable technical plea, worthy of the most tricky attorney, that the warrant of commitment was regular and that the Act did not authorize bail." This last rhetorical saying is based upon a fundamental and inexcusable mistake as to the duty and power of a Judge. A Judge does not make the law—that is for the Legislature, and a Judge must take it as he finds it. He cannot arrogate power which is denied him by the Legislature, but must in his office do what the Legislature directs by its words and must loyally obey the same as any other citizen. A Judge who acts otherwise, not only may but should be removed. Where the Act forbade bail or mainprize, it was no more possible for the Chief Justice to admit to bail than it was for the Sheriff.

But it is said that he should have discharged the prisoner and that the highest English authorities including Sir Arthur "Piggott" said so.

The only authority for this statement is Gourlay himself. He says in January, 1820: "In the meantime (i.e., after his recommitment to Niagara gaol and his trial), I wrote off to various quarters for legal advice. From Montreal, from Edinburgh, from London, the replies of most respectable lawyers were uniform, that my imprisonment was illegal, and the late Sir Arthur Piggott declared that not only should the Chief Justice of Upper Canada have granted my liberty applied for by writ of Habeas Corpus, but that a good action lay against the Magistrates." (114)

No lawyer of any standing would give a legal opinion intended to be acted upon, under the circumstances, except in writing; there is no

such opinion set out or definitely referred to in all Gourlay's voluminous effusions. There is nothing to show whether the lawyers had the Statute before them or knew anything about it—purely local Act as it was—or whether they had even the papers which were before the Chief Justice. The facts are stated in a publication of Gourlay's, twenty-five years later, from which it appears that when in gaol he, March 24 and April 27, 1819, wrote to his wife to consult British lawyers, and that she told him she had consulted Mr. Cranstoun (afterwards Lord Corehouse) and Sir Arthur "Piggott," both of whom gave their opinion that his imprisonment was illegal. <sup>(115)</sup> This is not quite the way to obtain a reliable legal opinion. There is no other record as to the Montreal lawyer unless it be that mentioned as to the happenings in January, 1820. "Six weeks after trial it was pointed out to me by a gentleman of Montreal on my way home . . . for the first time that . . . the word **offence** used in the Statute could . . . be applied . . . to the mere refusal to obey." <sup>(116)</sup> If Gourlay had anything in the way of a considered opinion, it is inconceivable that with his mania for recording, he would not have recorded it as he did that of an eminent London counsel to whom all the proceedings, Statute, etc., were submitted by him to advise on a petition.

Mr. Adam, of Lincoln's Inn, in his written opinion, February 24, 1821, comes to the conclusion that Mr. Gourlay was answerable to the Act, that the burden was cast upon him of proving that he was not and that he neither did so nor offered to do so before the Councillors. This opinion Gourlay answers, not by asserting or producing opinions to the contrary, but by violently asserting "It was not necessary for me to take the oath of allegiance at all. . . . I never thought anything more was required for procuring my enlargement but the fact that I was a native-born British subject. . . . Chief Justice Powell never pretended ignorance of it, and upon the knowledge of this alone he was bound to set me free." <sup>(117)</sup> If it was on any proposition like this that the alleged opinions of British and Montreal lawyers were founded, they were worthless. And even if Sir Arthur Pigott did give such an opinion (and it is to be noticed that Gourlay did not know him well enough to spell his name properly) there does not seem to be any reason for accepting the view of an English equity lawyer who had left the common law bar twenty-five years before, of the interpretation of a local and quasi-criminal Statute, rather than that of one equally well educated, trained at the same bar, of at least equal ability, with a perfect knowledge of our Statutes and many years' experience in criminal law. Even a superficial examination of the material will show that Powell was right in every respect even if he could have gone into the facts; there was no doubt of the power of the Councillors Dickson and Claus to make that kind of an order; the order was regular in every respect, and the only way Gourlay could avoid the order was to prove that the Act did not apply to him. The Statute placing the onus upon him, he must prove: (1) that he was an inhabitant of Upper Canada, and (2) that he had taken the oath of allegiance before the issue of the warrant. The first may perhaps be taken as proved by the affidavits; the second is not, and that Mr. Adam draws attention to in his opinion, and adds:

"Indeed I had collected from page 6 (of a petition drawn up by Gourlay's solicitor) that he had not taken the oath of allegiance before his commitment." To this Gourlay's only reply is: "Mr. Adam rests importance on my not having taken the oath of allegiance as prescribed by the Act when it was not necessary to take the oath of allegiance at all." (117) It may be asserted with the utmost confidence that there is not a Judge in the British possessions who would have done other than Powell did—if he did he would be doing wrong.

In the meantime the "Gagg'd, gagg'd, by Jingo" letter of December 3, 1818, had drawn down the wrath of Captain James Fitz Gibbon (the hero of Beaver Dams), who in a letter of December 8, addressed to the militia of Upper Canada, repelled the calumnies of Mr. Gourlay as to the alleged "scandal against the Province hitherto reported by military men." Gourlay, January 5, wrote a spirited counter-article reasserting the truth of his charges. Fitz Gibbon returned to the fray January 5 and January 13, and Gourlay wound up the debate February 2, disdaining to keep up "low personal bickerings" . . . at this awful period." Another correspondent, "Verax," wrote in the Upper Canada Gazette, February 25, a letter referring to Gourlay's last, and suggesting that he did not continue his controversy because Fitz Gibbon had truth and evidence on his side; and so this wretched squabble ended. (118)

The Grand Jury at the Quarter Sessions of Niagara, January 14th, in their presentment to the magistrates, stated that they felt hurt that a report had been circulated against the loyalty of the Province and of that District particularly; they reprobated and disapproved "of the proceedings which have taken place to give rise to such suspicions." Gourlay, January 20, wrote the Spectator from gaol that readers of the Spectator knew well that what the Grand Jury were assailing was the proceedings of the Friends of Enquiry and that the presentment was intended to bolster up Sir Peregrine Maitland and the House of Assembly; he protested that "sedition" was mentioned for the first time in Clark's placard, and that the second alarm arose from his two prosecutions for seditious libel. The editor did not insert this at once, but informed Gourlay that what the Grand Jury reprobated was the proceedings in Parliament and Gourlay's arrest; and then Gourlay wrote a letter, January 26, containing that statement and had the two letters published together.

Upon the presentment being made to the Magistrates, they drew up themselves an Address to the Lieutenant-Governor and transmitted it along with a copy of the presentment. This address *inter alia* lamented that "this loyal District has been calumniated; and from the wicked and insidious diffusion of the writings of a very few discontented, virulent and malignant characters, it is presumed that this district is the concentration of folly and the focus of sedition and disloyalty. . . . We trust that the arm of the law has vigour to reach and wisdom to punish such," etc., etc. This was signed by twenty-five magistrates, the sheriff, one member of the House (Isaac Swayzie), four Captains and many other gentlemen of standing. A gracious answer was vouchsafed by the

Governor. Then came an Address from the inhabitants of Queenston, equally strong and along the same lines, "aware how much disquiet has been occasioned by the too unguarded writings and publications of an individual," and confident that the constitution was "sufficient . . . to repel the mischievous and unlawful attempts of designing men, and keep firm in his seat of authority the Representative of His Majesty."

Gourlay published a letter to many of the signatories—Thomas Dickson, the supposed draftsman, he reminded that the very first of his writings which breathed a political opinion in Upper Canada he had entrusted to Dickson's hands with discretionary power to publish it, and that he had published it. To Hepburn he said: "And you were the carrier of the Queenston Address! And you were invited to the Governor's table for carrying the Address! And the Address obtained for you a seat next her Ladyship!" He reminded him that but eleven months before, he (Hepburn) had lent his signature to prove that Thomas Dickson had subscribed a dollar to the cause of Enquiry. Some others he reminded that they had met him in St. Catharines during the past summer and highly extolled his conduct, and then and there directed to be published the writings for which he was tried twice at the Assizes; and in righteous indignation asks: "For what reason . . . should you now join in the host of my enemies, work up prejudice against me in the public mind, prejudice my case and blast every hope of an impartial trial? . . . Fie upon you! Such conduct is mean and infamous; it is unjust, ungenerous and inhuman." This is one of the letters which show the persecuted man at his best. John Clark, one of the alleged signatories to the Queenston Address, wrote saying he did not sign, and Dr. Lafferty publicly apologized to Gourlay and the inhabitants of the Township of Stamford for having signed the Address, admitted that he deserved their contempt for doing so, and begged forgiveness, "as the Apostle Peter wept in bitterness for having thrice denied his Saviour, and received pardon." These must have been some little consolation for the much-tried Gourlay, apparently deserted by all, kinsfolk, friends, co-workers and acquaintances.

For a time his imprisonment does not seem to have been harmful to his health. He gave the whole of the public money allowed for his maintenance (nearly a dollar a week) to the gaoler, to ensure civility and cleanliness, and for a time all went reasonably well. (119) Gourlay continued his communications to the press; May 22 he wrote to the Spectator deploring the desertion of Magistrates and others from the popular cause, and enclosing an Address, the fourth, to the Resident Land Owners of Upper Canada, of date May 20, and written in view of the meeting of the House then imminent.

After referring to his former addresses, he attacked some of the Representatives who "believing every preconceived notion of character and conduct, showed themselves in brutal opposition to the quiet and peaceful exercise of constitutional right . . . made party against the cause of truth and liberty." "Gentlemen," he continued, "you can no longer boast of freedom; you are in fact at this moment slaves." He

instanced his own case, and asked: "Was it to be enslaved that you came from the States of America, from Britain and from Germany? . . . to sow the seeds of despotism that you lifted the axe to clear away these woods?" "In prosperity, in adversity, I have through life been uniformly the same; enthusiastic and sincere in every public undertaking; often imprudent; sometimes foolish; but never for a moment have I harboured criminal design." He hopes against hope that Parliament may do some good, ridicules the suggestion that Upper Canada has the same Constitution as the Mother Country, and winds up by promising to continue the subject. (120)

In January, James Durand, a Member of the Legislature, had written the Spectator defending himself against an attack by Gourlay. The prisoner, now at leisure, June 1, answers, calls Durand to task and lashes him for his vote for the Bill forbidding Conventions. After comparing the Convention movement thus forbidden with similar movements in England, he concludes: "Look at that, you gagging bill apologist! Look at that, every Spoiler of his Country's liberty! Look at that, every betrayer of his 'sacred trust!' Look at that, you prater about 'piety' and the 'insignia of honour!' Look at that, you liek-spittle, and off to Sir Peregrine Maitland. Off, off, you Spartan dog—off to Little York and make clean the Parliamentary journals by gobbling up your vomit." (121)

The Address of May 20 attracted the attention of Captain C. Stuart, a resident landowner near Amherstburg; he had formerly been in the East India Company's service, and was then studying Divinity. In his letter he combats the proposition that Canadians were slaves; points out that Gourlay's imprisonment (which he lamented) was in the regular and legal (though extraordinary) course of the laws; thinks that Canadians need not blush in a comparison with Americans; as a landowner sees no reason for a Commission or Petition to the Prince Regent, and concludes a courteous letter by asserting that he has no object but the public good.

July 5 Gourlay answers in a somewhat rambling letter, reasserts the illegality of his imprisonment and the "disgusting truth" that Canadians are not as free as Americans, defends his language concerning Maitland by quoting that of Christ concerning Herod—in which "Herod is likened to a brute, noted for being cruel, cunning and thievish, a brute which prowls about under the cloud of night. . . . How admirably does the similitude apply to the general dispositions and habits of Provincial Governors, who in all ages have proved the most deceitful, cruel and rapacious tyrants!" He proceeds to insult Stuart by saying, "Mr. C. Stuart resembles so strongly the second James that I cannot help thinking him the lineal descendant"; and closes with invective against him which can scarcely be said to have been called for by anything Stuart had written. (122)

But more important matters demanded his attention. The House met June 7, and on that day he wrote an open letter to the Members

of Parliament, published in the Niagara Spectator, June 10. He began by saying: "It is a lamentable fact that men will sometimes continue to hate those whom they have injured, for no other reason but because they themselves have already done so much wrong." With this inauspicious beginning, he addresses the representatives at great length and with much generality. He "condescends to particulars"; e.g., he sketches out an entirely new scheme of taxation, advocates good roads, St. Lawrence navigation, and gives a plan of immigration from Britain. June 14, he writes another open letter to the Representatives, going into immigration, a Convention Commission, taxation, the funding system, St. Lawrence navigation, his account of the first settlement, etc. A continuation of this letter, June 17, goes into taxation, immigration, St. Lawrence navigation, etc. (123)

In the Niagara Spectator of June 10 had appeared a report of part of the Lieutenant-Governor's Speech from the Throne, and of the reply of the two Houses of Parliament. Maitland had said that while the Prince Regent had authorized the Governors of both Canadas to bestow land on certain of the Provincial navy and of the militia who had served during the war, he did not consider himself justified in extending this mark of approbation to any of those who had composed the late Convention of Delegates. This extraordinary and wrong-headed piece of arbitrary despotism, the Council felt the propriety of, and the Assembly offered His Excellency their most humble and hearty thanks for his gracious speech, and lamented "that any portion of His Majesty's subjects should have forfeited their claims on the bounty of the Government." This unjust punishment of men who had been guilty of no wrong-doing and whose motives were unimpeachable, exasperated Gourlay. He took time to consider, and at length, June 28, wrote a letter to the Spectator, flaying the Representatives, the sycophants around the Governor, the Duke of Richmond, who might "chuckle with the thought that the tenants and labours of his estate now at nurse may now be held . . . perhaps till he has made a fortune out of the taxes of Canada, so as to keep him at ease though he should go home and find them all ruined and starved"; "the treachery of the Commons," "poor creatures, poor Peregrine," "a thing called Excellency, a British General, forgets the laws of honour, of prudence, feeling, justice; his deeds say Britons are but slaves; and slaves he finds to justify his deeds." "Bonaparte . . . gave himself to British honour, and now he pines in prison, a scandal to the British name. Aye, just as I, a lesser victim pine"; and he calls upon the Militia "to refuse to receive land till they receive it without fee and without distinction."

July 5, the House voted this "a scandalous, malicious and traitorous libel," and requested the Lieutenant-Governor to cause the authors, printers and publishers to be prosecuted by the Attorney-General. His Excellency complied with the request. Bartimus Ferguson, the Editor and Publisher of the Niagara Spectator, was at the time on Talbot Road, a hundred miles away from Niagara. He had been assured in the preceding December that he would not thereafter be blamed for publications, provided he kept the manuscript bearing the signature of the

author. Notwithstanding this assurance (which by the way, no one had legal power to give), he was arrested at his home in Niagara, taken from his bed in the middle of the night, July 13, by the Sheriff, Thomas Merritt, under a warrant issued against him on two criminal informations at the instance of the Attorney-General. He was at once taken to the gaol and kept till morning, when the Sheriff took him by water to York. He was brought before the full bench of three Judges. At his own request he was remanded to the gaol at York till the following day, to give him an opportunity of considering the charges against him. He procured copies of the two informations filed against him, and next day was again brought before the Court. He pleaded not guilty and was remanded for trial at Niagara. Ferguson says that Merritt's treatment of him was beastly in the extreme; having been ordered to take his prisoner back to Niagara where he could find bail, he remained at York two or three days rioting and gambling, Ferguson being in York gaol and his business neglected at home. He complains also of ill-treatment on the way home (he was brought by land and exposed to view as a malefactor, says Gourlay), and charges that this conduct of the Sheriff was due to his being reprimanded by the Attorney-General for allowing Gourlay writing material, which conduct of the Attorney-General caused the Sheriff to fear the loss of his position. That there was much ground for such fear became manifest a little later. Ferguson also charged that the Sheriff read the manuscript of the article for which he took him to York before it left the gaol, and also of a subsequent article for which he was being prosecuted. (124) Ferguson was at length brought back to Niagara, he procured bail, and was released for the time. Gourlay begged him to have his case traversed over to the August Assizes, and let him (Gourlay) have an opportunity of defending his own writing, but in vain. He then entreated his lawyer to defend his client on the argument used by Erskine in the case of Cuthell, but in vain. (125) They were sanguine of success, and perhaps ambitious of appearing as champions of the Press; but Ferguson was convicted, August 19, (126) and immediately committed to prison. Ferguson, the ensuing term, November 8, was brought before the Court at York and sentenced to pay a fine of £50 (\$200) and to be imprisoned in the common gaol at Niagara for eighteen months—in the first of these months he was to stand in the public pillory between the hours of 10 a. m. and 2 p. m.—at the expiration of the time he was to give bonds for good behaviour for seven years, and to be imprisoned until the fine was paid and security given. Some of this scandalous sentence was remitted on Ferguson making a humble submission. (127)

Returning to Gourlay—after he had been confined for two months, his health began to suffer, and he was allowed to walk along the passages and sit at the door. This continued for some four months or so, when he wrote the letter of June 28. The publication of this apparently caused the Sheriff to be reprimanded or warned; at all events, Gourlay was again confined to his cell, and was not allowed to converse with his friends except through a hole in the door, with the gaoler or under-sheriff watching. The Quarter Sessions, which should have taken cognizance of

this barbarous treatment, did not. Notwithstanding the closeness of the watch upon him, he managed to have his letter of 19th July carried to the Press by a gentleman who had been with him in his cell; and this angered the gaoler. A week afterwards he got out a letter complaining of his own treatment, but this the editor refused to publish, with the excuse that he had promised the under-sheriff that he would not publish any more of Gourlay's productions. Another letter, complaining of the treatment of other prisoners, had no better fate; not one line of his was allowed to see the light for four weeks before his trial. (128)

The *saeva indignatio* which so preyed on the fine mind of the Dean of St. Patrick attacked the mind of one much like him in *perfervidum ingenium*. He says: "Exasperation of mind now joined to the heat of the weather, which was excessive, rapidly wasted my health and impaired my faculties. I felt my memory sensibly affected, and could not connect my ideas through any length of reasoning but by writing, which many days I was wholly unfitted for by the violence of continued headache." He was a nervous wreck, perilously near insanity. One morning, gasping for breath, he asked the gaoler to give him air by opening the window—the brute refused, because Gourlay had sent out the letter in favour of Ferguson already referred to. Some time before the Assizes the heat moderated, and he was able to write out his defence, covering every point which he thought likely to come up in a trial for seditious libel. Gourlay never till the end of his life could disconnect the trials and acquittals at Kingston and Brockville from the entirely different charge at Niagara; he over and over again complains that he who had been acquitted twice should be prosecuted again. A short time before the trial he was informed that he was not to be tried for sedition or libel, but for the statutory offence of refusing to obey the order to leave the Province; he accordingly prepared a protest against that course. But he was again and definitely informed that this was to be the charge; his overwrought mind gave way, "a state of nervous irritability of which I was not then sufficiently aware deprived my mind of the power of reflection on the subject; I was seized with a fit of convulsive laughter, resolved not to defend such a suit, and was perhaps rejoiced that I might be even thus set at liberty from my horrible situation." (129)

His trial came on August 20, 1819, before Chief Justice Powell at Niagara. He was determined not to defend a prosecution for refusing to obey the order of Dickson and Claus, but had a formal protest all ready prepared against a conviction for such offence.

A good deal of "fine writing" has been indulged in, in describing this trial, much of it due to a want of appreciation of criminal proceedings. It was, after all, but a commonplace affair, a charge practically undefended and incapable of being defended. It is quite true that the indictment set out the circumstances under which the order was made, but that did not put in issue whether the prisoner had been guilty of sedition, as seems to be thought by some. (130) It was mere matter of inducement and need not and could not be proved on the trial, any more than the allegation that the accused "had not the fear of God in his

heart but was instigated by the Devil." Indictments in those days and for long after were technical and cumbrous, and had not attained the simplicity of the present day.

The prosecuting Counsel, the Attorney-General, John Beverley Robinson, had simply to prove the order and the prisoner's disobedience, and the Jury was bound to convict. Gourlay says that the Jury was packed. This is a suspicion which may be well founded, but there was no need of packing; the admitted facts necessitated a conviction unless the Jury should be false to their oaths. Many years after, that is in 1841, Dr. Dunlop ("Tiger" Dunlop), M.P., who espoused Gourlay's cause, said that the conviction was brought about by "a most lawyer-like and quibbling construction as to the meaning of habitancy. The Judge informed the astonished Jury that to constitute habitancy a man must possess a dwelling of his own; living in the house of another could not make a man an inhabitant." (131) This is quite different from Gourlay's statement: "My fate, I believe, was determined by a misconstruction of the Judge of the word 'inhabitant.' To the best of my recollection this was defined to mean a person who had paid taxes or performed statute labour on the roads." Gourlay says that the question was started by an Englishman (not named), who had dined with him at the same table for months. (132)

No one who has had any experience with reports given by those in Court as to rulings of a Judge will be inclined to place much reliance on even contemporary reports; and it is reasonable to express very strong doubt as to the Judge saying anything about the meaning of "inhabitant" at all, at least in directing the Jury in the case. The Statute lays the onus of proof on the accused; he gave no evidence, and there was no need of anything being said of inhabitancy, etc. Chief Justice Powell was a sound lawyer, and no one was less likely than he to bring in irrelevant matter; while the Attorney-General understood his profession if anyone did. Dr. Dunlop's sneer at the lawyer-like quibble is based upon the erroneous view of a Judge's duty already referred to. If Powell did define an inhabitant as Dunlop imagines, he was following in substance a decision then very recent in the Court of King's Bench in England. (133) Outside of a Court of Law everyone may decide for himself whether a man should be called "an inhabitant of Upper Canada for six months," who had come out for a temporary purpose, intending to return, and who had made up his mind to remain only a few weeks before his arrest.

When Gourlay's case was called on for trial, "the action of the fresh air," as he thinks, "after six weeks' close confinement, produced the effect of intoxication." "I had no control over my conduct, no sense of consequence, nor little other feeling but of ridicule and disgust for the Court which countenanced such a trial." He forgot the written protest he had ready in his pocket, could not even remember the word "protest," and when he was found guilty he asked a jurymen if it was for sedition. (134) This, his own account, is borne out at least in part by the evidence already spoken of given in 1841 by three of those pre-

sent. But all this had no effect on the trial; the admitted facts condemned him; and he had already determined not to defend such a prosecution. He was sentenced forthwith, the Court pronouncing the only sentence allowed by the Statute, banishment on pain of death for disobedience.

A few words now as to the whole wretched prosecution:

In the first place the Committee of the House appointed in 1841, reported that the Statute was unconstitutional.<sup>(135)</sup> This may mean one of two things, either that the Parliament of Upper Canada had not the legal power to pass such a Statute, or, that having the power, it should not have exercised it. If the former be the meaning the statement is baseless, for no one can doubt the power of Parliament. Of the unwisdom of passing such an Act there can be little doubt unless there was extreme necessity, and of that no one can judge who is not acquainted with the state of the Province at that time. The extraordinary power given to Legislative Councillors and others is not unlike that given now to the Minister of the Interior in the case of undesirable immigrants. But it must be remembered that none of those concerned in the prosecution of Gourlay was responsible for the legislation passed fifteen years before.

Then the Committee say that the Statute had an unjust construction placed upon it. For this there is no justification; the construction placed upon it by the Court was the only possible construction.

The Committee add that the power of the Councillors was "most illegally exercised." Their power was exercised in strict accordance with law however unwisely and with however improper motive.

The Report of the Committee was answered most conclusively in a Report of a Committee of the Legislative Council which is said to have been written by the Hon. Robert Baldwin Sullivan,<sup>(163)</sup> and which is worthy even of that distinguished lawyer and judge.

## NOTES TO PART I.

\* \* In these Notes the following contractions are employed:

"Nep."—"The Banished Briton and Neptunian" or "The Neptunian." See Note 111 to Part II.

"Ap."—"An Appeal to Common Sense . . . of the British Nation." See Note 37 to Part II.

"Chron. of Can."—"Chronicles of Canada . . ." See Note 117 to Part II.

"Stat. Ac."—"Statistical Account of Upper Canada . . ." See Note 29 to Part II.

"Gen. Intro."—"General Introduction to Statistical Account of Upper Canada . . ." See same Note 20.

"How. St. Tr."—Howell's State Trials.

"Ves."—Vesey's Reports (Chancery).

"V. & B."—Vesey and Beames' Reports (Chancery).

"B. & Ald."—Barnwell and Alderson's Reports (English).

"U. C. L. J."—Upper Canada Law Journal.

"Introduction," "Intro.," etc.—"Introduction to The Banished Briton and Neptunian No. 1."

"C. B., N. S."—Reports (English) of Cases in the Common Bench, New Series.

"East"—East's Reports of Cases in the King's Bench (English).

"Jour. Leg. Assy," etc.—Journals of the Legislative Assembly, Upper Canada.

(1)—See his holograph dedication of his "Letter to the Earl of Kellie," to the Resident Landowners of Upper Canada, now in the Public Reference Library, Toronto—cf. Note 16 infra.

(2)—Nep. No. 2, p. 5.

(3)—Nep. No. 7, p. 71.

(4)—Nep. No. 15, p. 133 (n). Gourlay says "the second who perished at the stake for the cause of religious liberty."

(5)—Ap. xlii.

(6)—Introduction.

(7)—Introduction and Nep. No. 19, p. 212. He did not graduate at either academy, but the records of his attendance at both still exist (from information kindly furnished to me by the Registrars of the universities). The "profound Mr. Robinson" was of course Mr. John Robison, Professor of Natural Philosophy at the University of Edinburgh. He is now remembered only from his curious book attacking Freemasonry, "a lasting monument of fatuous credulity," as it has been rightly characterized—"Proofs of a Conspiracy against all the Religions and Governments of Europe, carried on in the Secret Meetings of Freemasons, Illuminati, and Reading Societies," 1797. Edinburgh, 8 vo., with subsequent editions in Edinburgh (1797), Dublin (1798), London (1798) and New York (1798).

(8)—Introduction.

(9)—Ap. xlii. Professor Hume was David Hume, nephew of the more celebrated David Hume, the philosopher; he was Professor of Scottish Law in the University of Edinburgh and became Baron of the Scottish Exchequer—he is best known by his Reports.

(10)—Introduction, Nep. No. 1; Nep. No. 23, p. 269.

(11)—Introduction, Nep. No. 1.

(12)—Ap. lxii.

(13)—Ap. pp. 34, 35.

(14)—Nep. No. 4, p. 41.

(15)—This was Thomas Erskine, 9th Earl of Kellie and of the line of the first Earl; not long after, John Francis Miller the 9th Earl of Mar proved his right to the

Earldom of Kellie, on failure of the male line of the first Earl of Kellie and ever since the earldoms have been united.

(16)—Letters/to/The Earl of Kellie/concerning/The Farmer's Income Tax/with a Hint on/the Principle/of/Representation/etc., etc./ . . . London/Printed by Eallantine and Law/Duke-Street, Adelphi/sold by E. Wilson, Paternoster Row/ and may be had of all Booksellers/1818/ (Price two Shillings).

(17)—Ap. p. 63.

(18)—Introd., pp. 12, 13.

(19)—Introd., p. 13; Ap. pp. 22, 163.

(20)—See the report of Gourlay v. Duke of Somerset (1812) 1 V. & B. 68.

(21)—Ap. p. 69.

(22)—Ap. pp. 75, 76.

(23)—Gourlay v. Duke of Somerset, (1815), 19 Ves. 429. (Sir William Grant for a time practised law in Montreal.)

(24)—Tyranny of Poor Laws/exemplified./Bath./Printed by Gye and Son, Market-Place./By Robert Gourlay./March 13, 1815.

(25)—"Poor Laws, No. 2." "H. Gye, Printer, Bath."

(26)—The Village System/Being a Scheme for the Gradual/Abolition of Pauperism/and/Immediate/Employment and Provisioning/of/The People/By Robert Gourlay/Printed and Sold by Henry Gye, Market-Place, Bath/Sold also by Highley and Son, Fleet Street, London/Gilmour, Salisbury and other Booksellers/1817.

(27)—The/Petition/for the/Benefit of the labouring Poor/Presented and not Presented/By/Sir Francis Burdett/Disenrdd by Lord Cochrane/and/Spurned by Lord Folkstone/Now laid before Parliament/With occasional Correspondence/and Remarks on the Subject of the Poor Laws./Parliamentary Reform./By Robert Gourlay/Printed and sold by Henry Gye, Market-Place, Bath/Sold also by Coulton Devizes, Vardy, Warminster/Gilmour Salisbury and other Booksellers/1817. 42 pages, octavo.

(28)—The/Right/To/Church Property/Secured/and/Commutation of Tythes vindicated In a Letter/to the/Rev. William Coxe/Archdeacon of Wilts/London/Printed for Highley and Son, 174 Fleet-Street/and sold by all other Booksellers/1815. 41 pages, octavo.

(29)—Liberty of the Press/Asserted/in/An Appeal/to the/Inhabitants of Wilts/ and/a Letter/on the/Corn Laws/Bath.

(30)—This is indicated in several passages.

(31)—Nep. No. 25, p. 304.(n)

(32)—Nep. No. 17, p. 180.

(33)—Nep. No. 25, p. 302.

(34)—Nep. No. 25, p. 302.

(35)—Ap. p. 75.

(36)—Nep. No. 25, p. 319, no. 24; p. 320, no. 26; p. 323, no. 29.

(37)—Nep. No. 1, p. 15; No. 17, p. 180.

(38)—Nep. No. 25, p. 304, no. 4; p. 302, no. 1.

(39)—Nep. No. 20, p. 237 n; at another place he says "On my voyage to Quebec, it occurred that something might be done by circulating queries for information necessary to emigrants." Introd., p. 15.

(40)—One of these (the St. Lawrence diagram) is prefixed to Vol. 1, the other to the General Introduction of the "Statistical Account of Upper Canada, 1822."

(41)—Nep. No. 19, p. 209, note.\*

(42)—Nep. No. 25, p. 305, no. 6 and note at p. 308. He says apparently with perfect seriousness that this two-months sickness was "caused by the stinging of mosquitoes" and that it undid his plan of returning home in six months. Nep. No. 22, p. 238 (n). If this is true, mosquitoes have played no small part in our history.

(43)—Ap. p. 170.

(44)—Nep. No. 25, no. 7, pp. 309 and 310 (wrongly paged 301 in the pamphlet).

(45)—Nep. No. 19, p. 209.

(46)—Nep. No. 16, p. 154; Nep. No. 19, pp. 206, 207.

(47)—Stat. Ac., Vol. 1, pp. 521, 522.

(48)—Nep. No. 25, p. 314, no. 16.

(49)—Nep. No. 17, p. 177, n.

(50)—Nep. No. 22, p. 240.

(51)—A Visit to the Province of Upper Canada in 1819, by James Strachan/Aberdeen/Printed by D. Chalmers & Co./For James Strachan, Aberdeen/Longman, Hurst Rees Orme and Erown London; Oliver and Boyd, Edinburgh; W. Turnbull, Glasgow/and E. Lesslie, Dundee/1820. Nep. No. 26, pp. 348, 349 and note on p. 352.

(52)—Nep. No. 26, p. 348.

(53)—Nep. No. 17, p. 176.

(54)—Nep. No. 17, p. 177.

(55)—Nep. No. 17, p. 179. (The letter is dated January 8, 1817, but it is plain that the date should be 1818.)

(56)—Nep. No. 21, p. 231.

(57)—Nep. No. 21, p. 232.

(58)—Nep. No. 19, pp. 205-214.

(59)—Nep. No. 18, p. 201.

(60)—Gen. Intro., pp. excix-ccii.

The attack on the Ex-President was of course the able and spirited open letter to ex-President Jefferson, which every Canadian must admire and approve; the propriety of the letter to Lord Selkirk is still a matter of dispute.

(61)—Nep. No. 30, p. 411, and many other places.

(62)—Nep. No. 18, pp. 191-200.

(63)—Nep. No. 19, p. 214. The sheets were sent to York for binding but they seem to have been lost (except two copies stitched for Gourlay's own use). Some dozen or so years thereafter, the sheets came to light in a garret, and were sold by auction with someone's household effects. Mr. Doxstader, a journeyman printer, who had set up Gourlay's matter in the Upper Canada Gazette and the Niagara Spectator, and also the volume in question, bought a copy. Meeting Gourlay at Cleveland, Ohio, in 1837, he gave him the copy from which, February 27, 1844, Gourlay printed the matter a third time with two extracts from Canadian newspapers in The Neptunian, No. 19.

(64)—Nep. No. 25, p. 313, no. 14; do. p. 314, no. 16.

(65)—Nep. No. 20 (all).

(66)—Nep. No. 21, pp. 224-230.

(67)—Nep. No. 26, pp. 330-332.

(68)—Nep. No. 22, (all).

(69)—Nep. No. 25, p. 315, no. 18.

(70)—Nep. No. 25, p. 316, no. 19.

(71)—Nep. No. 22, p. 252.

(72)—Nep. No. 22, p. 252.

(73)—Chron. of Can., 1st Edit., (1842), p. 4.

(74)—The reference is to the trial of "Friends of the People" in 1793.

In August 29th and 31st, Thomas Muir, Jr., of Huntershill, was tried before the High Court of Justiciary at Edinburgh for sedition. The substance of the charge was attending and taking part in meetings to amend and reform Representation in Parliament. This was in those days considered sedition, at least in those of lower rank and condition in life. The pannel was accused of seditious harangues, vilifying the King and constitution, representing the monarchical part of the government as cumbersome and expensive and inciting the people to insurrection and rebellion—the occasion being two meetings, one at Campsie and the other at Kirkintilloch. The Lord Justice Clerk told the jury that two things were certain and required no proof: "First, that the British Constitution is the best that ever was since the creation of the world and it is not possible to make it better . . . the next . . . that there was a spirit of sedition in this country last winter which made every good man very uneasy. . . . (His Lordship) never liked the French all his days and now he hated them. . . . Mr. Muir had . . . gone about among ignorant country people making them forget their work and told them that a reform was absolutely necessary for preserving their liberty which if it had not been for him they never would have thought was in danger" and much more of the same sort. The jury convicted; and the unfortunate reformer was sentenced to fourteen years' transportation.

An/Account/of the Trial/of/Thomas Muir, Esq., Younger, of Huntershill, /Before the/High Court of Justiciary, at Edinburgh. . . . /Edinburgh/ . . . ' (a somewhat rare publication of which I have a copy); 23 How. St. Trials, 117, 1405.

Muir was sent to Botany Bay, rescued by an American ship in 1796, wrecked on Nootka Sound, taken captive by the Indians, treated well in Mexico and imprisoned at Havana. Being sent to Spain in a Spanish frigate, he was seriously wounded by shot from British cruisers which attacked her; left for dead, he was afterwards imprisoned in Spain. He was released at the instance of the French Directory but died of his wounds, 1797, at Chantilly. There is a monument to his memory and that of other Scottish political reformers on Calton Hill, Edinburgh, erected in 1844.

In the following month, September 12th and 13th, 1793, at Perth, Scotland, the trial for seditious practices of the Revd. Thomas Fyshe Palmer, of Dundee, a Unitarian Minister, was held before the Circuit Court of Justiciary, Lords Eskgrove and Abercrombie presiding. The "seditious practices" were the writing and publishing the address of the "Friends of Liberty"—substantially a plea for reform in parliamentary representation and against the war with France. Palmer was convicted and sentenced to seven years' transportation. He remained in banishment till 1802 and when on his way home was captured by the Spaniards; he died a prisoner in 1802, his body afterwards being exhumed and reinterred at Boston, Mass.

The/Trial/of the/Rev. Thomas Fyshe Palmer/before the/Circuit Court of Justiciary,/held at Perth on the 12th and 13th September, 1793,/on an Indictment for Seditious Practices/ . . . . /Edinburgh/ . . . ' (Also a rare volume in my Library); 23 How. St. Tr., 237.

The trial of James Tytler, at Edinburgh, for sedition, January 7, 1793, 23 How. St. Tr. 1; of James Morton, James Anderson and Malcolm Craig, at the same place, for the same offence, January 8th, 9th and 11th, 1793, 23 How. St. Tr. 7, and many others, reports of which are to be found in the State Trials, Vols. 22, 23 and 24—all are like that of Muir, and are no doubt those to which Gourlay refers. They were a disgrace to the Government and excusable only because of the alarming condition of the country by reason of foreign wars.

Adolphus, in his History of England, gives some account of them, Vol. V., pp. 538 sqq.

Clark was much more nearly accurate in his view of the effect of the Scottish cases than Gourlay; under the law as it was judicially laid down, there can be no doubt that Gourlay and all those attending the meetings would have been convicted of seditious practices—and Gourlay for his writings would undoubtedly have been very severely punished.

This is an instance, among several, of Gourlay's acting upon his firm conviction that he knew more about law than anyone else, Judge, Counsel, Attorney or Legislator—a conviction for which he paid very dearly more than once.

(75)—Chron. of Can., 1st Edit., pp. 5-10.

(76)—Nep. No. 25, p. 317, no. 22.

(77)—Chron. of Can., 1st Edit., pp. 12-14.

(78)—Nep. No. 30, passim; Nep. No. 26, pp. 335, 336; Nep. No. 12, pp. 108, sqq.; Nep. No. 13, pp. 113-120.

(79)—*Oliver v. Oliver* (1861) 11 C. B., N. S., 139. Our Canadian Statute R. S. Can. (1906), c. 66, s. 83, making a letter once it is posted the property of the addressee, simply lays down explicitly what has always been the law.

(80)—Nep. No. 30, pp. 419-421.

(81)—Nep. No. 30, p. 428. He continues: "I made search as to the true history of the nose, one said it was injured by a stroke of Mrs. Walker of the Hotel (i. e. Walker's Hotel, Kingston) with a brass candlestick, another that it was cut with an axe; but as Mr. Paul Peterson, who was raised in the same neighbourhood, assured me that while Hagerman was a boy he fell and had it smashed on the lip of a kettle in consequence of the stair ladder of the log house wanting a rung." There is no doubt of the currency of such rumours. In a pamphlet published at Buffalo by Charles Faxon, Printer, in 1838, entitled "A Letter to John Walton, editor of the Shrewsbury Chronicle, England, from Rowland Wingfield, Upper Canada," appears on p. 38 the following: ". . . that singular character who calls himself the 'Father of Reform in Upper Canada', Robert Gourlay, a man notorious for having attempted to horsewhip Lord Brougham in the lobby of the House of Commons and who actually did horsewhip Mr. Hagerman, the Attorney-General of Upper Canada, and that so severely as to have entirely spoiled his beauty, leaving him minus part of his nose." When a lad, half a century or more ago, I heard the same statement more than once: it was current tradition. He is the same Hagerman whom Mrs. Jameson playfully, perhaps a little maliciously, calls "that great mastiff Hagerman," and afterwards Judge of the Court of King's Bench.

(82)—Nep. No. 13, p. 116. This was the steamboat which excited so much admiration in Dr. John Howison, and which he described in most enthusiastic terms: "The largest steamboat in Canada, her deck is one hundred and seventy-one feet long, and thirty-two wide; she is seven hundred and forty tons burden and draws only eight feet of water when loaded. Two paddle wheels, each forty feet in circumference, impel her through the water," and, "when the wind is favourable sails nine knots an hour with ease." "Sketches of Upper Canada, by John Howison, Esq." First (and best) edition, 1821, pp. 47, 48, 54.

(83)—Nep. No. 30, p. 408.

(84)—This was a pamphlet published at the Niagara Spectator's Office in May, 1818, containing an address by the Representatives of the Niagara District, Gourlay's third address, reports of various township meetings, Clark's and Hamilton's Handbill, Gourlay's address to the worthy Inhabitant of the District of Niagara, April 21, 1818, and a draft Petition to the Prince Address. See Chron. of Canada, pp. 1-14; Nep. No. 22, p. 264; Nep. No. 30, p. 427. The pamphlet is very rare (I have seen a copy priced at \$20.00 in a second-hand dealer's catalogue); the title reads thus: "Principles and Proceedings of the Inhabitants of the District of Niagara, for addressing H. R. H. the Prince Regent, Respecting/claims of sufferers in War Lands/to Militiamen, and the general Benefit/of/Upper Canada/Printed/at the Niagara Spectator Office/1818" 24 pp.

The Transactions of the Convention were also published about the same time, Nep. No. 30, p. 427, and in August, 1818, the Narrative of Gourlay's journey in that summer in the Province. Nep. No. 30, p. 427.

(85)—Nep. No. 25, p. 320, no. 26. Chron. of Can., 1st Edit., p. 23; Nep. No. 13, p. 123.

(86)—Nep. No. 25, p. 322, no. 28.

(87)—Nep. No. 13, p. 118.

(88)—Nep. No. 25, p. 320, no. 26; Gen. Intro. p. dii.

(89)—He was acting Solicitor-General (not acting Attorney-General, as Gourlay states), and received the appointment as Solicitor-General July, 1820; as Attorney-General, July 1829, on the Attorney-General John Beverley Robinson being appointed Chief Justice.

(90)—Ap. pp. 38, 39.

(91)—Nep. No. 30, p. 427. This pamphlet, a 12 mo., is very rare, but a copy turns up from time to time. The Toronto Public Library possesses one: "Address/to/The Jury at Kingston Assizes in the case of/The King v. Robert Gourlay/for/Libel with/a Report of the Trial, etc., etc./Printed at the Gazette Office, Kingston/August, 1818." It is dedicated, August 20, to the Friends of Enquiry in a dedication, signed Robert Gourlay. Boulton's father was Mr. Justice D'Arcy Boulton, and the alleged murder was a fatal duel; Mackenzie made much of this also.

See also Nep. No. 12, p. 112; Nep. No. 25, p. 318, no. 23. Lake v. King is reported 1 Saunders, 131; 1 Levinz; 1 Modern Rep. 58; Siderfin 414; and is still a ruling case and good law.

(92)—Nep. No. 12, p. 112.

(93)—Nep. No. 12, p. 107.

(94)—Chron. of Can., 1st Edit., p. 29.

(95)—Nep. No. 13, p. 130; Nep. No. 25, p. 320, no. 26.

(96)—Nep. No. 15, p. 134.

(97)—Nep. No. 1, pp. 15, 16; Nep. No. 13, pp. 120, 121.

(98)—Chron. of Can., 1st Edit., pp. 30, 31.

(99)—Nep. No. 15, pp. 133-142; Nep. No. 16, pp. 148, 149.

(100)—Nep. No. 16, pp. 139, 150, 151, 152. The pamphlet referred to as containing Fothergill's speech is a 12 mo. "Proceedings/at a/Meeting/of the Inhabitants of the Townships/of/Hope and Hamilton/in the District/of/Newcastle U. C./Held agreeable to notice/from/Robert Gourlay/York U. C./Printed by R. C. Horne/1818." From an examination of the names signed to the resolution it appears that many of those present were from Hope Township. (This is my place of origin and I recognize the names of many.)

Charles Fothergill, J. P., was an Englishman of good education; he had an "elegant cottage near Port Hope," and Gourlay spent an evening there with him at this time, and, from his seeming friendship, thought he would make a valuable auxiliary of him, but the expectation proved wrong. Fothergill afterwards, in 1821, became King's Printer in York, published the Gazette and an Almanac, continuing his opposition to Gourlay. But in course of time he became member of the Assembly, fell out of favour, and, in 1826, lost his position with unhappy consequences to his fortunes. He and Gourlay met again by accident at an hotel in Niagara in 1839, and were reconciled. Nep. No. 37, p. 498, No. 7 and note. He was an experienced naturalist and wrote several volumes of manuscript on the animals and birds of this continent, supplying Bewick with a horned owl, stuffed, for illustration. He took an active part in a scheme for a Museum and Institute of Natural History and Philo-see with Botanical and Zoological Gardens attached, which fell to the ground. See Scadding's Toronto of Old. The Almanac is not very common. The York/Almanac/and/Royal Calendar/of/Upper Canada/for the year/1825/. (Print of Royal Arms)/York U. C./Published by and for Charles Fothergill, Esq./Printer to the King's Most Excellent Majesty/and sold by all Agents for the U. C. Gazette and Weekly Register/Throughout Canada. At p. 68 he thus writes of "the famous Patriot Mr. Gourlay": "It has always been a subject of regret to the writer of this sketch that one so well qualified to promote the agricultural interests and encourage fresh accessions to our population from other parts of the British Dominions should have intermeddled with politics, since on many questions of political economy, and especially on the subject of the Poor Laws of England, that eccentric being was a perfect adept, whilst on Politics he became not merely bewildered but actually insane." Many at the time, and more since, would agree with Fothergill in these judgments.

(101)—Nep. No. 26, pp. 329, 330. This was forwarded by Archibald McLean, afterwards Chief Justice. Gourlay had had a letter of introduction to him and had been received by him most politely. He had given him some pamphlets to read and circulate, but by the 4th of June he found, much to his astonishment, that McLean

was adverse to him. Nep. No. 26, p. 334. Afterwards, in 1822, when Gourlay was in prison in London, he offered to get out of prison long enough to give McLean a chance to horsewhip him as he had heard McLean had once threatened to do; but McLean, being then in London, had too much sense to accept the offer. McLean had been angered by Gourlay's reference in one of his Addresses to "worldly minded priests, pettifogging lawyers and the spawn of legislative councillors." Nep. No. 30, p. 428.

(102)—Chron. of Can., 1st Edition, pp. 31-34.

(103)—Gen. Intro., p. xi.

(104)—Nep. No. 16, pp. 145-148.

(105)—Nep. No. 16, p. 153; Nep. No. 35, p. 476.

(106)—Nep. No. 16, p. 154.

(107)—44 George III., c. 1, U. C. reads:

"An Act for the better securing this Province against all seditious attempts or designs to disturb the Tranquillity thereof.

(Passed 9th March, 1804).

Whereas it is necessary to protect his Majesty's subjects of this Province from the insidious attempts or designs of evil minded and seditious persons; And whereas much danger may arise to the public tranquillity thereof, from the unrestrained resort and residence of such persons therein; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled "an Act for making more effectual provision for the government of the Province of Quebec, in North America, and to make further provision for the government of the said Province" and by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the Members of the Legislative and Executive Councils, the Judges of his Majesty's Court of King's Bench for the time being, respectively, or for any person or persons authorized in that behalf, by an instrument under the hand and seal of the Governor, Lieutenant Governor, or Person Administering the Government for the time being, or any one or more of them, jointly or separately, by warrant or warrants under his or their hand and seal, or hands and seals, to arrest any person or persons, not having been an inhabitant or inhabitants of this Province for the space of six months next preceding the date of such warrant or warrants, or not having taken the oath of allegiance to our Sovereign Lord the King, 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 this Province from his person or government, or in any wise with a seditious intent to disturb the tranquillity thereof, to the end that such person or persons shall forthwith be brought before the said person or persons so granting such warrant or warrants against him, her or them, or any other person or persons duly authorized to grant such warrants by virtue of this Act; And if such person or persons, not being such inhabitant or inhabitants as aforesaid, or not having taken such oath of allegiance, shall not give to the person or persons so granting such warrant or warrants, or so authorized as aforesaid, before whom he, she or they shall be brought, full and complete satisfaction that his, her or their words, actions, conduct or behaviour had no such tendency, or were not intended to promote or encourage disaffection to his Majesty's person or government, it shall and may be lawful for each or any of the said persons so granting such warrant or warrants, or so authorized as aforesaid, and he and they is and are hereby required to deliver an order or orders in writing, to such person or persons, not being such inhabitant or inhabitants as aforesaid, or not having taken such oath of allegiance, requiring of him, her or them to depart this Province within a time to be limited by such order or orders, or if it shall be deemed expedient that he, she or they should be permitted to remain in this Province, to require from him, her or them good and sufficient security to the satisfaction of the person or persons acting under the authority hereby given, for his, her or their good behaviour, during his, her or their continuance therein.

II. And be it further Enacted by the Authority aforesaid, That if any person or persons, not being such inhabitant or inhabitants as aforesaid, or not having taken such oath of allegiance, who by any order or orders so delivered to him, her or them, is or are required to depart this Province within a time limited by that order, should by sickness or other impediment, be prevented from paying due obedience to the same, it shall and may be lawful for the person or persons who hath or have issued such order or orders as aforesaid, or for any other person or persons as aforesaid, authorized by this Act so to do (the person or persons acting under the authority hereby given, being first satisfied that such impediment by sickness or otherwise, ought to be admitted as a reason for such order as aforesaid not having been obeyed) by an indorsement in writing upon the said order or orders, or otherwise in writing, to enlarge the time specified in the said order or orders, from time to time as occasion may require, and if any person or persons so having been required or ordered to quit this Province as aforesaid, and not having obtained an enlargement of such time, in manner hereinbefore specified, shall be found at large therein, or return thereunto after the time limited by any or either of such orders, without licence from the Governor, Lieutenant Governor, or Person administering the Government for the time being, in that behalf, or in case any person or persons who shall have been served with any or either of such order or orders as aforesaid, or who shall have been permitted to remain in this Province, upon such security as aforesaid, shall by words, actions or otherwise, endeavour to give 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 this Province from his Person or Government, or in any wise with a seditious intent, to disturb the tranquillity thereof, it shall and may be lawful for any one or more of he said person or persons so authorized by this Act as aforesaid, and he and they is, and are hereby required, by warrant or warrants under his or their hand and seal, or hands and seals, to commit such person or persons so remaining at large, or returning into this Province without such licence as aforesaid, or so endeavouring or giving cause to suspect, that he, she or they is or are about to endeavour so to alienate the minds of his Majesty's subjects of this Province, or in any wise with a seditious intent, to disturb the tranquillity thereof, to the common Gaol, or to the custody of the Sheriff of the district, in such districts in which there shall be no gaol at that time, there to remain without bail or mainprize, unless delivered therefrom by special order from the Governor, Lieutenant Governor or Person administering the Government for the time being, until, he, she or they can be prosecuted for such offence in his Majesty's Court of King's Bench, or of Oyer and Terminer and General Gaol Delivery in this Province, or under any special commission of Oyer and Terminer to be issued by the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being; and if such person or persons, not being such inhabitant or inhabitants as aforesaid, or not having taken such oath of allegiance, shall be duly convicted of any of the offences herein before described, in either of the said Courts respectively, he, she or they shall be adjudged by such Court forthwith to depart this Province, or to be imprisoned in the common Gaol, or be delivered over to the custody of the Sheriff in such districts in which there shall be no gaol at that time, for a time to be limited by such judgement, and at the expiration of that time to depart this Province; and if such person or persons so convicted as aforesaid, shall remain in this Province, or return thereto after the expiration of the time to be limited by the said judgement, without licence from the Governor, Lieutenant Governor, or Person administering the Government for the time being, in that behalf first had and obtained, such person or persons on being duly convicted of so remaining or returning, before either of the said Courts, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of Clergy. Provided always, That if in the execution of the powers hereby given, any question shall arise touching or concerning the space of time during which any person or persons shall have been an inhabitant or inhabitants of this Province previous to any warrant or warrants having been issued against him, her or them, or touching or concerning the fact of any person or persons having taken such oath of allegiance, the proof shall, in all such cases, lay (sic) on the party or parties against whom any such warrant or warrants shall, in virtue of the powers hereby given, have been granted or issued.

III. And be it further Enacted by the Authority aforesaid, That if any person or persons, at any time, shall be sued or prosecuted for any thing by him or them

done, in pursuance, or by colour of this Act, or of any matter or thing therein contained, such action or prosecution shall be commenced within three calendar months next after the offence shall have been committed, and such person or persons may plead the general issue, and give the special matter in evidence for his, her or their defence, and if, upon trial, a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs, shall become nonsuited, or shall discontinue his, her or their suit or prosecution, or if judgement be given for the defendant or defendants upon demurrer or otherwise, such defendant or defendants shall have treble costs to him or them awarded against the plaintiffs or plaintiffs."

I may add that William Lyon MacKenzie in his speech in the Legislative Assembly May 21st, 1858, when Gourlay asked to be heard before the House, says expressly that the Act was passed to prevent Irish Roman Catholics from settling in Upper Canada—"to keep out the Irish Catholics from this country." See a very rare brochure: Mr. Gourlay's Case before the Legislature with his/ Globe Book and Job Office/1858.

That the conclusions in the text as to the objects of the Act are well founded appears in a little work which I had not seen when the text was in hand. The work I refer to is entitled: "Life and Letters of the late/Hon. Richard Cartwright/Member of Legislative Council in the First Parliament of Upper Canada, Edited by Rev. C. E. Cartwright/Born 1759, Died 1815/ (Quotation from Tennyson)/Toronto, Canada: Sydney, N. S. W./Belford Brothers/MDCCLXXVI." 12 mo., cloth, pp. viii. 9-145. The book contains a short life of Cartwright by the Reverend Dr. Strachan, and letters by Cartwright to several correspondents from 1792 to 1808 on public matters, legislation, etc. It casts a flood of light on much of our early history and clears up some facts that have been in dispute. Of course there is no possible ground for suspecting anything but the best of good faith. In a letter to the Reverend Dr. Strachan, dated March 17th, 1804, Cartwright, speaking of the work of the Session of Parliament just closed, says: "The renewal of the war with France having been mentioned in the Governor's speech, and the necessity thence inferred of guarding the internal tranquillity of the Province against the insidious attempts of secret enemies, the subject was considered with the attention that so weighty a matter deserved. In the course of the investigation it was understood that the Executive Government already possessed a sufficient power of coercion and restraint over alien enemies; but it appeared likely that other instruments might be employed, and some upon whom it would be difficult to fix the proposed discriminating term of alien. It was agreed also that every political society ought to possess the power of excluding from its limits all strangers who evinced a disposition to excite dissension and inflame discontent among its respective orders; or in other words, to disturb the established government thereof; and on this principle a law was framed, authorizing persons in certain public situations—namely the Governor, members of the Legislative and Executive Council, Judges of the Court of King's Bench, and others to be commissioned by the Governor—on complaint being made against any person not a stated resident of the Province (that is, who had not been an inhabitant for six months before and had not taken the oath of allegiance) to call such person before them and require him to give an account of himself; and if he appeared to have been guilty of improper conduct in this respect or to have given just cause of suspicion of having sinister views of this kind, to order him out of the Province or to make him find sureties for his good behaviour while remaining therein, and the necessary provisions were added for enforcing obedience to such orders." This must dispose of the contention that the Act was an Alien Act, aimed at aliens only, and not at British subjects also. (It may be observed that the conjunction "and" used by Cartwright appears as "or" in the Statute as passed and engrossed). It appears that the Act was really a war measure: that it was not repealed after the war can be fully explained by the conduct of many, both alien and British subjects, during the War of 1812—that painful episode of the war has not yet received the attention it deserves.

(It is to be regretted that we have no more worthy a memorial of this most useful public servant who has helped to make our Province what it is. He was not the "recording animal" which Gourlay boasted himself to be, and we could profitably exchange some hundreds of pages of Gourlay for a few more of Cartwright.)

The records of the Houses of Parliament at York for 1804 are now available to all, and they bear out Cartwright's statements fully. In the Sixth Report of the Bureau of Archives for the Province of Ontario, Toronto, 1911, will be found the course of legislation:

1804. February 8th, the Lieutenant Governor, Peter Hunter, in the speech from the Throne said: "Among the first objects I would recommend to your deliberation is the security of this part of His Majesty's Dominion, by sane, wise and salutary law, calculated to protect the King's Government against aliens and to afford His Majesty's subjects in this Province all the internal security which can be derived from timely and well concerted legislative precaution."

February 8th, the address of the Legislative Council in answer to the speech from the Throne, said: "We shall duly attend to the framing of such salutary measures as may be calculated to protect the King's Government against aliens and to afford His Majesty's subjects in this province all the internal security which can be derived from timely and well-concerted legislative precaution."

February 9th, the House of Assembly in its Address in answer to the speech from the Throne, said: "Fully convinced of the good effects to be derived from timely precaution against the insidious designs of hostile aliens . . . we will lose no time in taking these important objects into our consideration . . ."

February 14th, in the Council, on motion of Mr. Baby, seconded by Mr. Cartwright, "that part of His Excellency the Lieutenant-Governor's speech . . . having reference to aliens" was read; and also that part of the answer of the House relative thereto—thereupon "Mr. Baby . . . moved, seconded by Mr. Duncan, for leave to bring in a Bill, the 'Alien Bill. and that the same be now read the first time."

February 15th. In the Council "a Bill intitled 'The Alien Bill' was read a second time."

February 21st, in the Council, "Mr. Cartwright moved, seconded by Mr. Baby, that that part of the order of the day which requires the further consideration of the 'Alien Bill' be discharged, and that the same be taken into consideration to-morrow. Ordered accordingly."

February 22nd, "the order in respect to the 'Alien Bill' " was discharged till to-morrow.

February 23rd, the House resolved itself into "Committee of the whole House upon the further consideration of the 'Alien Bill.' " House in Committee "went again into the consideration of the said Bill" and rose, reported progress, and asked to sit again on the morrow.

It was at this point that the Bill was changed so as no longer to be aimed simply at aliens—for on

February 24th, "the House resolved itself into Committee of the whole House upon the consideration of the Bill 'For better securing the Province against seditious attempts or designs to disturb the tranquillity thereof.' " Amendments were made, agreed to and engrossed.

February 25th, "Read as engrossed a Bill 'For the better securing this Province against all seditious attempts or designs to disturb the tranquillity thereof' " : the Bill was recommended and in Committee of the Whole other amendments were made, and ordered to be engrossed.

February 27th, it was again considered in Committee of the Whole and further amendments made. The amendments were read with the Bill and the Bill as amended adopted. Engrossed, it received the Speaker's signature and was sent down to the House of Assembly by the hands of the Master-in-Chancery, Mr. David Burns.

February 27th, received by the Assembly and read the first time;

February 29th, read the second time and considered in Committee of the Whole which made no amendments. Being reported without amendment, on the motion for the receipt and adoption of the report, Mr. Angus Macdonell, of York, moved,

seconded by Mr. Ralfe Clinch of Lincoln, that the Act should be in force only for four years. On a division, Maedonell and Clinch were alone for the amendment against eleven for the negative. The Bill was passed, signed by the Speaker, and returned to the Legislative Council by the hands of Mr. Samuel Sherwood of Grenville and Mr. John Ferguson of Frontenac. They performed their mission on the same day, and

March 9th the Bill received the assent of His Excellency.

It will be seen that the measure received most careful consideration and must have been thought necessary by those best competent to judge. It will be seen, Chap. 3 of Part II., that Gourlay himself says in his petition of May 4th, 1846, that this Act "was intended for Irish rebels or aliens."

(108)—Stat. Ac., Vol. 2, pp. 490, 491.

(109)—Gen. Intro., p. lxiv.

(110)—Stat. Ac., Vol. 2, p. 516. Gourlay explains the word thus: "Suppose a personage having purloined your sugar plum, sucks it till both his mouth and eyes water with gladness, making you all the time think that such gladness comes from the pleasure of your company instead of the sweet relish of your unseen and lost sugar plum, then you have some idea of the term 'pawkie'; and it will help you on to comprehend, though not altogether, the Chief Justice of Upper Canada." do. do. pp. 516, 517. The nick-name (for the adjective became such) "stuck."

(111)—Letter, Powell to Gore, January 18, 1819, in the Toronto Public Library.

(112)—Nep. No. 16, p. 163; Nep. No. 22, p. 263. Stat. Ac., Vol. 2, p. 498. The estimates of Swayzie differ according to the principles of the writer. Swayzie was a scout during the Revolutionary War; the Americans therefore called him a spy—he took horses for the loyal troops; they called him a horsethief. Some account of him will be found in a note to an article on Early Upper Canadian Legislation and Legislators in 33 C. L. T. for January, 1913, pp. 28, 29. It will be seen that he himself had been found guilty of sedition by a jury, and therefore he knew something about it. Stat. Ac., Vol. 2, p. 492.

(113)—See *In re Biggar*, 10 U. C. L. J., 329.

(114)—Gen. Intro., p. x.

(115)—Nep. No. 25, pp. 324, 326.

(116)—Gen. Intro., pp. lxxvii, lxxviii.

(117)—Gen. Intro., pp. ccxxx-ccxxxiii.

(118)—Nep. No. 26, pp. 330-334.

(119)—Stat. Ac., Vol. 2, p. 394. There is extant a contemporary description of the gaol at Niagara by a competent and impartial observer—it appears in a work seldom met with, entitled "Travels through part of the United States/and/Canada/ in 1818 and 1819. By John M. Duncan, A.B. in Two Volumes/Vol. New York/W. B. Biley, 92, Broadway/New Haven Howe & Spalding/1823." Cr. 8 vo. boards. Vol. I., pp. xvi, 333; Vol. II., pp. xii, 384.

In Volume II., pp. 107-108, Duncan describes the gaol at Niagara (which "map-makers and travellers persist in calling . . . Newark, but that name is not acknowledged by the inhabitants"):

"Niagara is possessed of a court house and jail; both under one roof. The jail is on the lower floor. The cells, both for criminals and debtors, surround and open from the hall, which leads to the court-room, and the guilty or unfortunate inmates are exposed to the gaze of everyone whom curiosity or idleness induces to enter. The partitions and doors of the various cells are composed of strong pieces of oak firmly bolted together; the doors are about nine inches thick, consisting of two thicknesses of wood with sheet-iron between them. Some of the debtors' apartments have a small window to the outside, but the criminals have no light but from a small semicircular opening in the door. The debtors have fire places, but the criminals have only the miserable comfort of looking out at a stove in the middle of the hall, from which no perceptible warmth can reach their dismal abodes. It must be truly dreadful to pass a Canadian winter in such a place. How miserably does this prison contrast with those in the United States!"

Duncan was a printer of a theological bent of mind, a university graduate, who took a deep interest in penology—he gives a careful description of the prisons at Boston, Philadelphia, etc. He exhibits nowhere any bias in favour of American institutions, rather the reverse.

(120)—Nep. No. 28, pp. 385-392.

(121)—Nep. No. 29, pp. 393-401.

(122)—Nep. No. 33, pp. 457-468.

(123)—Nep. No. 32, pp. 437-456.

(124)—Nep. No. 34, p. 477; Gen. Intro., p. xii.

(125)—This was the prosecution of Mr. Cuthell, one of the most respectable booksellers in London, who dealt almost exclusively in classical literature, and had published the philological writings of Rev. Gilbert Wakefield. Wakefield, through another printer, published a pamphlet in reply to the Bishop of Landaff, of which some copies were sent to Cuthell's shop for sale without Cuthell's knowledge. Cuthell's shopman sold a few copies also without Cuthell's knowledge, and Cuthell stopped the sale as soon as he discovered the nature of the publication. An information was brought against him at the instance of the Attorney-General, and he was defended by Erskine, who contended that the accused was not criminally liable for the act of his servant. This was not the law at that time, and Cuthell was convicted. After a short imprisonment he was discharged on paying a fine of 30 marks. As the law was the same in Upper Canada as in England, one can easily see the utter futility of a defence on such lines, the absurdity of Gourlay's advice, and the wisdom of Ferguson and his lawyer in rejecting it. Campbell's Lives of the Lord Chancellors, Vol. 6, pp. 402-403, 27 How. St. Tr., pp. 641-650. The Cuthell trial was February 21, 1799, and created great excitement at the time.

(126)—Nep. No. 34, p. 477; Gen. Intro., p. xiii. Ferguson's lawyer was Thomas Taylor, an English Barrister called in Hilary Term of that year, and afterwards the Editor of a Volume of Reports of Cases in the King's Bench, Upper Canada, the first legal Reports published in the Province. See "The Legal Profession in Upper Canada in its Early Periods." (Toronto, 1916), at p. 108 and notes.

(127)—See a note on this case in a note to an article on Some Early Legislation in Upper Canada in the Canada Law Times for 1913, p. 190, Gen. Intro., p. xiii.

(128)—Nep. No. 34, p. 478.

(129)—Gen. Intro., pp. xiii., sqq. The "strident peal of unmeaning maniacal laughter" of Dent, Vol. 1, p. 37, "the maniacal laugh" of Kingsford, Vol. IX, p. 236, at the trial, are mythical. This, not the trial, is the occasion of the insane laugh. Witnesses were in 1841 examined before a Committee of the House on behalf of Gourlay, i.e., William Hamilton Merritt, David Thompson and David Thorburn, M.P. P.'s, who were present at the trial. While they speak of wild appearance, incoherent speech and apparent unconsciousness of what was going on, none suggests maniacal or other laughter. Gourlay does not speak of anything of the kind in all his accounts of the trial. And with his views as to recording it is incredible he should not have mentioned such a striking incident if it had not occurred. Nep. No. 6, pp. 60, 61.

It has more than once been stated that Gourlay brought an action for damages against Dickson and Claus—e.g., in a very recent and very interesting work in The Chronicles of Canada Series, i.e., The Family Compact/A Chronicle of the Rebellion/ in Upper Canada, by W. Stewart Wallace, Toronto/Glasgow, Brooks & Company/1915, on page 29 it is said "Gourlay then (i.e., after his remand to goal by the Chief Justice) attempted to bring actions against Dickson and Claus for false imprisonment, but here, too, he was defeated by legal chicanery. The defendants each obtained an order for security for costs, and Gourlay, lying in jail with his business going to ruin, was not able to raise this security. The actions therefore lapsed, and Dickson and Claus escaped prosecution."

I think this is a mistake. Gourlay does indeed once, and only once, refer to such an action. In the General Introduction, p. x., he says:

"After three months' confinement it was whispered that I should . . . be tried . . . for not having obeyed the order to quit the Province. . . . In the meantime I instituted a suit for false imprisonment and wrote off to various quarters for legal advice."

A little later at p. xxxiii, he says:  
 "Sir Arthur Piggott and other lawyers of eminence . . . had their decided opinions . . . that those who had caused the arrest were subject to an action for false imprisonment.

In several places he speaks of his hope to have the matter tried by a jury.

But nowhere else than at p. x., in all his voluminous writings, does he suggest that he had brought an action (it is possible that he did not use the word "institute" in the lawyer's sense) and he never at any time complains of its stay. It is incredible that Gourlay, when detailing again and again his wrongs, would have omitted to mention the "lapse" of his action if such had been the case.

I have carefully examined the proceedings of the Court of King's Bench up to Hilary Term, 1 Geo. IV., January 13th, 1821, and find no record of such an order being made, nor indeed any record of the actions at all. While the actions might have been begun without any record being extant, an order for security for costs was at that time a matter of Term Motion, a Rule Nisi, etc. (Now, of course, it is a mere Chamber matter if not obtained on precept.) The fact that no record exists in the Term Book is almost conclusive against any such order having been obtained.

Moreover, if it was obtained, it is somewhat difficult to see "chicanery" in the transaction. The order could not have been obtained on account of the position of the supposed defendants; the Statute does not so provide and there was no general law in that regard. The ground upon which such orders must have been granted if granted at all, could only be Gourlay's absence from the Province. From very early times it was the practice of the English Court, (which our Courts were compelled by law to follow), to order any plaintiff to give security for costs if he was out of the jurisdiction. This is still the law in practically all English-speaking countries, our own included. The order, then, must have been obtained not when Gourlay was in gaol but after his banishment. It looks hard that a plaintiff who is banished must give security for the costs of an action, but it is even more necessary in his case than in that of one living or going abroad, who might come into the Country at any time.

Just about that time a precisely similar order had been made in the Court of King's Bench in England. One Harvey had brought an action against Jacob, and it was all ready for trial when the plaintiff was convicted of a felony and sentenced to transportation. The defendant applied for an order for security for costs, and cited cases in the Court of Common Pleas wherein such an order was refused where the plaintiff was a prisoner in Newgate Prison or a bankrupt or a prisoner of war in France. But the Court granted the order. *Harvey v. Jacob* (1817), 1 B. & Ald. 159.

It should be added that while no order of this kind could be granted on the ground that Gourlay was in prison or penniless, Gourlay never had any trouble in obtaining necessary, even ample, supplies of money, and that he had no business which could be ruined by his incarceration.

The orders, if they were made after he left the Province, had no prejudicial effect; he never would have pressed the actions at the time. I have sufficiently indicated that in my opinion the actions could not possibly succeed, and proceeding with them would be nothing but a waste of time and money.

(130)—Kingsford Hist. of Canada., Vol. IX., p. 236.

(131)—Nep. No. 6, p. 62.

(132)—Gen. Intro., p. xvi., note.

(133)—*The King v. Mitchell* (1809), 10 East, 511.

(134)—Gen. Intro., p. xv.

(135)—Nep. No. 6, p. 58.

(136)—Nep. No. 8, pp. 73-77 (note).

## Part II.

### CHAPTER V.

#### Gourlay Again in England.

Defiant as he was of the law and its officers, Gourlay was not so foolish as to disobey the sentence of banishment. Bewildered and distracted, he made his way across the river and wandered up along the bank until he came to Buffalo. He was fairly well provided with money, the proceeds of drafts made on his friends in the old land; and he remained a week in Buffalo to recruit his shattered health. Then he went to Geneva, N.Y., where he remained the same length of time for the same purpose; then to Albany, where he remained a fortnight. He had intended to make his way to New York and sail thence for home, but at Albany he heard that yellow fever was raging in New York, he determined to sail from Quebec. This he might safely do as his banishment was only from the Province of Upper Canada. But he heard that his brother Tom was in New York, and the epidemic abating, he went down to New York to see him, arriving October 7th, 1819. Leaving New York, October 10th, he made his way by Albany to Montreal and Quebec. He sailed from Quebec, October 24th, and had an uneventful voyage of five weeks and four days (1), arriving at Liverpool December 2nd.

Stopping a day or two at Chester, he then went on to Edinburgh. On his arrival at Edinburgh, December 6th, he learned of his father's death (2), and went almost at once to Craigrothie where his wife and five children were; he possessed himself of the many references which had been made to him during the previous two years, in the newspapers of Britain.

January 3rd, 1820, he sent a circular letter "To Editors of British Newspapers." (3) In this he defended himself against the charge that he was one of the "worthies who escaped from Spa Field," and denied that he was connected with the schemes of Cobbett and Hunt. He, moreover, explained that in Upper Canada his efforts had no view whatever to a reform of Parliament, as the people there had a perfect representation of which they would soon make a better use. He told of the "Convention" and its objects, his own prosecution and order of banishment, his failure to obtain release on Habeas Corpus, his final trial and its result—all in quiet and decorous language. He asked for instant Parliamentary inquiry, pledging himself to show that 50,000 of the poor inhabitants of Britain could be provided for every year, and a handsome revenue besides yielded to the British Government by Upper Canada; but owing to the King's death he did not press for publication of this circular.

About the middle of January we find him again in Edinburgh: he waited on Constable, an eminent bookseller, to offer him for publication

"A Statistical Account of Upper Canada written by the Inhabitants"; the bookseller informed him that he had had lying by him for some weeks a statistical account of Upper Canada written by Dr. Strachan, which had been sent home recommended for publication by Sir Peregrine Maitland and the Attorney-General, John Beverley Robinson; and he added that he had declined to publish it. (4) Gourlay negotiated with another bookseller and believed that he would be able to get his work printed (as also petitions to Parliament concerning his treatment in Upper Canada) in time to sail for Quebec in the spring. We shall find that he was not destined to see the American continent for fourteen years more.

King George III. died January 19th, 1820, Parliament was dissolved, and Gourlay determined to seek restoration of his health. He first went westward on foot through Lanark, Renfrew and Ayrshire, then to the north as far as Peterhead, Inverness and Fort William, returning to Edinburgh about the beginning of May. (5) He then found Strachan's book advertised, and getting hold of a copy he "readily perceived why the Edinburgh bookseller had refused to be its publisher. From beginning to end it exhibited one continued tissue of weakness and abominations," etc., etc. (6)

The first Parliament of the new reign having now met, Gourlay was anxious to get up to London to present petitions with regard to the state of Upper Canada and to his own case. Being detained in Scotland for a few weeks by the death of a family connection, he left Edinburgh June 2nd, arriving at his accustomed lodging house in Bouverie Street, London, June 6th. Queen Caroline had just landed and was expected in London; the troubles between the Royal pair made it impossible to do any business for weeks, and Gourlay retired to the suburbs to await a more favourable moment.

In the last week of June, 1820, he sent a circular (dated June 10th) to every member of the House of Commons, a few newspaper editors and some friends. (7) The "Statement" was much the same as that of January, and enclosed a draft petition setting out his case, also his belief that Upper Canada would furnish the proper solution of the problem of the poor; and asking that the state of Upper Canada might be taken into serious consideration by the House of Commons. The circular was intended to prepare the minds of the Members of Parliament and others.

Gourlay wrote to Sir James Mackintosh and asked him to present his petition to the House. "Not a single soul took notice of" the circular; "not even Sir James Mackintosh." (8) Gourlay wrote Mackintosh again as he was exceedingly anxious to secure his good offices; Mackintosh made an appointment and Gourlay called upon him. The petition was somewhat amended and was presented by Mackintosh, July 11th, 1820 (9); he expressed his opinion to Gourlay that the House could do nothing for him, but thought the state of the Colony might call for attention.

A petition to the House of Lords was prepared to be presented by Lord Holland, but deferred on account of the Queen's business occupying the attention of the House.

Copies of his "Statement" had in April been sent out to Upper Canada; and during this summer he was cheered by the news of an election in the Colony of a Parliament adverse to the Government. (10)

During the summer Gourlay was having his Statistical Account put through the press; the printing began July 26th, but delay was caused by the non-delivery of the plates ordered; three were ready only by November 1st, and three more were not ready by December 2nd. On that day he received a letter from his wife informing him of her serious condition; he remained in London three days, powerless from solitude. A letter from his daughter gave him hope, and he left London for Edinburgh, arriving only in time to bear the mortal part of his dearest friend to the grave. (11)

This calamity interrupted the preparation of the General Introduction which he was preparing for his Statistical Account.

It was in this summer that he resolved to enter as a student at law in London. On consulting Campbell, afterwards Lord Chancellor, he was informed that the Benchers would not admit him because of the sentence of banishment from Upper Canada. He informed the House of Assembly of Canada in his speech in 1858 (which will receive attention later) that he borrowed £200 from a friend, intending to enter as a student-at-law, but "because of banishment could not be received by the Benchers"; he does not seem however to have made formal application for admission to any of the Inns of Court.

Ever since his imprisonment at Niagara, he had been the victim of a nervous malady. By extraordinary efforts he conquered this in a measure before going to London; but his terrible and unexpected affliction now threw him into a state of "the most deplorable weakness." He remained in Scotland about three months, wholly unable to go on with the work of publication—he could not "sum up four figures together."

Hoping that change of scene would give relief, he sailed for London from Leith, March 2nd, 1821, arriving in London after a miserable voyage of twelve days, landing still more reduced in strength. Day by day he became worse and worse, and finally on the advice of a friend he offered to accompany Sir Robert Wilson to Naples in the cause of independence. (12) He wrote Wilson, but the scheme fell through and Gourlay was rather glad of it, for he was somewhat ashamed of having offered to be a soldier, agreeing as he did with Gibbon, the historian, that "the courage of a soldier is the cheapest commodity in nature." (13)

He then, April 3rd, started off on a walking tour westward, but the second day's walk was too much for him and he took the coach for Devizes. There an old friend lent him a pony and he visited Bath, Warminster and Salisbury, returning to Devizes, meeting many old

friends. As Cheltenham waters had restored him to health six years before, he tried them again, but this time without avail. Leaving the pony at Devizes, he walked back to London, now somewhat strengthened in body but still unfit for any continued mental effort; he had lost all power of concentrating his thought.

May 7th an article in the *Morning Chronicle* on the Poor Laws roused his "still feeble mind to action," and by the 24th he was at last resolved to be up and doing. (14)

In June he prepared another petition to the House of Commons in respect of the Poor Laws, warning the House against Scarlett's Bill, which had been introduced, but which had "clearly been drawn up without practical knowledge of the system of the Poor Laws or a due consideration of the circumstances"; it ended by asking that the state of Upper Canada might be taken into consideration and a scheme formed for emigration "in unison with a plan for reforming the Poor Laws." (15) This was presented by Sir James Mackintosh, June 27th, 1821, printed and ignored.

His health remaining bad, he went to Brighton for a week in the early part of July, and did some work on his Statistical Account. August and September he was in London almost wholly incapacitated for work, and in October had to leave again; he went to Margate and made an excursion round the shores of Kent.

He was able nevertheless to carry on correspondence with the Colonial Office. September 3rd he asks on what terms land would be granted to emigrants to Canada, and is referred to the Governor of the Colony. The correspondence continued till October 11th. (16) It showed as Gourlay thought "how completely indifferent Lord Bathurst is to the duties of his office, how callous to distress at home, how regardless of the interests of Upper Canada"; and it must be said there is much ground for such a conclusion.

Having in December, 1820, broken off the writing of his *General Introduction* after writing 82 pages, he resumed the task September 22nd, 1821, and wrote 146 more pages, all the 228 being in type by December 11th. He then got hold of Cobbett's *Cottage Economy*, Nos. 4 and 5, and wrote some 22 pages of criticism on that author. Afterwards he wrote up to p. 350 of the *Introduction*, and got it in the press by the end of the year.

By the middle of the month of December his health again declined and he became totally unfit for business; he accordingly determined on a fourth flight to the country. Being delayed by incessant rains, he set forth on Christmas Eve for the west, intending to stay a week. Near Staines he came across a London post-boy, who in the darkness had driven his carriage off the road and upset it in a gravel pit full of water alongside the road. The poor man was immersed in water up to the hips and had stood on the pole for half an hour calling for help. Gourlay hastened to his aid, but being no swimmer was nearly drowned; how

ever, fastening the coach traces together, he succeeded in dragging the post-boy on shore. (17) The wetting brought on rheumatism (from which he suffered all the rest of his life) and he was forced to remain three weeks in the country instead of one. The time was not wasted; he made further enquiry into the wretched condition of the poor and the inefficacy and injustice of the Poor Laws.

January 14th, 1822, he published in the Salisbury Journal an Address to the People of Wiltshire, (18) setting out his connection with Hunt and Cobbett, his efforts for an amendment of the Poor Laws and his devotion to the cause of the poor.

Returning to London, he, February 11th, 1822, "concluded" his General Introduction with an Address to the People of Upper Canada; but added another Address fifteen days later on receiving a copy of the York, U.C., "Observer" of December 24th, 1821, "stuffed with debates" of the U. C. Parliament. He finds Jonas Jones active in the Assembly and devotes a few pages to "this fellow Jones," "the oratory of Jonas Jones of Brockville, lawyer, M.P. and Esq." He sets out a petition which he proposes to present (and which was in fact presented by Hume and ordered to be printed February 27th) to the Imperial House of Commons asking for enquiry into the state of Upper Canada, and proceeding along the familiar lines. (19) Hume made certain corrections in it before engrossment.

March 8th he takes up the General Introduction again and writes 14 pages; adding a Supplement of 40 pages and an Index, the whole was put to press.

The General Introduction in one Volume of 551 pages and the Statistical Account in two Volumes of XX. + 625 and 704 + CXX. pages respectively, were printed by J. G. Barnard, Skinner Street, London, and published by Simpkin and Marshall, Stationers' Court, Ludgate Street, London, in 1822. (20)

The first volume contains an interesting account of Upper Canada (said to have been written by Barnabas Bidwell) with a number of Reports from Townships in that Province in answer to Gourlay's enquiries in 1817; also a short account of Lower Canada.

The second volume is chiefly filled with an account of the legislation and a review of the policies of the Governors and Government.

The General Introduction is a mixture of English and Canadian subjects; chiefly an account of Gourlay's efforts for the amendment of the Poor Laws and his treatment in Canada.

Gourlay was not wholly satisfied with this work. Writing April 1st, 1823, to Hume, he says: "That book was composed while I was in a fever and wholly distorted in its arrangements by grievous occurrences in its progress through the press. Before it came out, I was in a state of distraction. . . . The first volume was intended for separate publication, but the greatest misfortune of my life disabled me from

sending it forth till it appeared a year afterwards with others, which at first were not contemplated and which were produced by a mere series of impulses. It was a most unfortunate publication; yet it exhibits some things in a way which . . . might have lain hid—things well worthy of notice." Every word of this the candid reader must approve. Gourlay also attributes to some criticism in this work of Brougham's Education Bill, what he thought was Brougham's betrayal of him, soon to be described.

It may be added that a third volume was prepared, even the plates being engraved, but it was not published.

July 28th, 1822, another petition, much the same as the preceding one, was presented for Gourlay by Brougham July 18th, 1822. (21) This complained of his treatment in Upper Canada and of the calumnies to which he had been subjected. It even appeared that public money had during his absence in Canada been spent in Fifeshire to watch his motions, which were alleged to be of a treasonable character. He asked that full enquiry should be made.

Again, July 15th, 1822, Brougham presented a petition for him asking enquiry into trade with Canada, etc., etc. (22) Petitions were also presented to the House of Lords.

Failing to receive attention from Parliament, he, August 10th, wrote to the King, setting out his loyalty, his grievances and his failure to obtain relief; he asked for the interference of His Majesty. (23) As was to be expected, the letter went to the Colonial Secretary without effect. (24)

In September, Gourlay believed that his reason was in danger, and that strenuous physical exercise was the only means to save him from mental alienation—"to save life and reason." He determined, therefore, "for good and urgent reasons," to throw himself on the Parish and work as a pauper labourer. There were no financial reasons for such a course; he never had difficulty in procuring such money as he required; some of the newspapers did not hesitate to call him an "amateur pauper."

Accordingly, September 10th, he proved his right of settlement in his old parish of Wily, in Wilts, before the Magistrates at Fisherton, near Salisbury. The following day he was set to work by the Overseer of the Poor, at breaking flints on the public road eight hours a day, receiving pay at the rate of a shilling per ten hours; he also received sixpence a day gratuity from the parish. After a few days he received four shillings and sixpence a week without being required to work; but this did not suit him, and he went back to breaking stones under rather better terms. He went on till November 27th, when the overseer told him he would pay him no more for breaking stones. He could not get pay for what he had done, and summoned the overseer before the Petty Sessions, when the Magistrates ordered the overseer to pay for the work

done, which he did. Gourlay worked on till December 23rd, when he left the parish for some twelve weeks. He left work because flints could no longer be broken on account of the frost, and for a month was "cherished by friends . . . in various parts of the country." He had received remittances from other friends, and made a pedestrian tour through Dorset, Devon, Cornwall and Somerset, "to be able to witness the miseries endured by the poor of England during the severity of the winter and under the influence of the Poor Laws."

He returned to the parish and to renewed disputes with the overseer, March 17th, 1823. The Magistrates, again appealed to, again decided in Gourlay's favour. Continuing to work under the overseer he prepared a petition to the House of Commons, which set out the deplorable condition of the poor as seen by him in his journey and his daily life, and asked for a Commission to come to Wily and make enquiry, etc. This was presented June 27th, 1823, by Hume, ordered to be printed—and forgotten. (25)

This had been preceded by a petition in respect of establishing parish schools, presented by Grey Bennet, June 5th (26), and another presented by the same member, June 19th, on behalf of the poor of Wily (27)—all equally ignored and ineffectual.

During the summer of 1823 Gourlay wrote Sir Robert Peel offering a plan for the reform of the Poor Laws. Peel asked to have the plan in writing, but Gourlay refused to reduce it to writing unless he had a personal interview with Peel. This Peel did not grant, and the matter dropped. (28)

Three petitions prepared by Gourlay and signed by him with others were presented March, 1824. (29) Gourlay at last left Wily and went to Edinburgh, where, May 1st, 1824, we find him writing another letter to the King. (30) This complained of the neglect of his representations about Upper Canada, and asked that he might be allowed to return to the new world without arrest, and that the poor of Wily might be protected by His Majesty. June 2nd: "His Majesty has not been pleased to signify any commands thereupon," says Secretary Peel. (31)

June, 1822, Sir John Astley presented a petition for him asking for parish schools and an amendment of the Poor Laws (32); Mr. Coke, June 10th, another on the general distress and parish provision for the poor. (33) The same month Searlett presented another on the state of Wily Parish (34), all without avail.

In the early part of the year 1822 he "becoming when alone fatuus," made up his mind to die for his children by suicide; he determined to go to Land's End for that purpose and in order to make a greater impression on the public mind; this mood passed away.

In the year 1823 he was advised by a friend to lecture in London on Rural Economy, but he was so tortured with lawsuits in the Court of Chancery and the House of Lords he could not give steady attention to anything. This litigation will be considered later.

In May, 1824, he was met in the streets of London by Mr. Nicol Graham, author of "Three-Fingered Jack," etc., and well known in Montreal. Graham asked him to dinner and told him of the Canada Company scheme then being promoted. Gourlay took a great interest in opposing this scheme, and some of his many petitions to Parliament are against it.

One of the most extraordinary incidents in Gourlay's career has now to be mentioned. When in the spring of 1822 he asked Sir Ronald Ferguson to present his petition in Parliament, Ferguson put the petition, May 8th, 1822, in the hands of Henry Brougham, the better to insure success. Brougham seems to have encouraged the petitioner who made certain changes suggested by Brougham. Brougham offered Gourlay a seat under the Gallery when the petition should be spoken to; Gourlay waited most anxiously for the occasion, attended in the gallery (he sometimes had a seat with the reporter), heard Brougham speak on the beer question, and then saw him walk away. The same day Brougham formally presented the petition without a word in support of it.

Next year, 1823, Gourlay, "now a pauper in the parish where once he farmed" (as he says), refitted the petition "for education to his fellow-paupers" and sent it to the care of Mr. Grey Bennet, writing at the same time in its favour to Mr. Wilberforce. He then, May 21st, 1823, wrote from Berwick Farm near Hindon, Wilts. to Brougham, asking him to plead for the petition and thus "to pay your debts to me by lending them to the poor in general." It does not appear that any answer was returned to this request; but at all events Gourlay became impressed that Brougham's conduct in 1822 was a betrayal of duty, "cruel, unfeeling and treacherous." This feeling became an obsession, and finally he determined to punish the traitor. In a letter to his daughter, 1835, he says: "My encounter with Brougham . . . June, 1824, was the result of consultation with Dr. Joseph Hamilton—now in Upper Canada, and . . . before I exposed myself by the act, a packet of papers containing with others a letter from Dr. Hamilton to me was sealed by him and by me to remain for my justification." (35) In another passage he says he did it in utter contempt for Brougham after long and serious consideration, in duty to himself, his family and his country, and with the advice of a friend, and that he never would repent of the deed. (36)

On June 11th, 1824, arming himself with a lady's riding whip, he lay in wait for Brougham in the Parliament Buildings, allowed him to pass near the entry to the House of Lords, "followed him quietly upstairs and just as he reached the first pillar in the lobby of the House of Commons, applied the whip to his shoulders as calmly as ever I chastised a child"; three blows were given, according to Gourlay's account. A constable, Thomas Gook, present, gives much the same account and adds the further facts that he pushed Gourlay away, asking him if he knew what he was doing. Gourlay replied: "Yes, I do; he has injured me." Brougham then turned round and said: "Who is the man? I don't know him. What does he want?" Gourlay replied:

"You recollect my petition which you neglected two years ago," and offered Brougham his card, saying: "Let the dead bury the dead, and you do your duty to me." Gook then took out his staff and placed Gourlay under arrest. Gourlay submitted to the authority of the constable, and Brougham asked that he be kept in safe custody, saying: "Poor man! I don't think he is in his right mind." After being held in custody by the constable for two or three hours, he was turned over to the Sergeant-at-Arms. On the House of Commons meeting, the Speaker informed the House of the assault and asked for directions; Brougham gave an account of what had taken place and said he had "an impression . . . of having been told that he was occasionally deranged." Mr. Secretary Peel added his comment that the letters written by Gourlay were such as no rational man would write, and Hume said that he had been confined in consequence of derangement (which, of course, was a mistake). Ultimately it was ordered that he should remain in custody until further order.

In the evening two medical men, Drs. Morris and Sutherland, visited him and apparently thought him insane; they signed a certificate to that effect.

From Hansard, N.S., Vol. 11, pp. 1204, 1317, it appears that June 14th, 1824, Dr. Sir George L. Tuthill and Dr. Edward Thomas Munro certified to the Speaker that they had had several interviews with Gourlay and were of the opinion that he was of unsound mind when he assaulted Brougham, and continued to be of unsound mind; on Canning's suggestion the most humane course was considered to be to detain him without further order until his friends could be consulted.

June 24th Gourlay sent a letter to the Speaker denying unsoundness of mind, and saying his assault had been deliberately planned five months before; he asked that the House of Commons should address the King in order that Gourlay might "have the royal confidence so far as to enable him fully and fairly to lay before ministers his case, his opinions and his project." Needless to say, this request was not complied with; it was rather looked upon as a further proof of the prisoner's insanity.

Next day the House was prorogued; and at 3.30 the Housekeeper of the House of Commons entered Gourlay's place of confinement and told him he might depart as the House had no further control over him. Before this time, however, a warrant had been issued for his arrest; officers watched his departure from the House, followed him as far as Bedford Street, Strand, and there arrested him.

He was brought before Mr. Halls, the Bow Street Magistrate, charged with assault, and under 39 and 40 Geo. III., c. 94, with being a dangerous person of unsound mind. The facts of the assault upon Brougham were sworn to; two physicians, Sir George Tuthill and Dr. Munro, swore that in their opinion Gourlay was of unsound mind, as did a constable. The accused called a surgeon who had had very little experience with

the insane, and a law student; these witnesses thought he was not insane, but the latter considered him "of a singularly enthusiastic turn of mind." Thereupon the Magistrate committed him for trial at the Sessions, saying that he might be admitted to bail the following day on the bail being approved by himself and the Magistrates. Gourlay describes the medical men who gave evidence against him as "bought doctors," but there does not seem to be any reason for suspecting bad faith on their part; they were well-known experts in insanity.

He was taken to the House of Correction, Cold-bath Fields, where he was to remain more than three years.

As soon as he had been taken to the Bow Street Court, he wrote for friends to come to him and some came instantly to give evidence and bail; Mr. Halls said the bail must be satisfactory to the Magistrates of the Sessions—the Magistrates on application made to them referred Gourlay to Mr. Halls; Halls told Gourlay's friends then that no bail could be granted until the doctors reported it safe for him to be at large. Halls offered to send the doctors to see Gourlay, but he declined as the Sessions were near and he expected a discharge.

The Sessions sat July 20th, 1824; Gourlay was brought in by Mr. Vickery, the Governor of the House of Correction, and at once handed the Chairman of the Sessions, Mr. Const, a long document containing an account of events subsequent to the assault, the examination at Bow Street, the committal by Mr. Halls, and his arrival at the House of Correction; and he thereupon demanded to be dismissed from his confinement which he pronounced to be unjust and illegal.

Mr. Bolland, instructed by the Solicitor to the Treasury, appeared for the Crown and opposed the discharge asked for. The clause of the Act was read which provided that persons committed upon the warrant of a Justice of the Peace on the ground of insanity should remain in custody until they put in good and sufficient bail, 39 and 40 Geo. III., c. 94, sec. 3. Gourlay was informed that the Court had no power to discharge him unless he put in bail; Gourlay expressed his dissent from that opinion and demanded a trial and discharge. This, of course, was impossible, and the Chairman, whom he found to be "at once a lawyer and a gentleman," advised Gourlay to go before a Judge who had the power to discharge if the warrant was illegal, which the Sessions could not do without bail being put in. Gourlay refused to put in bail and said: "I would rather remain in prison than consent to be a party to such a gross violation of the liberty of the subject." The Chairman said that heavy bail would not be asked for, and Mr. C. Phillips, a well-known barrister, advised Gourlay for the sake of his family and friends to put in bail and obtain his liberty, but now Gourlay changed his line and refused to put in bail because some might conceive such an act "an admission of the truth of the impudent insinuations which have been made as to the state of my mind." How such an act could by possibility be considered an admission of insanity is difficult to imagine;

but it is certain that Gourlay always afterwards thought that his refusal to put in bail was to prevent his family being humiliated by his insanity.

Gourlay, being "determined to weather it out whatever might be the issue," refused the advice of the Chairman and of the two lawyers who ventured to advise him, and declined to do anything. He was accordingly recommitted.

It is abundantly plain from Gourlay's own account that he was treated on this occasion with the utmost courtesy and consideration (he says he "is well and happy"), that no one wanted his further detention, and that he was not released solely because the law imperatively forbade it. The Chairman's conduct indeed was such that Gourlay inferred that he must have left the Bar for "on my father's authority (and he practised as a Writer, after apprenticeship, more than a dozen years in Edinburgh) to say nothing of my own dear-bought experience, I believe it to be impossible for any practitioner of law to be honest."

March 30th, 1825, Gourlay had a petition presented in the House of Commons by Mr. John Bennet asking that the Lord Chancellor Eldon, then 75 years old, should be removed from all other employment than reforming the Court of Chancery and rendering it efficient for the speedy and sure ends of justice and equity. He sent a similar petition to Lord Eldon himself to present in the House of Lords; Lord Eldon returned it and Gourlay sent it to Lord King for presentation.

A petition in March, 1825, complaining of the bread in the House of Correction failed to be presented, but Gourlay did not press it.

Mr. J. Stuart Wortley in April, 1825, offered to present a petition to Parliament for inquiry into Gourlay's case, and Gourlay had a form of petition made out, as "unless backed by the public there will be but little chance of a fair and full hearing." A number of petitions were signed and sent in.

Mr. Hume, April 25th, presented one from Fifeshire whereupon Peel said that he "was not now confined by Government but merely because he was unable" ("unwilling" should have been the word) to give the security required. He (Mr. Peel) had sent directions that Mr. Gourlay should be kindly treated; nothing was done. It may be mentioned that Peel also said that Gourlay excused himself for the assault upon Brougham "by saying that he had only followed high example by scourging sinners in the temple." Hansard, N.S., Vol. 13, p. 161, gives some account of the scene.

Gourlay, believing that he was "contending for the liberty of the subject and the security of reputation against the vilest and most dread conspiracy that was ever concocted and persisted in by arbitrary power for the ruin of an individual," remained in comfort in the House of Correction; he speaks in high terms of the Governor and officers; some kind friend sent him three excellent blankets, a handsome counterpane and a comfortable morning gown, and he occupied a State room.

March 6th, 1826, Hume presented another petition and Peel said that if security were given for his peaceful demeanour towards His Majesty's subjects, Gourlay would be at once released, that his detention was due to his refusal to provide recognisances to keep the peace—apparently he still thought Gourlay insane.

Hume said he would himself enter into recognisances for Gourlay, but that Gourlay would not allow him to do so until some examination should be made into his sanity, as he seemed to think that if he entered into recognisances without such examination it would be admitting that he was insane; Croker said, judiciously, that the very fact of the Magistrates accepting such a recognisance would be in itself a vindication from the charge of insanity. Again nothing was or could be done. Similar petitions were presented April 26th from different parts with the same result.

In March, 1826, Gourlay determined to publish his "Appeal," and advertised for subscribers at five shillings each. This work, an octavo, contains a narrative of the facts of the assault and imprisonment, many letters sent to his children from the House of Correction, and many extracts from newspapers—this contains 90 pages. Then follow 196 pages of copies of letters, petitions, etc., from June 23rd, 1820, to June 11th, 1825. The work is dedicated to his children—he tells them "The world is still against me, the same world which poisoned Socrates, crucified Christ and imprisoned Galileo." His opening address to the public shows the same delusion of persecution: "The speeches of Mr. Hume, Mr. Peel and others, the conduct of the Speaker and the House of Commons, of Halls, the Magistrate and his masters, of the doctors, newspaper reports and opinions, etc., all require review before an adequate notion can be formed of a conspiracy like to which nothing was ever before got up and persisted in for the ruin of an individual."

"No one can suppose for a moment that the mere peccadillo in the lobby was the sole cause of double arrests and double punishments; or that I would remain obstinate were simple questions alone at issue. No, the wrath—the revenge—the remorselessness has been long treasured up and its virus cannot be exhausted but by endurance. Here is the catalogue of my crimes: In 1808 I espoused the cause of the farmers against the Lairds of Fife. In 1809 published a specific plan for parliamentary reform. In 1815 demonstrated that Church property was the property of the people; and, in the same year, posted the Bath Society as rogues for deserting the commutation of tithes and originating the Corn-Bill. In 1818 I held in Upper Canada, Convention for inquiry into the state of that Province; and all along have taken part with the poor against the rich. For these causes there is no forgiveness—no liberty, till I confirm by my own act a sentence of insanity." This was from one of whom everybody was tired, and who everybody wished would allow his friends to bail him out. The sole obstacle in the way of immediate freedom was his refusal to obey the express direction of a statute, and his obedience to that direction could not by anyone of sense be construed as an admission of insanity. The English people thought they had

achieved a great triumph when by the Habeas Corpus Act they made it obligatory that one confined in prison should be (in certain circumstances) admitted to bail, and no one has ever imagined that giving bail was an admission of wrong-doing.

to issue series after series, whereby "non only would my persecutors be

He expresses his intention if the "Appeal" should repay the printer, put to the blush, but a train of evidence be made out proving, at once, such adherence to great public pursuits, such determined resistance to oppression and such uniform regularity in private affairs as perhaps no other man can boast of"; and he solicits aid to enable him to accomplish this work. (37)

No great sale was obtained for the publication; it is very rare and is seldom offered for sale; and it had no successors.

During his incarceration he wrote frequent letters to his children (he had one son, Oliver, and four daughters, Jean, Janet, Helen and Catherine, who were at Craigothie). These letters are lively, interesting and such as a loving father of literary ability would write to intelligent children. The curious thing about them is that he sent copies to the London newspapers and had them published and also printed them at length in the "Appeal."

On December 3rd, 1824, (38) he wrote to the King, telling of his petitions to the House of Commons of July, 1820, June, 1821, and February, 1822, the petition presented by Brougham, May, 1822, and one presented *pro forma* to the House of Lords, a letter of August, 1822, to the King, another May, 1824, etc.; he asks for a commission to visit, examine and assist him if found worthy. This reached the proper office January 3rd, 1825, and an answer came three days later that no direction could be given, but that all that was necessary or ever had been for his discharge was to give the security required by the Act 39 and 40, Geo. III. (39)

Continuing in the House of Correction, he kept an eye on the proceedings in Parliament; we find him, March 17th, 1825, reproaching Hume and the same day offering assistance to Alexander Baring. (40) Hume answers in a spirited letter telling Gourlay: "Wull to Coupar, Maun to Coupar," and that he, Gourlay, himself preferred and chose the abode of felons rather than take his advice. (41) Gourlay answered April 16th and 26th in an apologetic tone (the only instance of such a thing on record) (42), and considerable correspondence of no great consequence followed, resulting in Hume, May 3rd, 1825, presenting a petition from Gourlay against the "Canada Bill" (43), i.e., the Bill authorising sale of land in Upper Canada to the Canadian Company.

Previously and on April 25th, 1825, a petition had been presented for him on familiar lines. (44) May 31st John Williams presented a petition from Gourlay concerning his lawsuits and the delays in Chancery, which will be mentioned later. (45)

His petition of May 3rd is referred to in another petition along the same lines presented in the House of Lords by the Lord Chancellor June 13th. (46) Another was presented in the Commons by Stuart Wortley June 16th, 1825, on the Poor Law system (47); and during the same month Gourlay tried hard to get some member to present a petition for the improvement of London. (48) In this he seems to have failed; but we shall see that in his after life he recurred to plans for the improvement of cities.

October 20th he wrote a letter to the King urging him not to permit the sale of lands in Upper Canada to the Canada Company, of course without avail.

July 2nd, 1827, Hume presented a petition from Gourlay still in Cold-bath Fields prison and stated that his case was hard, that he had been accused of madness and only wanted an opportunity of having that put to a test by means of a Commission. Brougham said he always thought Gourlay to be mad and now more than ever; that he had had nothing to do with the imprisonment, and the prisoner could be released on offering the stipulated amount of security; he had been bred a gentleman but had permitted himself to fall so low as to be a parish pauper in Wiltshire and to break stones on the road for a sustenance; the law was the accuser and required securities for good behaviour. Lord Palmerston and Perceval both thought the refusal to permit bail to be given for him showed something very like mental aberration.

After this we find no more petitions from Gourlay or on his behalf; he seems to have despaired of obtaining relief in an extrajudicial way and to have lost hope of putting someone in the wrong. It does not appear precisely when or how he obtained his release from the House of Correction, but as it is almost certain that he would have recorded the fact if he was released without following the prescribed course, it may be safely assumed that he at last allowed himself to be bailed out. It is not impossible that the death of his mother, August 10th, 1827 (50), had something to do with this concession to common sense.

At all events having been "confined by British tyranny, in London, three years and eight months" (51), he was set free apparently in February or March, 1828. (52)

He had as early as January, 1825, determined to set up as a Colonial Land Agent, and when he came out of prison he had cards printed as such in London, embellished with his family arm and motto, "Profunda cernit," (53) but business connected with his litigation drew him to Scotland. (54)

He did not fail to keep his project for colonizing Upper Canada before the authorities. We find him writing Sir George Murray on the subject July 1st and November 25th, 1828, and again September 25th, 1829. (55) He also wrote the King and the Duke of Wellington along the same lines; he visited St. Andrew's (which he calls "Alma Mater"), Leith, etc. (56)

He had as early as April, 1827, written to some fifty clergymen in Fife on plans for emigration; in March, 1828, he began in Fife to form emigration societies, and in two months had instituted seventeen; but he found it impossible to keep them together without repeated explanation and personal attendance, and accordingly he suspended operations. He published "Purposes of Emigration Societies Union and Agency," and sent copies for publication (September, 1828), to the Colonial Advocate, published by William Lyon Mackenzie at York (Toronto), and to the Kingston Herald for publication. It appeared in the Advocate, but apparently not in the Herald. The scheme came to nothing. The same may be said of his project begun by an address to the People of New York State (January 10th, 1827), asking for \$500.00, contributed by 50,000 subscribers of one cent each. On receiving the sum he would cross the Atlantic and endeavour to establish a grand system of emigration from Europe to America; he might even cross to Upper Canada, though the Government might hang him as legally as they imprisoned and banished him. But even letters to General Jackson, to whom he said, "there was a time when no man disliked you more than I did," were of no avail. (57) In 1829 he presented plans for the improvement of Edinburgh, and in the same year first gave utterance to his favorite apothegm "Man is a recording animal." In 1831 he published in Scotland a pamphlet containing his New York scheme (58); the following year he printed a Record of his private affairs. (59)

In December, 1830, the death of Dr. Coventry, Professor of Agriculture in the University of Edinburgh from the foundation of the chair nearly forty years before, was announced. Gourlay had, as he says, been a constant student in the House of Correction, and considered himself well qualified for the position. He had, indeed, hoped to become Professor in Agriculture in the London University, but that chair was not established. He applied for the position in Edinburgh and obtained testimonials from fellow-students in the University and others of high standing; but the appointment was made in favour of another. Gourlay had applied "thinking there might be a comparative trial before actual cultivators"; but that is not the way professors even of agriculture are chosen. (60)

It now will be necessary to say something of the financial troubles Gourlay had to endure from litigation.

Mention has already been made of the Chancery proceedings he was forced to take against the Duke of Somerset to compel the delivery of a lease which Gourlay had himself foolishly declined to sign—also of the verdict for damages in his favour and the unfortunate disposition of his lease and stock.

The decree for a lease having been made and the matter referred to a Master, the Duke appealed from the decree of the Master of the Rolls granting Gourlay damages for £1,325, and Gourlay, being without means, suffered his household furniture to be sold to provide money for the costs of this appeal. The case came on for argument before the

Chancellor in 1821. The Duke did not appear, because he understood negotiations were going on for a settlement. In fact, Gourlay had requested that some of his principal creditors should take up the matter and arrange a settlement, and some attempt was made, but in vain. The Duke's appeal was reinstated on payment of £10 costs, and it came on again in 1823. Gourlay argued his own case; he assailed the Duchess of Somerset, charged that she was at the bottom of the trouble, and that she "wore the breeches." He seems to have had much ground for this accusation, but it was hardly consistent with the decorum of the Court of Lord Eldon. The Chancellor rebuked him, and punished him by refusing costs when in January, 1824, he dismissed the Duke's appeal. Gourlay, had it not been for ill-health, would have followed up his purpose of petitioning for the Chancellor's removal from office—and told the Chancellor so in writing.

The Duke at once gave notice of an appeal to the House of Lords; but failed there also.

Gourlay rather intimates that had he known that the Duke would appeal from the decree in Gourlay's favour, he would have appealed from that which denied him the damages awarded in the other issue; but he did nothing in the matter. He did, however, petition for a reform of the Court of Chancery.

In the Scottish Courts an action was taken against him by his brother-in-law, "Thomas Henderson, farmer of Newton Wemyss," on the marriage settlement made by the elder Gourlay, it being claimed that Robert Gourlay was his guarantor. This was won by Gourlay in the Scottish Courts and in the House of Lords. Then Henderson in 1825 sued as representing the infants for the appointment of an agent (factor) to manage the fund to the corpus of which the infants were entitled after Gourlay's death. This also failed.

Gourlay probably had, when leaving Canada and for a time after arriving in England, the intention of appealing to the Courts for redress for his imprisonment in Canada, being confident that his view of the Statute of 1804 was correct; but he soon abandoned that idea. Mr. Richardson, solicitor, Fludyer Street, London, was employed to prepare a petition to the King in Council, and authorized to consult counsel; the counsel, Mr. Adam, is said by Gourlay to have misunderstood the purpose for which he was consulted; at all events he gave an opinion against Gourlay's interpretation of the Act; for which he was duly flogged. (61)

Notwithstanding his embarrassed financial condition, we find Gourlay writing letters to the King from time to time. (62)

William Lyon Mackenzie, who Gourlay said "sprung out of me," and whom he later called the "self-styled Patriot, Hero of Navy Island and Prince of Mischief-makers," was countenanced by Gourlay for three years, 1829-1832, but was then dropped as Gourlay thought he had no stability. In July, 1832, Mackenzie was in London and wrote Gourlay;

Gourlay replied from Leith asking him to come "for a crack"; Mac-kenzie visited him in the spring of 1833 and invited him to return to Upper Canada, saying the people there would pay him. Gourlay replied that they must first settle the old account or he would cut all their throats; this language, he says, was used simply to express disgust with their political doings. (63)

The financial troubles continued and his son Oliver returned to Scotland to help his father to unravel them. (64) Gourlay had him consult his sisters and advise, but there was no success. At last it was decided that Gourlay should go out to New York, send thence a Power of Attorney for settlement of the debts he "could not personally get quit of," and then the son and two of his sisters join the father in New York. (65) He left Edinburgh November 5th, 1833, by canal boat; arriving at Glasgow next morning, he sailed by steamer to Greenock, thence by S.S. Vulcan to Liverpool, arriving there on the second day after a violent passage. November 9th, he took the packet Pacific (Captain Wait) for New York, landing there December 22nd. (66)



King's ear because it was engaged by a man whom he "knew to be false, treacherous and vindictive"—this was, of course, Brougham—but now as that individual no longer influenced His Majesty's Councils he once more solicited attention. This letter was sent to his daughter in Scotland with instructions to copy it and send it under cover to the Duke of Wellington with a note to him asking him to lay it before the King. He sent with it a letter March 7th, 1835, to the Duke asking justice; a subsequent letter was sent April 2nd recommending the Duke to advise the King to visit the British American Colonies and the United States, and "to lodge in the very house which the Duke of Clarence occupied fifty-five years ago." In May and June he sent other letters to the Duke—it is hard to see why.

While residing in New York, he in July, 1835, laid before the Board of Aldermen an elaborate scheme accompanied by drawings for the improvement of the city; he returned to this in 1842 when in the city. Some account of his scheme will be given at a later stage. He also in 1835 drew up a petition to the King asking enquiry into his case, and wrote the Duke of Wellington several letters on reform of the Poor Laws, etc., etc.; he recommended the Duke to advise the King to visit British North America and the United States, etc., etc. No answers were received so he printed in New York in that year the petition (and the letter he had sent his daughter to copy and forward it) and letters, and it was again printed in 1836 at Cleveland, Ohio. (70)

After eighteen months' residence in New York no progress was made in the settlement of his affairs, and he sought new scenes. In the second half of 1835, Gourlay made his way to Ohio, settling at the village of Willoughby, Cuyahoga County, about August of that year. (71) He formed a project of drawing up an account of the Township, Historical, Topographical and Statistical, for publication; he went further and endeavoured to get the Governor, Robert Lucas, and the Legislature to assist in the publication of a statistical account of Ohio which he was to draw up. His larger project does not seem to have received any encouragement; but a meeting of the inhabitants of the Township of Willoughby (two meetings were held, August 20th and December 10th, 1836) passed a resolution approving of a survey and map of the Township on Gourlay's lines. (72)

But amid all his projects he never forgot Upper Canada. December 22nd, 1835, writing from Ohio, he sent across the line the following:

"Monsters!

"Mr. Clark will show this to the inhabitants of Niagara District, and Mr. Mackenzie may publish the duplicate to all the world. Mr. W. Chisholm and Mr. Paul Peterson shall have copies to exhibit in the Gore and Midland Districts. Postages will be paid on demand by the Great Bear of London District, or by the writer.

"Robt. E. Gourlay."

He in the following February sent a copy of this to Mr. Smart to send to the Speaker of the Legislative Assembly for exhibition in the House.

This cryptic message received no interpretation from Gourlay till years after, when he explained that "Monsters" while "it could not hurt or offend anybody," was intended to mark his feelings on offering his services as Statist to a foreign country after his own had been regardless of him. "The Great Bear of London District" had reference to his banishment from his land in that district. (74) Quite naturally "this was deemed an act of insanity" in the Province (75) as he himself says.

Hearing that Sir Francis Bond Head had arrived in New York on his way to Upper Canada as Governor, Gourlay sent him a copy of the testimonials he had obtained when applying for the Chair of Agriculture in the University of Edinburgh in 1831 (which he had reprinted in Cleveland in 1836), and also a printed copy of his letters to the King, the Duke of Wellington and Miss Gourlay. He offered to go either with or without Canadian Commissioners to England and explain his "grand system of emigration."

Sir Francis thanked him courteously, but nothing came of the proposition. (76)

Gourlay also sent to the Governor after his (the Governor's) arrival at Toronto (i.e., in March, 1836) a memorial he drew up for presentation to the Legislative Assembly. He sets out his own ill-treatment, and claims that every step taken against him was oppressive and barbarous, though nothing but zeal for public good actuated him throughout. He does not ask for any relief but saying that public affairs are causing trouble both in Lower and in Upper Canada, he recommends Commissioners being sent to England to have the competent authorities grant free and fair enquiry into every cause of evil. This was practically ignored; Sir Francis gave it to the Speaker; the Speaker handed it to Peter Perry, and he presented it April 27th, 1836; but he with other Radicals were engaged in a constitutional struggle with the Governor and had no time for less important matters. (77)

He kept up a correspondence with Sir Francis, sending him copies of letters concerning his private affairs, letters to his daughters, etc., but at length left off a barren correspondence in July, 1836. There is nothing of consequence in his letters; and it seems certain that he was looked upon as a "erank."

He crossed the river at Sandwich, September 17th, 1836, called on his old friend, Mr. Charles Asken, and was instantly recognized. He remained at Mr. Asken's for three days, being recognized by many and treated with much kindness. Hearing that Col. Prince had been elected member for the District, he called at his house near Sandwich but failed to find him at home; he left for him a memorandum respecting Emigration Societies, and "for the first time" wrote "The Banished Briton, Mediator and Appellant, Profunda Cernit" (his family motto). Therefore he had been a banished Briton, thereafter he was always "The Banished Briton." (78)

The day of his arrival on Canadian soil he wrote Head a protest against the barbarous and oppressive treatment he had received in 1818 and 1819; and did not fail to send also a private letter which he had received from his son.

From Sandwich he went to Chatham, and there to Talbot Street. He had "designed to make a progress from one end of the Province to the other," but from the newspapers he found that party rancour was raging and therefore thought it prudent to pull up "satisfied that all parties are kind and respectful to myself." He turned westward to Malden (Amherstburgh) and back to Sandwich. October 12th he crossed to Detroit and sailed for Ohio, intending to get his trunk and go to Toronto. In Cleveland he had a pamphlet printed containing the correspondence with the Duke of Wellington, Sir Francis Bond Head and the Governor of Ohio (79); and with that he went on board a schooner to cross Lake Erie; but accident prevented his sailing, so he added to his pamphlet and determined to wait for sleighing so as to go to Toronto by way of Buffalo.

In January, 1837, he was suddenly stricken with erysipelas in the leg at a tavern at Willoughby, and could not be moved till the middle of April. He made the best of circumstances during the summer; he was short of money and his remittances from Scotland did not come promptly; accordingly he could do no other than fix himself in Cleveland for the winter. (80)

The Rebellion broke out in December, 1837; Mackenzie fled to Buffalo and afterwards with his Generals and troops took possession of Navy Island. Some Upper Canadians, among them the editor of the *St. Thomas Liberal*, charged Gourlay with being engaged in raising volunteers to assist the Rebels—Gourlay as loyal a man as ever breathed, first, last and all the time. Not only did he take part in opposing the "Patriot" movement in Cleveland, but he sent Sir Francis valuable information as to the movements of American "Sympathisers." (81) Written to in Mackenzie's name (Mackenzie repudiated the letter) to assist the insurgents on Navy Island, he refused, rating Mackenzie in no measured terms; he also expostulated with General Van Rensselaer for joining such a movement. He had already, when in New York in June, 1834, written Joseph Hume a strong letter of rebuke for his notorious letter to Mackenzie in which occurs the passage "baneful domination of the mother country."

Sir Francis being succeeded in his Government by Sir George Arthur, Gourlay in April, 1838—he was then living at Cleveland—attempted to carry on a correspondence with the new Governor; his letter was not answered, and no better fate awaited a copy sent three weeks later. (82) This letter is mainly an exculpation of General Scott from the charges of Head, and regrets for the burning of the *Caroline*, which he says "fired all ranks of Americans and abashed old countrymen"—"far happier results might have followed a contrary course."

In August Gourlay was staying with his friend Judge McDonell at Point Fortune on the Ottawa River when Sir George came to embark there on board a steamer. Gourlay asked him why he had not even acknowledged receipt of the letter. He answered "there were difficulties." With that enigmatical answer Gourlay had to be satisfied. (83)

In October, 1837, he had sent an address to Queen Victoria saying that his object had been to make Upper Canada an asylum for the poor of England, and that he was about to visit the Province to counsel peace; of this he sent a copy to Sir Francis Bond Head to lay before the Legislative Assembly. This he in May, 1838, sent to Lord Durham on his appointment to Canada; his repeated letters received no attention. This neglect astonished Gourlay, because Durham was son-in-law of Earl Grey and had had a quarrel with Brougham. Gourlay never freed himself from the conviction that Brougham was a malignant enemy who constantly plotted his ruin; and he accordingly thought that an enemy of Brougham's must be a friend of his.

Not receiving any answer from Lord Durham, he decided to visit the Western District; but at Cleveland, on his way to Detroit, he learned that Durham was at the Falls, and went there to obtain a personal interview. But by the time he arrived at Niagara Falls, Durham had left for the Lower Province. Consoling himself by writing a lampoon on the "Durham Ox" (84), he again wrote His Excellency. He went on to Montreal, where he again wrote, and at length caught up to the Governor at Quebec. He was told that it would be quite impossible to see the Governor but that all his papers would be laid before him. Then, being again very ill—he was taken sick in Montreal—he went to Caledonia Springs, from which place he again wrote, and sent the third number of "The Banished Briton." He never got an audience with Lord Durham (although he had gone seven hundred miles to see him) "for fear of Brougham." (85)

He published all his correspondence with Durham in the St. Catharines Journal during the winter of 1838-1839; and, hearing that Durham had expressed a desire to have a delegate appointed from the St. Catharines District to back his proposals for the good of the Province, Gourlay took steps to have such a delegate appointed.

January 10th, 1839, Gourlay issued at St. Catharines another "Address to the Resident Land Owners of Upper Canada," detailing his wrongs, the bad condition of the Province and its institutions, canals, railways, education, the church. Of the church, he says "the church itself wholly militant. Episcopalians maintaining what can never be established. Presbyterians more sour than ever, contending for right where they have none whatever. Methodists so disunited that they cannot even join in a respectable groan; and Catholic Priests wandering about in poverty because their scattered and starving flocks yield not sufficient wool for the shears." He asks what is to be done, and answers his own question: "I cannot go far or speak to many, but there is a meeting house within fifty miles of my bed, and I can be carried to that. Let the people of the Township of Grantham meet me there by two

o'clock next Monday, and I will tell them all that is necessary. They can repeat it to others, and the Province may even yet become the most enviable spot on the habitable globe." He sent out an advertisement for this meeting headed "For God, The Queen, The People."

A meeting was held, and another by the inhabitants of Thorold at Allanburg the following month. Gourlay attended, and the meetings resolved to send petitions across to the old land, asking for Commissioners to come out to Canada. The delegate scheme was dropped; Gourlay's health would not permit his further agitation.

Durham's Report came out. Gourlay upheld it against the violent criticism it received from the Assembly and in an "idiotic presentment of a Grand Jury of Newcastle District"—the characterization is not too strong. He advocated meetings throughout the Townships, came to Toronto and urged these meetings emphatically, but his wretched health again prevented much active participation in the movement.

When at the meeting at Allanburg, February 4th, 1839, he met an old friend, Major Seord, of St. David's. Invited to the Major's house, he was taken down with erysipelas and could not be moved for a month. Many kind friends visited him; one of these, Richard Woodruff, a member of the Legislature, Gourlay asked to present to the Assembly a letter for him, and he agreed to do so.

Gourlay thereupon prepared a fresh memorial to the Assembly, setting out his grievances and asking that a Commission or Committee might be appointed to investigate on the spot all the circumstances of the barbarous affair. Getting better, he was removed to Queenston, whence he removed to Niagara on hearing that a committee had been appointed by the House. He there waited week after week, expecting the committee to wait on him; but after four weeks he received a letter from Mr. Woodruff with the Committee's report, "investigating nothing." There had been a misunderstanding; the memorial had been presented and a committee appointed consisting of Messieurs Thorburn and McMicking. The committee reported, "waiving the legality of the judicial proceeding . . . however far he might have deviated from the law of the land . . . your Honourable House would render an act of justice to the Petitioner by addressing His Excellency . . . humbly requesting His Excellency to use the prerogative of the Crown to enable the said Robert F. Gourlay to return and reside in the Province if he shall think fit to do so." This was the report which Gourlay received waiting in Niagara, and it was quite different from what he desired and expected, "the said Robert having felt assured in the years 1836-7 that had he deemed it necessary he could have taken 'this Province' from 'His Excellency' backed by the House of Assembly with its Speaker commanding." That Gourlay did so think there can be not the least doubt, and as little that his belief was grotesquely absurd.

He first thought of writing and correcting the error, but on consideration, fearing that the pardon might be gazetted, he determined to go to the scene of action; accordingly he set sail by steamboat for Toronto.

Before he arrived in Toronto the Comedy of Errors had advanced a scene or two.

The report having been presented by Woodruff to the House, April 25th, the House went into Committee of the Whole, April 29th, Mr. Merritt in the Chair, and there after a seven hours' acrimonious debate adopted the report. On motion by Thorburn, seconded by Woodruff, that the report be adopted, an amendment was moved that an address should be presented asking for a pardon for Gourlay. This was lost, 16 to 26. Another amendment was moved that Gourlay should lay his case before the Lieutenant-Governor before any proceedings should be taken in the House. This was lost by the casting vote of the Speaker. A third amendment that he should have an unconditional pardon was negatived by a vote of 18 to 25; and the original question carried by 23 to 20.

A committee appointed to draft a report presented their draft the same day; it received its first reading and was set for the second reading on the morrow.

Before the House sat again Gourlay arrived in Toronto and was told what had been done. His friends were jubilant at their success, but Gourlay, while he thanked Woodruff for his good intentions "informed him of the woeful blundering." He drew up a memorial asking to be heard at the bar of the House, and asked that it should be presented. This his friends of the Assembly deprecated; it would "put us all in the wrong." "But," said I, "you are in the wrong and your errors have cruelly wronged me; do let me appear at the bar to correct them." The members were inexorable, and the petition was not presented.

But as he had consoled himself on his failure to see Lord Durham at Niagara Falls by writing "The Durham Ox"; so now he got comfort in writing "Monkey War, Part First,"<sup>(86)</sup> He then sent to each member a copy of the "Banished Briton," printed at Cleveland in 1836, containing his "Declaration of War."

He went to the House, and, hearing his name mentioned in debate, was told that the Address to His Excellency was being passed. He "could not jump on the floor and take the blockheads by the throat"; he remembered that he "had got three years and eight months imprisonment in London for the mildest breach of privilege ever perpetrated"; so he sat still, and then went to his hotel, "The Edinburgh Castle Tavern," and wrote a new petition. This was May 6th. On May 4th, on motion of Col. Prince, of Sandwich, the address was amended, and on May 6th it was read the third time and passed. This asked that the Governor should "be pleased to exercise the Royal Prerogative in annulling the sentence of the law passed upon Robert F. Gourlay, banishing him for life; so enabling him to make his permanent domicile in this Province as a true and loyal subject of Her Majesty, should he think fit to solicit the same."

Gourlay was, of course, wholly dissatisfied with this disposition of his case. His new petition set out that he would consider any pardon or favour from the Governor derogatory to his honour, and earnestly entreated that he might be heard at the bar of the House.

Back again to the House he went, laid hold of his old friend Elias More, and demanded that he should present the petition. More took the petition, but returned with it in half an hour, said it burned his fingers, and all Gourlay's friends in the House were opposed to presenting it. "Mr. Merritt, Col. Chisholm, Mr. Cameron—no, not one would hand in the protest against injustice." Gourlay accosted Sir Allan MacNab, the Speaker, before he took the chair; and, MacNab acknowledging that the Address had passed for a pardon, Gourlay said: "Then remember that I returned to the Province with this stick in my hand, and if you do outrage common sense, I may yet knock you down with it."

This done, he ran off to a printing office, had a placard printed headed "Protest," with his two petitions in parallel columns, and ending with the capitalized "Strike But Hear." A copy was sent to Sir George Arthur, Lieutenant-Governor, and many were posted up on the walls. Gourlay ends his account of this episode thus: "Asses all! grossly ignorant and wilfully unjust." (86)

One would have thought that he achieved a substantial triumph; but it was not in the way he desired; no one was put in the wrong and his vindication was not preceded by an examination of and an oration by himself.

We shall see that when at length he achieved the great object of his ambition and was allowed to address the House, his speech was a dismal failure.

Gourlay's conduct on this occasion did much to confirm a growing impression that he was if not deranged at least "cracked."

He remained during the summer of 1839 most of the time at Queenston, occasionally visiting friends. An incident which occurred during the autumn of this year showed Gourlay that he was not safe everywhere in the Province; this was when he was on his way to a meeting at Beamsville.

He was then living at Queenston; driving September 10th with Dr. Woolverton, of Grimsby, about two miles from that village on the mountain, he was informed that the proprietor of an adjoining farm was a brother Scot, Andrew Muir by name. Gourlay desired an introduction to his countryman, but as soon as Muir heard his name he rushed at him, struck him violently and would have seriously injured him but that the Doctor whipped up his horse. Muir then picked up a large stone and threw it with fury toward the carriage, fortunately without hitting anyone. Gourlay attempted to lay an information before Robert Nelles, J.P., and Henry Nelles, J.P., but both these gentlemen were from home; he then went to the Court of Oyer and Terminer, then in session at

Niagara: the Grand Jury advised him to go before a Magistrate, but on consideration he urged the Grand Jury to act, and asked the Crown Counsel, Sir Allan MacNab, to call upon them to act. At last the Grand Jury found a presentment against Muir, but the sittings were about their close and it was not proceeded upon. He then laid an information before Henry Mittleberger, William Hamilton Merritt and George Rykert, J. Ps. Muir was arrested and held to heavy bail for the ensuing Assizes. Gourlay complained, January, 1840, to the new Governor, Poulett Thompson (afterward Lord Sydenham): he could do nothing and Gourlay wrote an account of the matter to his friend, Sir John Campbell (afterwards Lord Chancellor Campbell). Soon more important matters demanded Gourlay's attention and Muir was forgotten.

It may perhaps be well to mention here an incident which took place earlier in the year. Having printed in the "Reporter" of April 15th, 1839, his petition to the Legislature, he wished to have support for it, and invited his friends to meet at the British Hotel, Niagara, for that purpose; the better to attract public attention he bought three large pasteboards, fastened to them a placard "The Banished Briton, Appellant and Mediator, Profunda Cernit," and added his intention to investigate the evils convulsing British America, etc., etc. One of these boards he placed at Harrington's, another at the British Hotel, and the third at James Miller's Tavern. That at Miller's disappeared, and Miller said he had destroyed it: Gourlay sued him for 10/6 for "a placard and board destroyed." On the day appointed for the hearing, Gourlay appeared with his witnesses, Miller with his lawyer, a Mr. Campbell. Campbell contended that the placard was seditious, but judgment was directed for the plaintiff. Then the placard was produced and Gourlay went off with it and "there will be no charges" said Mr. Clement, J.P. Gourlay immortalizes Miller as of the grossest ignorance, and does not forget to expose the ignorance of the lawyer and the magistrate as well as to glorify his own knowledge of law. (87)

Incidents such as these show that the reputation as a Radical which Gourlay had achieved, albeit involuntarily and almost factitiously, clung to him; and that notwithstanding his staunch loyalty and his unwearied exertions against the "Patriot" cause, he was by some classes identified with Mackenzie, whom he despised and for whom he nourished a feeling of the most contemptuous indignation.

This phase may be closed with the explanation he afterwards gave of his placard: "the words 'Banished Briton' were intended to attract attention to the monstrous treatment I had received at Niagara, that the word 'Appellant' announced my return to the Province, here to get redress; and the word 'Mediator,' my coming as a peacemaker. . . . As to Government, there was not in existence any man who had been more constantly loyal, and . . . my family motto, 'Profunda Cernit' was set forth on the placard to maintain this." (88)

The common people had no clue to the interpretation of his dark sayings, and even with the belated explanation many will fail to understand how "Profunda Cernit" vouches for loyalty. In too many cases

while it is possible Gourlay *profunda cernit*, it is quite certain that he overlooked *superficialis*.

In September of this year (1839), he had a record of the memorials, the proceedings in the Assembly and his placard "along with articles declaring his opinions and maintaining his right as a British Subject in Upper Canada," printed at Buffalo under the name of the "Banished Briton." (80)

January 16th, 1840, then residing at St. Catharines and in indifferent health, he made the appeal (already mentioned) to the Governor, Charles Poulett Thompson (afterward Lord Sydenham) in respect of the neglect by Magistrates, Grand Jury and Crown Counsel of his complaint against Muir; but as we have seen without effect (80), except that the receipt of his letter was acknowledged. Gratified by even that courtesy he was on the point of leaving for Toronto to wait on His Excellency when ill-health prevented. But in the early part of February he made his way by stage coach to Toronto to his favourite stopping-place, The Edinburgh Castle Tavern, and thence, on Monday, February 3rd, sent a letter to the Governor asking for an interview. No attention was paid to this request. His ailment increased and he betook himself to bed. He got a friend to mail a duplicate of his letter Thursday morning; "Friday afternoon being assured of neglect and not choosing to be put aside in silence," he "crawled out to the nearest printing office and engaged for printing 'The Banished Briton, No. 3' . . . . 'arranged newspaper slips, my letter to the Queen' (of October 13th, 1837), 'correspondence with Sir F. B. Head and Mr. Thompson. To add zest to it' he 'stuck in verses written at two different times, first on coming to Toronto, May, 1839, and now February, 1840, for publication in the British Colonist, and signed 'Fifean,' his 'native county.'"

"The Banished Briton" was printed just in time to have a hundred copies sent around Saturday evening among the boarding houses and public offices. About 2 p.m., February 11th, he received a note dated February 8th from the Governor's secretary, saying that the Governor could not give him an appointment, but would be happy to consider any communication from him; he at once added this letter to "The Banished Briton" with his own comments, and had five hundred copies struck off and offered for sale at one penny. The comments are characteristic: "villainy has been at work against me ever since the departure of Sir F. B. Head"; "the red-tapists had given . . . no thought" to his letters; "what had half the effect in cooling down the fever in the Province as my letter to Mackenzie?" "I must be at the mercy of" the Governor's "paltry clerk whose letter before us is a tissue of shuffling and palpable deceit." (81)

In September, 1840, we find Gourlay travelling from St. Catharines to New York "in stages, steamboats and railcars, talking much and continually excited with various scenes and occurrences." (82) It was in the spring of the following year that he built a log house on his property in Dereham. This he occupied until the House met in Kingston in 1841, when he made his way to that place.

On July 28th, 1841, he caused to be presented a formidable petition to the House of Commons of the United Canadas, by the hand of Mr. Merritt, M.P.P. It contained his memorial of 1836 (which had fallen flat), that of 1839 (which had had such an unexpected and undesired result), the Report thereon and his Protest. He attached a copy of "The Banished Briton," printed at Buffalo, September, 1839 (containing an account of the proceedings in 1839, "along with articles declaring his opinions and maintaining his rights")—and prayed that "all may be seriously considered . . . and that the wisdom of United Canada may do him that justice **which has been so long and so cruelly denied.**" (93) He did not this time make the mistake he had made two years before by leaving the conduct of this petition wholly in the hands of his friends; he was present in Kingston and took an active part in directing proceedings.

Read July 30th, the petition was, August 26th, on motion of Dr. Dunlop, referred to a committee composed of Dr. Dunlop, (Hon. Mr.) Viger, (Hon. John) Neilson, (Mr.) Price, and (Captain) Steele "to examine the contents thereof and to report thereon." The committee, with Dunlop as chairman, examined witnesses—Messrs. Merritt, Thompson and Thorburn, M.P.P.'s. All thought Gourlay loyal and honourable and his projects beneficial; all were present at his trial at Niagara in 1819 and thought "his speech incoherent and his appearance that of one not in self-possession" (none speaks of the traditional outburst of maniacal laughter); and Mr. Merritt thought "he was treated throughout with the greatest cruelty and injustice." Some affidavits were also obtained.

The Committee reported, September 11th; Gourlay's projects are fairly detailed, his trials at Kingston and Brockville, his treatment at Niagara. The Report expresses the "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 his trial and sentence when in a state of bodily and mental weakness . . . which prevented him from defending himself was unjust, unconstitutional and cruel." The Report recommended "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 the unwarrantable exercise of authority. In the meantime 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 Report was adopted.

On September 16th, the last day of the session, Dr. Dunlop in a vigorous speech in which he defended and gloried in the language of the Report (which he proudly acknowledged having drawn up), moved a resolution which on being seconded by Mr. Aylwin was unanimously adopted.

"Resolved that a humble address be presented to His Excellency, the Governor-General, communicating a copy of the Report of a Select Committee of the House, in the case of Robert F. Gourlay, Esq., and praying that measures may be taken for carrying the recommendations contained therein into effect." (94)

The same day this address was presented to and graciously received by Lord Sydenham. The next day but one, Sunday, September 19th, the Governor died from the effect of an injury received when his horse fell with him fifteen days before. Gourlay wrote for the Kingston Herald an editorial speaking of the deceased Governor in the highest terms (95), and he more than once thereafter wrote of this Governor with praise for his business capacity and sense of justice.

The very handsome conduct of the first House of Assembly of the new and United Canada satisfied even Gourlay; he thought all his vexations in that quarter ended and that he would soon rejoin his family in Scotland. (96) Anxious to leave for the old land he, October 11th, wrote Sir Richard Jackson, the Administrator, asking him what he had to expect from the Executive. After some correspondence he was informed that £50 will be advanced him out of the small sum at the Administrator's disposal; this would enable him to proceed to Quebec and meet the incoming Governor. The sum was paid, and after receiving office copies of most of the proceedings, Gourlay went to Quebec on the same boat with the Administrator. On the steamboat from Kingston to Montreal, Gourlay sent to Sir Richard a sketch of improvements which he proposed to be made in Kingston, accompanied by a map. In a few minutes a gentleman waited on him with a map in his hand, and told him that Sir Richard would examine it at Montreal—"it was somewhat amusing to observe that His Excellency from that moment . . . kept himself more retired from passengers." (97)

The arrival of Sir Charles Bagot was delayed, and Gourlay kept up a lively correspondence with the Administrator, calling for the missing documents and also for a decision by the Executive as to what he was to receive. He made his way back to Kingston, and there at last, on December 15th, he was furnished with a Report, dated December 10th, approved December 13th, of the Executive Council in his case, which dashed all his hopes.

This Report is written with great ability (as has already been said Hon. R. B. Sullivan is said to have been the author, and it is worthy even of him). It recites the Act of 1804 and the proceedings taken under it against Gourlay but without passing upon the advisability of the legislation or prosecution. It shows that both were legal and points out that "Mr. Gourlay suffered for direct disobedience to the law as it stood; he could not legally have been acquitted by any jury for such disobedience." Referring to the request that the Government should repudiate the transaction, it was said "no regret that such a law should have existed or that it should have been used with severity against him and no commiseration for his sufferings will authorize the admission of the dangerous and destructive principle that individuals are to judge for themselves and with impunity act in defiance of the positive law of the land."

So far as immunity from the effect of the conviction was concerned, Gourlay might at any time have had a pardon, and that might be given him then if desired.

Any indemnity must first be brought by the Government before the Legislative Assembly; and the Council did not suggest any limitation of the liability of the Assembly by withholding from it the opportunity of granting any reasonable sum of money to Mr. Gourlay. "Eut," the Report concludes, "it would be unjust to him were he to be permitted to remain under the impression that the Government recognizes the illegality of the sentence pronounced against him or liability of the public funds, to indemnify him as a matter of right, against the consequences of his own deliberate infringement of the law of the Province."

It would be hard for any law-abiding subject to find fault with any part of this Report; and in its calm and judicial statement of undoubted law and constitutionality it affords a striking contrast to the warm, rhetorical and sympathetic address of the Assembly. (98)

This Report put an entirely different face on his project; the proposed journey to Scotland was abandoned, and Gourlay remained in Kingston four months. In October, 1841, the Duke of Wellington coming into power again, Gourlay renews his correspondence with him; he tells him of what the Assembly had done, and hopes that the Duke will cause justice to be done him. He keeps on writing, (it must be said sometimes aimlessly but generally with a view to a Commission of Enquiry being sent out) until August, 1843, but never receives any attention.

After his disappointment in 1842 he moved from place to place in search of health, and by September, 1842, he had again taken up his residence in St. Catharines, "trying the effect of the warm salt water baths." His mother-in-law, "sister of the late Judge Hamilton, of Queenstown," had died in Scotland the preceding May, and his two unmarried daughters, of whom she was the stay since their mother's death, required his protection. But he could not make up his mind to leave Canada without clearing up the situation in the Legislature. He wrote Hon. John Neilson, of Quebec, then at the meeting of Parliament at Kingston, and asked him to bring up his business immediately; he offered to come to Kingston himself if necessary. Neilson advised him to prepare a petition "stating in as few words as possible the fact . . . since the Report" of the preceding year; he did so but added that the proceedings of the Executive Council had "been taken clandestinely by enemies who all along have pursued him at home and abroad through back-stairs' influence and underhand plots"; he hopes that "the darkest machinations may be exposed and your petitioner at last freed from persecution which has no parallel." (99)

This was presented and, although declared by the Speaker to be informal and to contain improper language, was referred to a committee of five, including Neilson and Dr. Dunlop, who reported that in consideration of his losses and misfortunes, Gourlay was entitled to an annuity during his life: an annuity of £50 was recommended by the House and assented to by the Governor, Sir Charles Bagot, October 10th.

Gourlay left St. Catharines on his way to Avon Springs, October 12th, and did not receive the notice of the Governor's intention till November 1st on his return to St. Catharines. He then wrote to Neilson saying that while no doubt Neilson intended to befriend him he must spurn all offerings on the ground of compassion—no insult could be greater than being placed on the Civil list as a pensioner "**in consideration of losses and sufferings.**" He added that he would lose no time in quitting the country where he had been so insulted, and that he would acquaint the world with his reasons. <sup>(100)</sup>

Gourlay certainly was not mercenary; he had made plain the year before in a letter to Dr. Dunlop that he did not pray for money, though he did claim damages from the Crown for undue exercise of its authority. <sup>(101)</sup> This curious obsession of a right existing against the Crown—of course wholly without foundation in law—he never got rid of.

His reception of information of what his friends had done for him increased and confirmed the suspicion of his want of perfect sanity; but it was not at all discreditable, rather the reverse, to refuse a grant of money by way of charity.

## CHAPTER VII.

### "Chronicles of Canada," "The Neptunian," etc.

In September of this year he had printed in St. Catharines the first edition of the "Chronicles of Canada" which had some vogue. It contains the address to the Resident Land Owners of Upper Canada of April 2nd, 1818, an account of several Township meetings in that year, the Address to the Worthy Inhabitants of the District of Niagara April 21st, 1818, proposed Address to the Prince Regent, report of the meetings at York of the Upper Canada Convention of the Friends to Inquiry, an account of his trial at Kingston and of the dinner given to him there, and extracts from the proceedings of Parliament with a Recapitulation and Conclusion by Gourlay. (102)

He left St. Catharines early in November, sailing per steamer Transit from Queenston, November 3rd; passing through Toronto, Kingston, Montreal, St. Johns and Troy, he arrived at New York November 16th. Before leaving Queenston he indited a letter to the St. Catharines Journal, attacking Colonel FitzGibbon for not rewarding Mrs. Defield, who had saved him from death or capture in the war of 1812; "while Colonel FitzGibbon had five thousand acres of land granted him for his services in the **Monkey** War and at Gallows Hill." The Colonel replied by a letter to the Journal (and the British Whig, Kingston) saying that he had had four hundred acres of land in the Talbot settlement granted to Mrs. Defield's husband; he also gave the correct account of the occurrence in 1812.

Gourlay writes, January 7th, 1843, from Providence (to which place he had gone from New York), a long letter, returning to the attack, and adding: "Regarding the 'five thousand acres of land' presented or granted to Col. FitzGibbon, let it be known that I was at Toronto when he suddenly disappeared, to the amazement of everybody. Some thought he had decamped with a large amount of Government treasure, others that he had become a defaulter . . . but all were mistaken, for he quietly returned."

This quite gratuitous attack on as honest and valiant a man as ever lived shows what Gourlay considered fair argument, and is excusable only on the ground of ill-health, bodily or mental. This letter was sent to both the St. Catharines Journal and the British Whig, but neither published it, and nothing more was heard of the matter. Later on, in 1843, however, he is convinced that in 1818-19 "this same FitzGibbon, after friendly declarations to me, turned round and led the van of the most wicked conspiracy which was ever got up by governmental power to ruin an individual.

About the same time Gourlay had a newspaper controversy concerning the death of Tecumseh; he also wrote the fable "The Lion and

the Bear" (already spoken of) for the Kingston Chronicle, but the Chronicle refused to publish it—"probably from some misapprehension." (103)

About February, 1843, he removed from Providence to Boston, "and had much enjoyment with improved health, walking in the glorious Common." On February 20th he caused a petition to be presented by Mr. Obed Barney of Nantucket, to the House of Representatives of Massachusetts; this gave his birth, his labours in 1800 and 1801, his coming to this continent in 1817, his banishment from Upper Canada, his petitioning the British Parliament from 1820 to 1827, his recrossing the Atlantic in 1833, and added that the "sole object of the petition" was "to record the facts with a view to after reference."<sup>(104)</sup> Perhaps no such extraordinary petition was ever sent in to any Parliament or Legislative Body.

In the following month he issued in Boston the first number of "The Neptunian," "an introduction to more, should public patronage be obtained. . . . Number after number to unfold my principles and projects, through a period of forty-two years devoted to the cause of humanity."

This number is styled "The Banished Briton and Neptunian No. 1." It contains his petition to the Legislature, copies of his 1831 testimonials (which had already been reprinted in Cleveland, 1836, as part of "The Banished Briton No. 1") with notes, an address setting out the objects of the journal, a story of his life, and asked that he might have a hearing.

In April No. 2 appeared; the style is now "The Neptunian," and ever after so continued. This contained an address to the People of the United States (rather pointless), his Notice to Creditors of November, 1833, his "declaration of war," correspondence with the Duke of Wellington and petition to the King in 1835, correspondence with Head in 1836-37-38, with Mackenzie in 1838, Sir George Arthur and Lord Durham in 1838, and notes. With No. 2 a new paging begins, which is continuous through the subsequent numbers of "The Neptunian."

No. 3 contains correspondence with Lord Sydenham in 1840; No. 4 the 1836 petition and correspondence concerning it, etc., with notes; No. 5 the petition of 1839 and proceedings thereon; No. 6 that of 1841; No. 7 correspondence with Sir Robert Jackson, the story of the Miller trouble concerning the placard, and the "Monkey War"; No. 8 the petition of 1842.

By this time June had arrived, and Gourlay was about to leave Boston. "As a token of gratitude and usefulness," he desired to leave behind a plan for the improvement of Boston Common, and wrote the Mayor accordingly. This plan, with accompanying illustrations and an account of his insomnia, fill up No. 9 of The Neptunian, issued July, 1843.

No. 10, published in September, contains his article on FitzGibbon, his "Death of Tecumseh" and his fable, "The Lion and the Bear"; No. 11 in October contained his 1841-43 correspondence with the Duke of Wellington, and also a copy of a new petition he intended to present to the Parliament of Canada. This petition, dated from Boston, October 7th, 1843, states that Gourlay had petitioned in 1836, 1838, 1841 and 1842; that "he was wholly neglected by the Commons House of Assembly of Upper Canada the first of these years; greatly wronged by the same House the second of these years; that he was fully satisfied with the award of the Legislative Assembly of Canada the third of these years, and cruelly disappointed with the result of his last application." He asks for "a personal hearing at the bar" of the Houses of Parliament. (105)

A copy of this was sent to the Speaker of the Assembly, another to a member of the Council, a third to the member for Bytown. None of these was presented. Had the petition been presented, it almost certainly would have been quite ineffectual.

No. 12 contains an account of Gourlay's actions in 1818 and his trial at Brockville; No. 13 his troubles with the Kingston Post Office in 1818.

Gourlay now made his way via Springfield, Albany, Syracuse and Oswego, to Kingston, where he arrived November 9th; he sent a circular to all the members of Parliament asking a personal hearing; then he drew up another petition. This set out the address in 1841 and what had been done on it, the petition of 1842 and the misunderstanding about it, and asked (in substance) that the plan of 1841 should be carried out. The petition was presented November 30, and referred to a favourable committee, including Gourlay's friends Neilson, Thorburn and Dunlop; and they recommended that the Report of 1842 should be carried into effect. This was agreed to, and His Excellency approved. Gourlay was notified of this and also that a yearly grant of £50 had been directed in his favour by the preceding Governor-General. He thanked the Governor, but declined the annuity. (106)

Gourlay also sent copies of Nos. 2, 3, 4, 5, 6, 7 and 8 of *The Neptunian* to the members of Parliament.

He left for the West by boat; stopped for Sunday to visit friends at Cobourg, where he heard a sermon, then returned East by stage coach through Colborne, Belleville and Napanee to Kingston, and then sent the members copies of *The Neptunian* Nos. 10, 11 and 12.

As showing his vigour, it may be mentioned that after his return from Cobourg in 1843 he walked from Kingston to the Mineral (Caledonia) Springs.

Before leaving the transactions of 1843 it may be well to see how much he had accomplished: we can thereby perhaps the better judge of the wisdom and propriety of his future conduct. He had in his petition urged that the House should "have annulled these unhappy doings of 1842, have the pension formally cancelled, and a present and adequate

payment recommended instead thereof." The Report of the Committee (adopted by the House) was "That an Humble Address be presented to His Excellency the Governor-General praying that His Excellency will be pleased to adopt some means of conveying to Robert Fleming Gourlay the opinion of this House on his case in the terms of the Report made to the House by a Select Committee, dated 11th September, 1841, and adopted by this House on the 16th of the same month." The Governor's Secretary wrote Gourlay saying that His Excellency had "great pleasure in complying with this request, and in transmitting to you accordingly the accompanying copy of the Report of a Select Committee of the House of Assembly dated the 11th September, 1841, and adopted by the House on the 16th of the same month. I am further to acquaint you that in compliance with request of the House a yearly grant of £50 was last year directed in your favour by His Excellency's predecessor."

Gourlay said many times, both before and after this, that he was perfectly satisfied with the Report of 1841. This action of the House and of the Governor-General reinstated that action (if anything could) and "annulled the unhappy doings of 1842." He was not, it is true, paid a lump sum, but the annuity already ordered was placed at his disposal; and while he declined it and continued to protest against it, he accepted one instalment of it, salving the matter over by the fact that he had paid it to his printers.

It is very difficult to see why he should not have been satisfied with his triumph; he had got all he asked and more (except a lump sum down). While he must be acquitted of mercenariness, it needs no brilliant imagination to conceive how Gourlay would have assailed another who was not content with such a result. We shall see that he was not.

He had made his way back to Boston by February, 1844; and Nos. 14 to 22 of the *Neptunian* were published at intervals, the first as early as February, the last on April 15th, 1844. All these numbers were filled with accounts of transactions before Gourlay left Canada in 1819. Copies were sent to the Governor-General. He seems to have intended to close the series with No. 22, and he concludes that number with a dedication to his daughter, in which he says that there are now reprinted all his writings in Upper Canada up to May 4th, 1818, etc.

In March, 1844, he laid a petition before the Massachusetts Legislature asking that body to use their endeavours to have the Ambassador to England obtain a settlement of the right of British subjects to change their allegiance.<sup>(107)</sup> He fills No. 23 with this petition, an address of his to the Governor and Legislature of Massachusetts (of no moment), his Emigration Societies of 1829, his Statistical proposals for Ohio of 1836, and an Invocation to Drumcarrow Craig, written in 1831 (which had already been printed in the Record of his Private Affairs in 1832).

In February of this year he again began to write the Duke of Wellington, asking for a Commission to be sent to Canada, but he ceased in June, of course without any result. He also tried to stir up

the Report of 1841 with Neilson and others. All this he sets out in No. 24.

The death of his only son occurred in November, 1843, but he did not learn of it till July, 1844. He then wrote a long, rambling letter to Sir Charles Metcalfe telling of the death of his son and urging the appointment of Commissioners. This, with transactions and correspondence of 1816, 1817 and 1818, fills No. 25.

No. 26 contains Addresses of 1818 and 1819, the silly presentment of the Grand Jury of Newcastle District (Cobourg) in 1839 against Lord Durham's Report, and a criticism of James Strachan's "Province of Upper Canada." This number completes the first volume of my copy.

Gourlay continued to reside in Boston, (he says he lived in Boston two years and seven months). In September, 1844, he put together the scheme for the improvement of New York in 1835, and a new and elaborate scheme for the improvement of Boston, both accompanied by plans, and published the whole as No. 27 of the Neptunian.

The New York scheme had been handed in at the City Hall, in 1835, and Gourlay then left New York for a fortnight. On his return he was informed that his scheme was under consideration; but he thought it time enough to apply for compensation when the Croton River should be brought to the city. He accordingly left for Ohio, and was detained "there and in Canada by ill-health years beyond expectation." When the great fire of 1836 occurred in New York, he "conceived a grand project for rebuilding on a plan of magnificence, convenience and safety from fire surpassing all that ever had been," and offered his services to the Mayor (January 12th, 1836). Nothing came of this; but being at Avon Springs in September, 1842, he saw an account of the opening of the Fountains in New York. His scheme had contemplated a fountain; and, coming to New York, he presented a new plan to the Mayor and asked for an interview—with no result.

The plan for the improvement of Boston is most elaborate. He expected that city in half a century to have 500,000 souls; he had studied city building for many years, had recommended suburban railways in London, Edinburgh and Liverpool, and advised them for Boston; expecting Boston to be the landing port for Atlantic travellers to and from New York, the harbours must be improved; a grand crescent, squares and boulevards would make the city beautiful, etc., etc.

Nos. 28, 29 and 30 are taken up with the transactions in 1818 and 1819. No. 28 had an added note on the death of Tecumseh, and No. 30 a long note by way of review.

In this review he says that there were published in Upper Canada in 1818, on behalf of the Friends to Enquiry, four pamphlets: 1, Principles and Proceedings; 2, Transactions of the Convention; 3, a "Narrative addressed to the Worthy Inhabitants of the District of Niagara" (of Gourlay's movements and actions in Eastern Upper Canada in 1818), and, 4, Gourlay's Address to the jury at Kingston. None of these could

be found on his return to the Province in 1838; most, he thought, were destroyed and some hidden. It is satisfactory to know that of these the fourth is still in existence as a separate pamphlet; the first and second are reprinted in the *Chronicles of Canada*, and the third, which was printed at the *Spectator* office, Niagara, August, 1818, is reprinted in the *Neptunian*, No. 30, pp. 405-426.

In October and November, 1844, he writes from Boston two letters to the Duke of Wellington, informing him that Metcalfe had dissolved the Parliament of Canada, and asking the Duke to "put an end to it—put an end to trifling and temporising with 'British North America,'" and allow the "Provincials . . . a Convention regularly chosen by themselves . . . to frame a constitution for British North America." No answer was returned.

Receiving the news of the death of his sister and his married daughter, he informed Metcalfe, and hoped comprehensive measures might be framed to put an end to party rancour. This was followed by the original letter which had informed him of his daughter's death and her "last breathings," "words which all of us ought to treasure up against the day of trial." These, with an extract from his *Statistical Account* and a copy of Hume's "baneful domination" letter he published as No. 31 of the *Neptunian*.

Addresses, letters, etc., of 1819 fill Nos. 32, 33 and 34, thereby reproducing either in *The Neptunian* or the *Chronicles of Canada* all his newspaper writing of 1817, 1818 and 1819. Writing a note dated "Boston, December 17, 1844," he says: "My imprisonment and banishment . . . is now declared 'illegal, unconstitutional and without the possibility of excuse or palliation'; out of that all the future miseries of Canada arose, for it confirmed the weak and tyrannical power of Sir Peregrine Maitland, established the Family Compact, and generated what Lord Sydenham styled '**the abominable government.**'" (108)

After the 1844 election we find him corresponding with Aylwin, Johnston, Morin, Cameron and Dunlop, with a view to the presentation of another petition. This petition sets out the report of 1841 and subsequent proceedings, the Report of the Council, his petitions in 1842 and 1843, his willingness to appear at the bar of the House to "submit to interrogation on every particular action of his life or assertion he has made"; says that "Ministers of the people's choice could play fast and loose with duties the most sacred, that while they presented to the world a face of honesty they could underhand with a little finger undo appearances and swindle a private individual out of his right, his property and his character—nay, that in doing all this they could make the Representative of Majesty a catspaw, and proceed unblushingly in their course of iniquity"; that this was shown by his treatment by the Executive Council in 1841; that "according to justice and parliamentary usage the decision of (the) House in his case, 1841, was final and . . . more . . . were the report of the Committee of Council allowable as a regular instrument, it can be shown to be what your Petitioner characterized it, 'false, frivolous, mawkish and impertinent.'" He

deemed it his "duty as one of the people to afford the people's Representatives opportunity to vindicate their rights and maintain their integrity," and entreated the House that "his case . . . may be reviewed and gravely considered in order to justice." (109)

It is at least interesting to see Gourlay appealing to Parliamentary usage; and it is impossible that any wholly sane man would believe that any good could come of a petition couched in such abusive terms.

Moreover, one is strongly tempted to be of the same mind as, the genial "Tiger" Dunlop, who wrote him July 17th, 1844, "As to your own case, I don't know what you want. I got you to draw the prayer of your own petition, and by the unanimous vote of the House got all you wanted and more . . . when I find out what you want. I'll try and get it . . ." Gourlay admits that Dunlop's management of the case in 1841 was admirable and "you did indeed get all I wanted in promise," but thinks "this was sadly clouded over by the proceedings next session." Looking at the Report and Address, however, we find a unanimous opinion of the House in favour of Gourlay—nothing modified or clouded this over; they recommended compensation for his losses—he refused a pension, and no one has ever suggested that one wronged by a prosecution by the Crown has a right to compensation, although the Crown has been known to give a sum of money as an act of grace; Gourlay refused any act of grace. The one thing which he seems to have wanted was some repudiation by the Crown of his prosecution; and that he could by no possibility get so long as there was a lawyer in the Government.

This petition and some of the correspondence will be found in No. 35.

It was presented and read February 13th, 1845, (110) but nothing was done on it; No. 36 records this fact and gives some more correspondence as also an account of the "Markham College" jest of 1839.

No. 37, published June, 1845, contains some correspondence in 1825 and 1841, concluding with a long letter to Neilson in 1845; No. 38 contains certain correspondence in 1843 and 1845 including a letter to a medical journal in August, 1845, concerning his insomnia, and concludes with a Dedication to Hon. John Neilson, M.L.C., Canada, dated Boston, August 28th, 1845. This has as its final sentence: "I have given you credit, and still do, for good intentions, although you have caused me infinite misery. In the end I shall be happy to show that **'it was not you that did it but God.'**" The misery (he points out) was caused by Neilson, 1, declining to present the memorial of 1841 because he thought it would make people think Gourlay much worse than he was; 2, preventing the printing in the Quebec Gazette of his case because it would do no good; 3, concurring with the Speaker in the opinion that the 1842 petition was informal; 4, begging for Gourlay as feeble in body and in mind; 5, procuring for him a pension as for the widow of the late Surveyor-General, and, 6, questioning whether he was exempt from errors in 1817-1818—all surely venial offences, if offences at all.

In September he came to Montreal "having no object . . . but an interview with His Excellency"; and wrote the Governor asking for one. He sent a copy of the letter which he had written to Dr. Dunlop in September, 1841, and asked that the Parliamentary transactions of that year should be acted on and those of 1842 cancelled. Metcalfe treated him with kindness (gratefully acknowledged) and entertained him at dinner; but ill-health again drove him to Avon Springs; from that place he solicited the Governor's assistance toward a new edition of his Statistical Account (he says that it was for this purpose he crossed the Atlantic in 1833); he had solicited like aid from Head in 1836 and Arthur in 1838 with the same want of success. By October 14th he had made his way via Albany to Niagara Falls on his way to his log house in Dereham. Spending four days at the Niagara frontier he embarked at Buffalo and landed the second day at Fort St. Clair; crossed the river to Sutherland and then by steamer "Goderich" to Sarnia and afterwards to Goderich. He spent one day at the show of agricultural stock and then went to Dr. Dunlop's residence on the River Maitland. Setting off on foot for Galt he stopped for the night at Cook's Inn, ten miles from Goderich, in a settlement where "half the settlers were Scotch, more than a fourth Irish and the rest English, etc." Having got twenty-seven miles from Goderich he was attacked by his old enemy erysipelas, and lay for two days "dead lame in a miserable tavern surrounded by an Irish colony where no comfort could be had either for love or money." On the third day he was carried back in an ox wagon ten miles to better quarters, and the following day he was conveyed to his friend, Dr. Dunlop's. Being there most kindly entertained he was so far recovered in three days that he could be taken in the Doctor's wagon to Goderich; he there took the boat and after four days journey in three several vessels he arrived at Chippewa, November 8th; thence he went to Queenston where he remained "with old friends, free of pain, but requiring time to reduce the swelling in" his leg.

By November 30th he had arrived at Montreal to see Metcalfe, but Metcalfe's state of health prevented an audience, and Gourlay determined to "retreat to the sea-board for the benefit of milder weather till the sitting of Parliament." He was again confined to bed and seems to have remained at the Ottawa Hotel, Montreal, till the meeting of Parliament. All this is printed in *The Neptunian*, No. 39, the last document printed being a letter to Hon. D. B. Viger dated from the Ottawa House March 12th, 1846.

We lose now the guidance of *The Neptunian* (111), but the *Journal of Parliament* helps for a time to trace his activities.

On April 9th, 1846, a petition was presented from Gourlay which set out the Report of 1841, the proceedings thereon, the Report of the Executive Council, the petition of 1842, etc.; doubts not that the House would sustain the Report of 1841 against the Council, and asks that the whole should be taken into the serious consideration of the House. This was ordered to be printed.

On May 4th he had another petition presented; this mentions the Memorials of 1836 and 1839, the Petition of 1841 and the result, that the Report of the Executive Council in 1841 "is cunningly devised; in its assertions it is bold and deceptive, and in its arguments fallacious, sometimes begging the question where that is inadmissible" (it does not say when begging the question is admissible) "and often insinuating purposely to mislead"; the Act of 1804 was intended for Irish rebels or aliens while he was an unattained British subject; "the Chief Justice of Upper Canada . . . most assuredly sinned against light, judged contrary to evidence," "aye, and after all the writer of the Report of Council drivels about 'commiseration'"; "there is now only one question for consideration," "are the opinions expressed in the Report of the House, 1841, sound and true?"—"he now therefore entreats that he may be heard in person or by counsel at the Bar of the House or before . . . a Committee." This petition was also printed, but a motion May 11th that he be heard in person or by counsel was defeated on a division.

Gourlay returns to the charge; May 22nd another petition is presented from him. This sets out once more the proceedings in 1841, "that as yet his sentence of banishment is not declared null and void, neither has he been compensated for losses"; his pedigree is set out, his exclusion in 1820 from the English Bar by reason of his conviction in Upper Canada; his candidature for the Chair of Agriculture in the University of Edinburgh in 1831, with six testimonials given in full. He entreats that the whole of the premises may be duly considered, and "compensation be allowed him for expenses incurred these last five years, the whole of this time being devoted to his defence as a British subject." This also was printed with the others, and was equally ineffective. (112)

## CHAPTER VIII.

### Visit to Scotland and Return to Upper Canada.

Even Gourlay's patience was now exhausted; he returned to Scotland, took up his residence in Edinburgh, and devoted himself for a time and with some success to rescuing from the wreck of his father's fortune sufficient for his sustenance. In 1848 he took up with vigour opposition to an enclosing project which he thought against justice and law; in November, 1849, he drew up a sketch for the "Edinburgh Arcade and Foot Bridge," "which he had lithographed and presented to the Lord Provost and Citizens of Edinburgh." In the following year he published a more elaborate plan for the improvement of that city, and placed it on sale in a small pamphlet. (113)

In 1851 we find him at the Bridge of Allan for his health (109); he was feeble, and "the chances are that I shall never see Canada again, which will grieve me, as there are many in the Province dear to my remembrance." In 1852, after addressing a public meeting with his usual vehemence, he was knocked down, a carriage passed over him and broke one of his legs. He never fully recovered, and was lame for the rest of his life.

He always retained his interest in Canada; and we find him in 1852 publishing a pamphlet advocating a duty on wheat from the United States, while wheat from Canada should be admitted free. He was no more successful in this than Chamberlain and his followers half a century later. (114)

Gourlay came again to Canada in 1856 and took up his residence on his Dereham land, which he called "Ceres" after his native parish. The facts of the occurrences of 1856 and 1857 are set out in detail in a publication, "Mr. Gourlay's Case," mentioned in note 118.

Early in 1856 he instructed his man of business in Edinburgh, Mr. John Cook, W.S., to prepare a petition to the Canadian Parliament; he was then in such a condition of health that he doubted ever again being able to go to Canada. "Its main object was that my claims on the Government of Canada might be maintained in ease of my death, and more especially that no stain should attach to my character"; "deeming all pecuniary advantage as dust in the balance compared with what affected my honour . . . had what the petition prayed for been . . . granted, I would have sat down contented."

This petition was sent to the Speaker of the Assembly and duplicates to several members; April 2nd, 1856, it was duly presented to the House of Assembly, "praying that the sentence of banishment passed upon him in the year 1819 may be annulled." This was, April 16th, referred to a committee composed of Hon. Mr. Merritt, Sir Allan MacNab, Solicitor-General Smith, Roderick McDonald, Hon. John Sandfield Macdonald,

Hon. Mr. Robinson and Joseph Curran Morrison. They reported, June 11th, recommending an Address to the Governor-General, "praying His Excellency to sanction the introduction of a Bill for the remission of the sentence or to exercise the Royal Clemency for restoring him his political rights by a free pardon for the alleged offences for which he has been convicted under a Law which has since been repealed." An Address in these terms was agreed to June 28th, and presented to the Governor. The House was prorogued July 1st. (115)

Mr. W. H. Merritt wrote Gourlay, June 28th, that the Assembly had recommended a full pardon to be granted; and added the next day a note, "You are at liberty to draw your pension whenever you please to send a power of attorney . . . to draw the money which I take it for granted you will now accept." This was of course the pension or annuity granted in 1842. It is stated by some writers that the annuity or pension was granted in 1856, but this is a mistake.

As soon as Gourlay received Merritt's communciation he wrote (Edinburgh, July 17th, 1856): "Accept the money . . . certainly I will not—neither pension nor pardon, however free—neither now nor ever . . . the Report of 1841 I hold by and that alone. . . . Should my life be spared I may yet be in Canada more fully to plead my cause." The letters by Merritt and Gourlay's reply he printed in Edinburgh and distributed among his friends in Scotland; copies were also sent to the members of the committee and some friends in Canada.

His health being restored, he sailed from Liverpool, accompanied by a daughter, August 13th, landed at Philadelphia, August 29th, and proceeded to Canada.

In London, C.W., he printed a call to the people of Canada:

London, Canada West,  
September 23rd, 1856.

"People of Canada!

"Here I am! Will you countenance me? Without the public ear I am helpless; with it confident of going to the grave triumphant.

Your aged friend,  
Robert F. Gourlay."

Continuing to travel through Canada, and distributing copies of the Edinburgh reprint by the way, he reached Montreal; afterwards he established himself for a time in Woodstock, wrote Mr. Merritt asking his advice, was told (February 17th, 1857) that he should send in a petition for the pension in arrears and accept it, or visit Toronto during the second week of the session, when Merritt would confer with him personally. Gourlay agreed (Woodstock, April 9th, 1857) "to send in a memorial regarding his case." He did write one, but concluded to retain it, "for so many have been presented to the Assembly on the same subject that another would only increase confusion." "The Administrator paid me £50, 1841, and the Governor-General sent me a year's pension to Boston,

which I handed over to the Printer of my Record." This is the only place Gourlay admits having received any payment on account of the pension; and he seems to desire to excuse its acceptance by the fact that he paid it to a printer.

Parliament met in April, but the petition or memorial was not forthcoming. The memorial is printed in the pamphlet, "Mr. Gourlay's Case." (See note 118). It is along the familiar lines, and asks that the House should "take the Report . . . of 1841 . . . into consideration and . . . give effect to said Report by annulling or by adoption of such measures as will enable the Assembly to annul the sentence of banishment."

In May, on seeing in the Woodstock "Sentinel" a news item saying that a pardon was about to be issued to him, he authorized the editor to say that he considered any offer of pardon an insult. He hastened to Toronto and protested to the Governor, Sir Edmund Head, against the issue of a pardon. His Excellency replied that he intended "to be guided by his constitutional advisers, proceeding on grounds of a public rather than a private nature."

In May Gourlay had a memorial presented to the House by Mr. Merritt referring to the petition sent from Scotland in 1856, the information in Merritt's letter, his own reply, his sailing from Liverpool, his arrival in Philadelphia and in Canada, his printing an account of the whole transaction at London, and his sending a copy to each member of the House; he prayed to be heard personally at the Bar of the House. This the Speaker declared disrespectful to the House as it militated against what it had declared the preceding year; Merritt agreed in this opinion. Gourlay appealed to the Governor, only to be told that it was no part of the Governor's duty "to question or control the opinion of the Speaker of the Assembly as to the tenor of any petition or memorial addressed to that Body." But Gourlay entered into communication with the Speaker and at length, June 9th, Merritt presented an emasculated petition ("guttled," Gourlay calls it), and moved that he be heard at the Bar as prayed for in his petition. The motion was lost on a narrow division (23 to 25). Gourlay never doubted "of a hearing till the Attorney-General (Macdonald) stood up in opposition, holding in his hand the gutted petition and exposing its nakedness!"

Petitions were during the year presented to the House "to remove all stains cast upon the reputation of Robert Fleming Gourlay, Esquire." These came from the Municipal Council of Dereham and certain inhabitants of Woodstock, Ingersoll and North Norwich. Gourlay at once published at Ingersoll, June 30th, an address to the inhabitants of Dereham, Norwich, Woodstock and Ingersoll telling them the story, and concluding, "God Save the Queen and the Collective Wisdom of Canada!!!" He then hastened to Kingston to protest to the Administrator, Sir William Eyre, against the pardon; he had an interview with him, but could make no progress—the matter "is still before the Executive Council." Although he has received only £120 in all, during fourteen

years for expenses and must return to Toronto," the wheels will not revolve—and at last in despair he gets back to Mount Elgin "at home" in October; addresses the inhabitants of Dereham thanking God he yet lives and although he has seen eighty summers and is lame, feels confident thus of guiding them to good. He concludes with the pathetic appeal: "Will you listen?"

In 1857 a petition was presented to the Legislative Council from the Municipal Council of Dereham "praying that measures be taken to give effect to the recommendations of the Legislative Assembly to annul the sentence of banishment passed on R. F. Gourlay in the year 1819"; and another from some inhabitants of the Village of Ingersoll "that the case of Robert Fleming Gourlay may receive the favourable consideration of the House." (116)

In this year he published at Ingersoll a new edition of "The Chronicles of Canada" slightly abridged. It contains the Principles and Proceedings, the Proceedings of the Local Meetings, the Meeting of the Friends to Inquiry, an account of Gourlay's Arrest and Trial at Kingston, certain proceedings of the Parliament in 1818, Gourlay's Review, and adds "Finally Concluded," dated Ceres (Lot 3, 4th Con.), Dereham, November 2, 1857. This tells that it had been put to him that he should offer himself as a candidate at the next general election for a seat in Parliament, and he takes the opportunity to say that he would not sit in such save to move for a Convention in order to draw up a new Constitution urgently called for. "Having seen eighty summers and being at present in poor health, I am fit for no great exertion; but I am here in my own house ready to advise; and first I may be conversed with by inhabitants of Dereham, then of the adjoining municipalities of Norwich, Ingersoll and Woodstock. Their friendly manifestations for me last session of Parliament was gratifying; and should they heartily enter in'o my views of a Convention, that may be in Session by next Christmas." (117)

The following year, April 15th, he again laid his grievance before the House of Assembly and asked to be heard at the Bar of the House; on the 21st May on a narrow division (41 to 38) it was ordered that he be so heard on "Wednesday, the second day of June next, on the subject of certain grievances set forth in his petition." The motion was supported by strong speeches by W. L. Mackenzie and George Brown, and opposed by John Sandfield Macdonald, J. A. Macdonald, Sicotte and others; Mackenzie, Gourlay's old *bête noir* being especially emphatic.

Being too sick to come to Toronto he was not heard on that day, and on June 24th he presented another petition to be heard; he was heard June 30th. A full report of what took place is to be found in a pamphlet published by "The Globe" at the time. (118)

Gourlay seems to have lost his head, the speech is weak, rambling and inconclusive. He begins by saying that he appears not as a suppliant, but to defend the rights of a British subject, speaks of his wrongs, (holding up a copy of "Chronicles of Canada No. 1" as evidence) the

iniquitous law under which he was convicted, the rancour and malignity of Strachan, his Commission as Captain of Volunteers in 1799, his services during the Rebellion of 1837-38, the providential nature of the emancipation of the United States from British rule, that he was Republican in a good sense, attached to no party, devoted to the cause of the labouring classes. "Responsible Government! What has that effected! an unblushing waste of public money and a monstrous debt." "I was in Canada while a new Constitution was drawn up in England by Lord John Russell. No individual but myself cared for the result. I advised meeting in Convention but nothing could then be heard for the bawlers for Responsible Government." "Having said this much I proceed to the more special business which has brought me here, begging you to receive for inspection by the members the pamphlet so often referred to (Chronicles of Canada) together with the other (The Banished Briton and Neptunian No. 1) containing testimonials in my favour by some of the most eminent men in Scotland which but sustain my character and silence calumny." Then he attacks the Speaker of the previous session for throwing out his first petition and says that that petition was not improper or disrespectful; he goes into the transactions of 1841, and attacks the Speaker for "his conduct regarding petitions," finds fault that his petition was not printed "in order that copies might be sent to my friends in the country." He appeals against the conduct of the Speaker in 1842. "Dr. Dunlop and Mr. Neilson were respectable men and I doubt not, meant well by me; but they had no right whatever to act as they did," their conduct "to this day has involved me in trouble"; "at this moment I have . . . nothing but existence in a log house on my land in the Township of Dereham, nothing for it but my appeal for justice to this Honourable House."

Such a lame and impotent conclusion would be ludicrous did it not evidence either complete loss of control of himself or a marked weakness bodily or mental in the speaker. No doubt it was a bitter disappointment to Gourlay's friends, most of whom had fought a life-long battle for the Responsible Government which he treated with such contempt.

Gourlay went home to the country but returned to Toronto almost immediately and endeavoured to get from Sir Edmund Head an answer to his enquiry as to what was being done about his proposed pardon. He received no reply. He also advised Sir Edmund to read a pamphlet published in 1829, "A Record of Emigration Societies"; this we have already referred to as part of the contents of No. 23 of "The Neptunian."

Gourlay, August 5th, petitioned the House "to vote an address to His Excellency . . . to give him the benefit of certain Resolutions passed by the Legislative Assembly in 1841"; and an address was voted and ordered to be engrossed and presented to the Governor "to grant to the said Robert Fleming Gourlay the full benefit of the said Resolution, as passed by the said Assembly." Unfortunately this was on the last day of the Sittings of the House, and the House was prorogued before any engrossing could be done. (119)

A petition against squatters who had taken possession of some of his land during a long absence from the Province had no success. (120)

A last attempt to obtain from the House what he conceived to be his rights was made in 1859, when he presented another petition, February 2nd, setting out his grievances and claiming relief. It was received and nothing more. (121)

The next year, 1860, he was nominated for the House of Assembly for his Riding but received little support.

## CHAPTER IX.

### The Final Scene.

About 1858, being eighty years old, he married a lady of Woodstock who had been his housekeeper; but disagreements arose between them, and he left the Province shortly after his defeat, abandoning the farm to his wife; he went to Edinburgh, where he died August 1st, 1862, in the eighty-fifth year of his age.

He never accepted any of the pension granted him except the one instalment already mentioned. After his death his only surviving children, Jean and Ellen Gourlay, presented a petition, March 18th, 1864, "praying that certain sums of money voted to their deceased father may be now paid to them"; (122) and this was ordered without opposition.

Mention has been made more than once of Gourlay's insomnia; any account of his life would be defective if that were overlooked.

He tells us that this did not trouble him till 1833. When in the House of Correction at Cold-Bath Fields he had had very little need of sleep, and the greater part of the time spent in bed, never more than six hours, was given to reveries. He thinks that the habit of doing without sleep began to form at that time; after he left the prison and from March, 1828, till November, 1833, he was tortured with unsettled business affairs but was generally in perfect health. He could walk without fatigue from morn to night and four or five hours' sleep were quite enough for rest and enjoyment.

November 5th 1833, he left Edinburgh at 6 p.m. in a canal-boat for Glasgow; the boat was an iron one, jarring every little while against some other boat, bridge or lock, it kept him in unspeakable discomfort, and sleep was out of the question. The ship from Greenock to Liverpool ran into a hurricane and was at sea till the second day. These two nights were sleepless like the preceding. Before going on board his ship for New York he told the Captain his condition, and was advised to take a warm bath before going to bed at Liverpool. He did so, and got some sleep; but all the way over, from November 9th to December he had not a wink of sleep. Laudanum, opium, getting tipsy, all were in vain. The "grog" indeed made him sick for the first time at sea, but he got no sleep. This spell of sleeplessness, it will be seen, was of more than six weeks' duration.

The next attack came on at Willoughby, Ohio, in the beginning of January, 1837, when he was seized with erysipelas in the leg. Thereafter he was five months without sleep, then sleep returned gradually; for many weeks he dozed at times and had strange dreams.

About January, 1839, the insomnia again set in, induced by ill-health and family affliction. After enduring it for seven months he

consulted Dr. Widmer, of Toronto, "reputed the most experienced physician in Upper Canada," and certainly well-deserving his fame. He advised to dine early and go to bed fasting; this to the last afforded the most comfort. He also prescribed Acetate of Morphia, which had not the slightest effect. The Doctor supposed that the trouble proceeded from excitement, reading and writing in politics, but Gourlay thought this a mistake, his view being that it arose from unsettled private affairs.

After three years of this sleeplessness Gourlay consulted Dr. Robinson of Montreal, who had a patient, Mr. Jamieson, who had not slept for five months; Dr. Robinson could do nothing.

In September, 1840, arriving in New York from St. Catharines after a long and wearisome voyage, he lay down on a luxurious bed, closed round with mosquito curtains, and he will not swear that he slept none. So, too, in June, 1841, seated in the door of his log-house in Dereham, during the stillness of a summer evening, he verily believes he would have slept had not a neighbour disturbed him. Five months afterwards in Kingston (November, 1841), he had a delightful night, and told his landlady he had nearly been asleep; at Quebec a week afterwards he "dozed and dreamt which is certainly an approach to sleep"; while about a year afterwards, after being "entertained for a whole day in the most delightful manner," he flung himself into bed, and "if Morpheus did not obtain dominion over" him, he "had at least perfect repose." Several times persons came into his room and reported that they had found him asleep, but this he denies; he "knew the train of" his "thoughts perfectly." He had "tried many remedies, a hop pillow, hop tea, etc., etc., etc., and laudanum, fifty drops, seventy drops, ninety drops and upwards of a hundred, yet still . . . no sleep." He had not as yet tried mesmerism.

All the above is from a letter, Boston, May 10th, 1843, to "The Boston Medical and Surgical Journal." In the following month (June 16) he obtained two hours' sleep, but no more up to the day of the date of a subsequent letter to the same Journal, July 15th, 1843. (123)

At no subsequent date does Gourlay recur to this affliction. It is therefore to be presumed that he was quite cured of it.

This extraordinary story there can be no doubt Gourlay implicitly believed. He was, it is certain, incapable of mis-stating a fact, however wrong his inferences might be; but it is equally certain that he was in error. It is by no means an uncommon circumstance that one believes he has not slept a wink all night when those occupying the same room or perhaps the same bed with him, have been kept awake for an hour or more by his snoring. Everyone must have had experiences of whole nights passed, as he thinks, in sleeplessness, when it has been made quite certain that he did in fact sleep. No medical man could be found who would believe that Gourlay could pass years without sleep, even if he did nothing but rest; not to mention that he was mentally and physically active during practically the whole period.

No doubt he was a light sleeper and did not require many hours of sleep. This seems a part of his general ill-health; when he says that his "constitution, naturally strong and vigorous, was till forty years of age sustained by healthy exercise as a farmer, riding and walking much" (124), this must be taken *cum grano salis*. In 1809 he was advised to move to England on account of his health; "rendering a change of climate necessary"; in the summer of 1815 he had to go to Cheltenham to take the waters there on account of ill-health; on coming to Upper Canada he was confined to the house for two months by sickness which indeed he attributed to mosquito bites. All this was before the confinement in Niagara gaol. Thereafter, his frequent attacks of erysipelas indicate an undermined constitution; but the most noticeable illness is of a "nervous" character—the rheumatism may be fairly accounted for by the wetting he got near Staines. Using his own words, he "suffered for years from a nervous disease"; he "guarded against the usual consequences by means not one in a thousand would have resolution for"; he "by no means acknowledged insanity," but it was necessary in order "to save his reason" (he was "on the verge of madness") that he should break stones on the road, a pauper where he had been a farmer, thereby curing himself of the nervous disease which "for three years tore him to pieces"; he determined at one time, when suffering from this "nervous" disease to commit suicide at the Land's End. After returning to Canada, we find him stricken again and again, and on returning to Scotland he feared he never would see Canada again by reason of his state of health.

Yet he did marvels in the way of walking; till forty years of age, walks of forty miles a day never distressed him. On his return to the Old Land in 1819, we find him at once making walking tours in Scotland, later in England. On release from Cold-Bath Fields he walked in Scotland from morn till night without fatigue, and when again in Canada we find him walking on every opportunity. No doubt this exercise, coupled with a constitution originally sound and a temperament from infancy sanguine and enthusiastic, enabled him to live to the great age he attained, notwithstanding the rude buffetings of the world, bitter disappointments and grievous sorrow. (125)

#### NOTES TO PART II.

- (1)—Nep. No. 25, pp. 325, 326.
- (2)—Nep. No. 25, p. 326.
- (3)—Gen. Intro., pp. x. sqq.; Ap., pp. 5 sqq.
- (4)—Gen. Intro., p. cxviii: This is the work published under the name of James Strachan, which (and whom) Gourlay treats with proper contempt, (Nep. No. 26, pp. 348 sqq.). See Note 51 to Part I.
- (5)—Gen. Intro., p. cxcix.
- (6)—Gen. Intro., pp. ccl., cciv.
- (7)—Gen. Intro., pp. xiii sqq., li. sqq.
- (8)—Gen. Intro., pp. li., sqq. About fifty of the letters were returned marked "refused to pay the postage." These Gourlay reposted through the Two-penny post-office; fifteen were returned as the members could not be found; these Gourlay took himself to the office of the House of Commons appointed to receive the letters of members. The keeper made a charge of one shilling each, but offered to take twelve shillings in all. Gourlay refused to pay and dispatched them through the Two-penny Postoffice to the House of Commons. This was an instance of very common petty "graft," which Gourlay very properly exposed.
- (9)—Gen. Intro., p. liii.
- (10)—This was the Eighth Parliament of Upper Canada, which met in January, 1821, and repealed the "Gagging Act." Gourlay grieves over the fact that the struggles of the Executive were so far successful as to secure in some of the more benighted districts the return of seven lawyers "who no doubt will confound reason and retard the progress of common sense with all their might." Gen. Intro., p. 1.
- (11)—Gen. Intro., p. cevi.
- (12)—Sir Robert Thomas Wilson (1777-1849), a valiant and successful soldier who had served in many parts of the world and had written an account of the British army in Egypt. In 1821 it was proposed that he should lead the insurgent force at Naples, joining them with a body of volunteers; but the proposal came to nothing. Wilson was a partisan of Queen Caroline, and a little later in the same year he got into disgrace from his intervening between the Household Cavalry and the mob at Cumberland Gate, Hyde Park, at the Queen's funeral, August 14th. His intervention was solely to prevent bloodshed, but this did not save him from dismissal from the army.
- Gourlay had been disgusted by some passages in Wilson's book, but overlooked them for the sake of joining him.
- (13)—Gen. Intro., p. ceviii. His account of his desire to become a barrister will be found in Nep. No. 1, p. 3.
- (14)—Gen. Intro., p. cex.
- (15)—Ap., pp. 21-24 (A4). Gen. Intro., pp. cclxxxii., sq.
- (16)—Gen. Intro., pp. cclxxvii-cexelx.
- (17)—Gen. Intro., pp. ccelxvii sq.
- (18)—Gen. Intro., pp. ccelxiii., sqq.
- (19)—Gen. Intro., pp. cceclxv., sqq. Ap., p. 24 (A5).
- (20)—All are crown octavo:

General Introduction  
to  
Statistical Account  
of  
Upper Canada  
Compiled With a View to a Grand System  
of Emigration  
In Connexion With a Reform of the Poor Laws,  
By Robert Gourlay.  
"Thy spirit, Independence, let me share,  
Lord of the lion-heart and eagle-eye."

Published by Simpkin and Marshall, Stationers' Court,  
Ludgate Street,  
1822.

Statistical Account  
of  
Upper Canada  
Compiled  
With a View to a Grand System of  
Emigration  
by  
Robert Gourlay.  
"Thy spirit, Independence, let me share,  
Lord of the lion-heart and eagle-eye."  
Vol. I. (II.)  
London.

Published by Simpkin and Marshall, Stationers' Court,  
January 1st, 1822.

The two volumes have on the title page a beautiful vignette of the Falls of Niagara, but from a different view-point in the two volumes. In both, the word "Independence" is floating in the vapour rising from the Canadian Falls. The preparation of the proposed third volume appears from Nep. No. 31, p. 433; Nep. No. 36, p. 489. The letter to Hume mentioned in the text is given in full, Ap. p. 169 sqq. (B42); his statement concerning his criticism of Brougham's Educational Bill in a letter to Brougham May 21st, 1823, Ap., pp. 162 sqq. (B34).

(21)—Ap., pp. 29 sqq. (A 6).

(22)—Ap., pp. 33, 34 (A 7). This petition we shall have occasion to mention again.

(23)—Ap., pp. 34-36 (A 8).

(24)—Ap., p. 40.

(25)—Ap., pp. 45 sqq. (A 11).

(26)—Ap., pp. 40 sqq. (A 9).

(27)—Ap., pp. 43 sqq. (A 10).

(28)—Nep. No. 2, p. 6.

(29)—Ap., pp. 50 sqq. (A 12, A 13 and A 14).

(30)—Ap., pp. 53 sqq. (A 15).

(31)—Ap., p. 55.

(32)—Ap., pp. 55, 56 (A 16).

(33)—Ap., pp. 56 sqq. (A 17).

(34)—Ap., pp. 60 sqq. (A 18). His account of the advice to lecture in London in 1823 is to be found in Nep. No. 1, p. 3; his suicidal mania appears from a letter to the Lord Chancellor dated March 12th, 1823, Ap., pp. 69 sqq. The meeting with Graham is spoken of Nep. No. 36, p. 495.

(35)—Nep. No. 2, p. 5. Of Dr. Hamilton he says, June 17th, 1824: (Ap., p. 98) "Madmen do not communicate their designs; I concerted mine against Mr. Brougham in the lobby of the House of Commons five months ago with Doctor Joseph Hamilton, who approved. Dr. H. received a liberal education, took out his degree as a physician at Edinburgh six years ago, practised in Canada several years, and is in every way entitled to respect as a gentleman."

(36)—Address to the Gentlemen of Westmoreland, June 8th, 1824, from Cold-Bath Fields, House of Correction. Ap., p. xc.

(37)—

An  
Appeal  
to the  
Common Sense, Mind, and Manhood,  
of  
The British Nation  
by

Robert Gourlay, Esq.,

Now and for the last two years imprisoned without fair examination or trial.

"Long years! It tries the thrilling frame to bear

Long years of outrage, calumny and wrong,

Imputed madness—prisoned solitude."

London.

Printed for the author,

and sold by Sherwood, Gilbert and Piper,

Paternoster Row,

1826.

Practically all the facts about Gourlay's life during this period are set out in this very curious book.

(38)—Ap., pp. 1 sqq. (A 1).

(39)—Ap., p. 8.

(40)—Ap., pp. 172 sqq. (Nos. 3, 4).

(41)—Ap., p. 179 (No. 5).

(42)—Ap., pp. 180 sqq. (No. 6). Perhaps his concession of the possible honesty of Strachan may also be considered an instance. See Note 68 to Part I.

(43)—Ap., pp. 107 sqq. (A 23). The correspondence Ap., pp. 180 sqq.

(45)—Ap., pp. 112 sqq. (A 25).

(46)—Ap., pp. 118 sqq. (A 26).

(47)—Ap., pp. 122 sqq. (A 27). The letter to the King is printed, Ap., pp. 195, 196.

(48)—Ap., pp. 125 sqq. (A 28).

(49)—Hansard N.S., Vol. 17, p. 1439. Hume had, November 27, in the previous year, presented a petition for him asking for a commission on the Poor Laws; "ordered to be laid on the table"; Hansard N. S., Vol. 16, p. 142.

(50)—Nep. No. 2, p. 3.

(51)—Nep. No. 9, p. 85.

(52)—I infer this from his statements, Nep. No. 9, p. 85, which seem to indicate that March, 1828, immediately followed his confinement.

(53)—Nep. No. 4, p. 44; his early determination appears from an article in the Farmers' Journal of January 3rd, 1825. App. lxii.

(54)—Nep. No. 9, p. 85; See also Nep. No. 1, p. 3, from which it appears that as early as July, 1827, he had determined to set up as a Land Agent and cross the Atlantic annually.

(55)—Nep. No. 4, p. 44.

(56)—Nep. No. 4, pp. 44 sqq.

(57)—Nep. No. 24, pp. 269. The last letter to General Jackson is dated January 28, 1830. The "Purposes of Emigration Societies, Union and Agency" will be found at pp. 272, 273. They were formed to obtain full information as to the best places to which to emigrate. His plans for improving Edinburgh Nep. Nos. 9 and 27; his maxim Nep. 2, p. 1; Nep. 7, p. 67.

(58)—Nep. No. 24, pp. 277 sqq.

(59)—Nep. No. 24, p. 288. I have not seen either of these; extracts from both are printed in Nep. No. 24. He had already in 1816 printed 260 pages of his private affairs (Ap., p. 116); this I have not seen. The volume printed in 1832 contained seven parts, 222 pages in all, of which the first part, 36 pages, is reprinted in Nep. No. 24, see p. 328.

(60)—Nep. No. 1, pp. 3-13. Two hundred copies of his testimonials were printed in Scotland in 1831; one copy was brought to America and a selection printed at Cleveland, Ohio, in 1836, Nep. No. 1, is largely a reprint of the latter. Of the certificates, that from the well-known Dr. Chalmers had been obtained in February, 1826, during Gourlay's incarceration in Cold-Bath Fields. Dr. Chalmers in 1831 saw no reason to vary it. Nep. No. 1, pp. 11 and 12.

(61)—Gen. Intro., pp. cxxvii., sqq. cf. Note 117 to Part I.

(62)—Nep. No. 2, p. 6.

(63)—Nep. No. 2, p. 20.

(64)—Gourlay's only son Oliver was born at Deptford Farm, Wiltshire, January 29th, 1812. After an apprenticeship of four years at Leith with John Ferguson, a wine merchant, he came to Canada in 1830, the father having written commending him to the care of Hon. John Neilson; Oliver made his way to Upper Canada, where he lived about three years—with his kinsman, Hon. John Hamilton (his mother's cousin), at Prescott for a time (Nep. No. 23, p. 288). When Gourlay came to New York in 1833, he bespoke the good-will of John Jacob Astor to find his son a place in some respectable mercantile house; but Oliver had, without consulting his father, agreed to go for four years to Singapore. He went to the East and became a general merchant at Port Phillip, Australia. A fearless swimmer he saved several lives, and as a special constable at Port Phillip, he displayed such courage against Bush-Rangers that a public dinner was given him. He died on board ship on a trading voyage from Port Phillip to Manilla and China, November 19th, 1843, after four-teen days' illness. Nep. No. 25, pp. 297, 328; Nep. No. 37, p. 503.

(65)—Nep. No. 25, p. 328.

(66)—Nep. No. 9, p. 85.

(67)—Nep. No. 2, p. 3.

(68)—Nep. No. 2, pp. 3, 20.

(69)—Nep. No. 2, p. 3.

(70)—It is to be found printed for the third time in Nep. No. 2, pp. 4-8; see Nep. No. 11, p. 100.

(71)—Nep. No. 23, p. 254. Willoughby is still a village of less than 2,000 inhabitants; in Lake County on the Chagrin River, and about 18 miles N.N.E. from Cleveland on the L. S. and M. S. Railway and the N. Y. C. and St. L. Railway.

(72)—He published a pamphlet (which I have not seen) at Cleveland Ohio, in 1836:

"Proposals  
For Drawing Up and Publishing  
A Statistical Account of Ohio  
Under the Direction of Its Legislature."  
Nep. No. 23, pp. 281 sqq.

(73)—Nep. No. 2, p. 9.

(74)—Nep. No. 2, p. 10. Gourlay in 1842 published in the *British Whig of Kingston* what he calls a "Fable of the Lion and the Bear" as silly and pointless as anything ever written—The *Kingston Chronicle* had refused to print it, Nep. No. 10, pp. 95, 96. Writing in 1843 he says that this "Fable" explains the allusion to the Great Bear of London District: I cannot follow the explanation if there is one.

(75)—Nep. No. 10, p. 96.

(76)—Nep. No. 2, pp. 9, 10.

(77)—Nep. No. 4, pp. 41, 42; Nep. No. 5, p. 49 (note).

(78)—I have never seen a copy of this "Banished Briton"; there seem to have been at least seven numbers; the contents, however, must be found reprinted in "The Neptunian."

So far as can be made out by putting together the various references by Gourlay, the following results:

In New York, in 1835, Gourlay printed his correspondence with the Duke of Wellington and Petition of that year (Nep. No. 11, p. 100), in the following year he printed in Cleveland copies of his agricultural testimonials (Nep. No. 1, p. 3) and sent copies to Sir Francis Bond Head (Nep. No. 2, p. 9). On returning home from Canada in 1837 he printed the correspondence with Head (Nep. No. 2, p. 12) and added to his record. This made a pamphlet containing correspondence with the Duke, Sir Francis and the Governor of Ohio (Nep. No. 4, p. 48), to which he gave the title "The Banished Briton" (Nep. No. 4, p. 48). Of this he sent a copy to Mackenzie, January 1st, 1838 (Nep. No. 2, p. 14) and to Sir Francis (Nep. No. 2, p. 15). He tells us specifically that the "Banished Briton" was printed in Cleveland in 1836 (Nep. No. 10, p. 96); and it seems clear that this was the first number of a proposed periodical with that name (see also Nep. No. 2, pp. 27, 28).

In May, 1839, he intended to publish "The Banished Briton" (Nep. No. 7, p. 69); he did print "The Banished Briton" at Buffalo, September, 1839, containing his memorials of 1836 and 1839, the proceedings thereon and his protest, etc., of May, 1839 (Nep. No. 6, p. 57); this must be No. 2. An extra was added to this at St. Catharines in January, 1840, to register transactions up to that time (Nep. No. 3, p. 38) and "The Banished Briton No. 3" was printed in Toronto in February, 1840, of newspaper slips, letter to the Queen, correspondence with Sir Francis and with Mr. Thompson and "to add zest to it" the two parts of the "Monkey War" (Nep. No. 3, p. 39), with the addition of the letter of the Governor's Secretary and Gourlay's comments. No mention is made of Nos. 4 and 5; but Nos. 6 and 7 were mailed to Hon. John Neilson, September 28th, 1842, appearing finally in the "Chronicles of Canada" (Nep. No. 8, pp. 78, 79). He put up for advertising purposes in May, 1839, a placard:

"The Banished Briton,  
Appellant and Mediator,  
Profunda Cernit."

Nep. No. 7, p. 69.

In the Parliamentary Library at Ottawa there were once Nos. 1, 2 and 3 of this "Banished Briton Appellant and Mediator," published at Cleveland, 1836, 8 vo.; but none of these can now be found. (Information kindly furnished by Mr. L. P. Sylvain, Lib. of Parlt.)

(79)—I have not seen this pamphlet, but all its contents are to be found in one or other of the numbers of the *Neptunian*. See the last note.

(80)—Nep. No. 4, p. 48.

(81)—Nep. No. 2, pp. 18, 19.

(82)—Nep. No. 2, pp. 20 sqq; the letter to Hume just mentioned will be found in Nep. No. 2, p. 16 note; those to Mackenzie in Nep. No. 2, pp. 14, 17; Mackenzie's in Nep. No. 2, p. 16.

(83)—Nep. No. 2, p. 23.

(84)—Nep. No. 2, p. 26, note;

"A Durham ox came o'er the sea  
And landed at Quebec;  
Canadians all were on their knee  
And instant at his beck."

And so on for six stanzas, the last reading:

"And now the truth is wholly out  
Nor need we any longer doubt  
So all the world may fairly laugh  
To think the Ox was but a Calf."

(85)—Nep. No. 2, p. 28.

(86)—Nep. No. 7, p. 72. This doggerel consists of eleven stanzas of four (three of five) lines each; it is a "skit" on the Rebellion of 1837-38.

"A monkey once sprung up aloft  
And gibbered in the trees,  
The bears and wolves began to dance  
And bum went all the bees.  
A shot or two being fired at Pug  
Away the creature scampered,  
And truly it made unco speed  
With bulk being little hampered."

(The Monkey was William Lyon Mackenzie, the allusions to his diminutive size are obvious). Then follow verses devoted to Navy Island, Van Rensselaer, Allan MacNab, Sir Francis Bond Head, and the effusion closes:

"Britannia's flag you now may see  
From Drummond's Hill to Fort Erie,  
While thousands range around,  
With shot and shell the trees they fell  
And make a mighty sound."

Nep. No. 5 contains the story of the proceedings in the House, etc.

(87)—Nep. No. 7, pp. 69-71.

(88)—Nep. No. 7, p. 71.

(89)—Nep. No. 6, p. 57 (note). I have not seen this publication; but it is manifest that its contents all appear in one number or the other of "The Neptunian." (See Note 78 to this Part.)

(90)—Nep. No. 3, pp. 33, 34.

(91)—This "Banished Briton No. 3" I have not seen, but its contents sufficiently appear from Gourlay's description. The two sets of verses are "The Monkey War," part first, already referred to, and "The Monkey War," part second. This consists of eleven stanzas of four lines (and one of five) each, and is a satirical account of the later events of the Rebellion:

"Good lauk, what next!—a boat unfixed  
The little Caroline  
Cut from the ice; and all so nice  
Now on the Lake doth shine!"  
'A spec! a spec! a glorious spec,  
The Buffaloes roar out,  
Victoria's wealth is all our own  
And Canada, no doubt,"

Malden, Pelé, the Short Hills, Prescott, Windsor, all are mentioned; and the poetical effusion ends with an apostrophe to Jonathan:

"But when we think upon the thing  
That led you to the war,  
A monkey vile, chock full of bile,  
It beats the Globe by far.  
The Monkey first, made you to thirst  
For acres and for dollars,  
But now in cage it spends its rage  
On Uncle Sam's tight collars."

The last is, of course, a delicate allusion to Mackenzie's imprisonment for 18 months in Monroe County Goal for setting on foot, etc., a warlike expedition against Canada. The verses are to be found in *Nep.* No. 7, p. 72; the story of the visit to Toronto and "The Banished Briton No. 3" is in *Nep.* No. 3, pp. 33-39; pp. 39, 40 contain an invective against the poor Secretary, Thomas C. Murdoch, who wrote the letter for the Governor.

(92)—*Nep.* No. 10, p. 87. He tells us this in his extraordinary account of insomnia which will be touched upon later.

(93)—*Nep.* No. 6, p. 57.

(94)—*Nep.* No. 6, pp. 58-63; see *Journal Leg. Ass.*, 1841, pp. 242, 259, 403, 567, 633, 640, Appendix T. T.

(95)—*Nep.* No. 3, p. 40.

(96)—*Nep.* No. 10, p. 87.

(97)—*Nep.* No. 7, pp. 66, 68.

(98)—*Nep.* No. 8, pp. 73, 77 (note).

(99)—*Nep.* No. 8, p. 73; the correspondence with the Duke of Wellington is to be found in *Nep.* No. 11, pp. 96-103.

(100)—*Nep.* No. 8, *passim*.

(101)—*Nep.* No. 8, p. 79 (note).

(102)—  
Chronicles of Canada  
Being  
A Record  
of  
Robert Gourlay, Esq.  
Now  
Robert Fleming Gourlay  
"The Banished Briton"  
"Man is a Recording Animal"  
No. 1  
Concerning  
The Convention and Gagging Law  
1818  
Mr. Gourlay's Arrest and Trial,  
&c., &c., &c.,  
Printed and Sold  
at the  
"Journal" Office, St. Catharines.  
Sold also by  
Carter & Bentley, Kingston,  
1842.

It is a paper bound pamphlet of 40 pages 8 vo; the final note is dated "St. Catharines, September 28th, 1842." I shall have occasion to mention a second edition printed at Ingersoll in 1857.

(103)—*Nep.* No. 10, pp. 89-94, 96. The "Fable" is unintelligible to me; and the explanation, p. 36, does not clear up the perplexity.

(104)—*Nep.* No. 1, pp. 1, 2.

(105)—*Nep.* No. 11, p. 103.

(106)—*Nep.* No. 14 *passim*. Proceedings Leg. Assembly Canada 1843, pp. 177, 193, Addresses (29).

(107)—The denial of this right on the part of Britain was one of the reasons alleged for the war of 1812; the Treaty of Ghent did not settle it; nor was Daniel Webster successful in obtaining an acknowledgment from Ashburton in 1842; it was not admitted by Britain until 1870. Gourlay's interest in the question arose from the threats on either side during the war of 1812 to carry which into effect would have involved the slaughter of many innocent persons.

(108)—Nep. No. 34, p. 480.

(109)—Nep. No. 35, pp. 482, 485; his illness at the Bridge of Allan (mentioned below) is referred to in a letter from January 30, 1851, published in the Hamilton Spectator and Huron Signal.

(110)—Nep. No. 36, p. 491; Journals Leg. Ass. 1844-1845, Vol. 4, p. 256.

(111)—Of "The Neptunian", Morgan in his Bibliotheca Canadensis (1867) has this to say: "The Banished Briton and the Neptunian, Boston, 1805, 8 vo."

It is quite certain that the publication of The Neptunian did not begin until 1843; the first number (which is the only one to bear the title "The Banished Briton and Neptunian") contains a petition to the Massachusetts Legislature dated February 20th, 1843, and a note dated in the following month.

Gagnon "Essai de Bibliographie Canadienne" (1895) says: "The Banished Briton and Neptunian being a record of the life, writings, principles and projects of Robert Gourlay, Esq., now Robert Fleming Gourlay . . . Boston, printed by Samuel N. Dickenson, 1834, No. 1, 16, p. Nos. 2 à 12, 112 p. in-8" and adds (I translate): "This curious and interesting publication . . . should, it is said, contain 38 numbers to be complete, although Sabine thinks that only 21 were published. . . ."

Kingsford, Hist. Can., Vol. 9, p. 238 note, has not seen any number beyond No. 26.

The Toronto Reference Library has the first 16 numbers and No. 39 bound in red morocco with an autograph presentation by Gourlay to Sir Charles Metcalfe (No. 39 has in his handwriting "a gift" on its first page—this appears also in my own copy); also No. 39 in pamphlet form, separate.

The Parliamentary Library at Ottawa has one volume containing only the following numbers: 1 to 26; The Archives at Ottawa, Nos. 1 to 12, 16, 24 to 26, 30 to 34, 36, and 39.

The Library of Congress does not appear to have any number of "The Neptunian" in that form, but it has what is apparently an enlarged edition of No. 27. It was published in 1844, and is a pamphlet entitled "Plans for Beautifying New York and for enlarging and Improving the City of Boston" (Card No. 12-3596). The author says in the preface ("Advertisement") as follows:

"Last year, I handed about a small pamphlet calling attention to the improvements of the Common,—a number of 'The Neptunian,' now included in this; and, by and by, was led to conceptions of vast importance, which I confidently trust may be gravely considered, and speedily acted on. But, the whole is subsidiary to higher objects still; and, in concert with the great purpose of my life, bettering the condition of the laboring classes, which has brought me, twice, to this side of he Atlantic."

This volume is also in the Archives at Ottawa, the copy there being graded with Gourlay's autograph, "To Captain Higginson/with/Mr. Gourlay's Compliments/Nov. 18, 1844." The title is "Plans/for/beautifying New York/and for/Enlarging and Improving/The City of Boston/Being Studies to Illustrate the Science of/City Building/By Robert Fleming, Gourlay (Coat of Arms with Motto, Profunda Cernit) 'Go to, let us build a City,/Boston/Published By Crocker & Brewster/and/Saxton Peirce & Co./1844.'"

The Legislative Library, Toronto, has no copy of the Neptunian. My own copy is in two volumes, the first containing Nos. 1 to 26; the second Nos. 27 to 38, both 8 vo., bound in paper, and entitled:

“The Banished Briton  
and  
Neptunian,  
Being  
A Record.  
of the  
Life, Writings, Principles and Projects  
of  
Robert Gourlay, Esq.,  
now  
Robert Fleming Gourlay  
(Coat of Arms)  
Profunda Cernit  
(Quotation from Job xxix. and xxx.)  
Boston

(Name of publishers erased, but visible under the erasure appears “Sold by Redding  
& Company/No. 8 State Street./)

1843

S. N. Dickinson, Printer.”

The covers of both volumes are alike, showing that the cover for the first volume, dated 1843, was used for the second volume, which was not completed till 1845. I have also No. 39, making the series complete—this is probably unique.

In view of the lavish way in which The Neptunian was distributed, there must be many copies in Upper Canada; a copy more or less imperfect turns up from time to time—a friend in Niagara-on-the-Lake lent me a very defective copy a year or so ago.

(112)—Leg. Assy. Journals, 1846, Vol. 5, pp. 76, 81, 191, 196, 263, 266, 342.

(113)—

The Mound Improvement  
With  
A Plan and Elevation  
also  
An Appendix  
Containing  
Correspondence with Dr. Chalmers, the  
City Authorities, &c., &c., on  
the Same Subject,  
Concluded with a Review  
by  
Robert Fleming Gourlay  
Edinburgh  
Adam & Charles Black  
North Bridge  
MDCCL.”

A Crown 8 vo. of 16 pages sold at a shilling. The title sufficiently expresses the object and contents; a copy with an autograph letter (June 14th, 1850) of Gourlay's is in the Toronto Reference Library.

- (114) - "Canada and Corn Laws  
or  
No Corn Laws No Canada  
by  
Robert Gourlay, Esq.,  
now  
Robert Fleming Gourlay . . . .  
Esq. of  
James Wood, 88 Princess Street  
MDCCLXII."

This is a pamphlet of 12 pages, Crown, 8 vo.; the arguments have a familiar ring; they are the same in the times of Gourlay and of Chamberlain and our own. The date of his accident is given by himself in the publication mentioned in Note 118, at p. 13.

(115)—Journals Leg. Assembly, 1856, Vol. 14, pp. 228, 321, 629, Addresses 33.

(116)—Journals Leg. Council, 1857, Vol. 15, pp. 470, 555; see also Jour. Leg. Ass. (1857), Vol. 15, pp. 621, 704, 716.

- (117)— "Chronicles of Canada,  
Being  
A Record  
of  
Robert Gourlay, Esquire,  
now  
Robert Fleming Gourlay  
No. 1  
Concerning the Convention and Gagging Law  
1818  
Mr. Gourlay's Arrest and Trial, &c., &c., &c.,  
Second Edition Abridged  
Ingersoll C.W.  
Reprinted at the "Chronicle" Office  
1857."

8 vo., 40 pages, bound in green paper, not very rare. In this edition Gourlay informs us that he had in June, 1856, recovered 49 copies of the first edition published in 1842. These came to hand most opportunely, as he was enabled to give 30 copies to Members of the Legislature. In this edition he reprints all important matter of the former, and he "will say that more important matter for reflection never was laid before the Canadian Public."

- (118)— "Mr. Gourlay's Case  
Before the  
Legislature  
With His  
Speech  
Delivered on Wednesday, July 1, 1858,  
In Two Parts,  
Toronto,  
Printed at the Globe Book and Job Office,  
1818."

An 8 vo. paper bound, of 29 pages; it really has four parts. The proceedings in the House are to be found noted in the Journal Leg. Assembly, 1858, Vol. 16, pp. 233, 498, 742, 765. June 2nd Mr. Foley obtained "leave to bring in a bill to declare the unjust sentence and banishment passed upon Robert F. Gourlay null and void." The bill was read the first time, the second reading ordered for the 7th, but nothing more is heard of it. Jour. Leg. Ass. ut supra, p. 587.

(119)—Jour. Leg. Ass. (1858), Vol. 16, pt. 2, pp. 946, 1038, Address No. 35.

(120)—Jour. Leg. Ass., p. 371; "Mr. Gourlay's Case," p. 16.

(121)—Jour. Leg. Ass. (1859), Vol. 17, p. 19.

(122)—Jour. Leg. Ass. (1864), Vol. 23, p. 117.

(123)—Nep. No. 9, pp. 84-88; Nep. No. 11, p. 98.

See my article in the "New York Medical Journal," January 1st, 1916, at pp. 8 sqq., "An Old Case of Chronic Insomnia." I add extracts from letter sent me by a medical man of experience and ability on this curious subject:

"Gourlay was quite in error; he slept much more than he thought. It should be borne in mind that some very active persons can do on a short allowance of sleep—Peter the Great, of Russia, is reputed as sleeping only four hours a night during his most energetic years. It is a well-known experience that careful nurses will give an account of the amount of sleep patients obtain quite different from that given by the patients themselves.

"The late Professor George Paxton Young once told me of an experience of his own. Shortly after the sad death of Miss Brown—Hon. George's sister—he was travelling. At the hotel he retired one night at 11 p. m.; some time afterwards he turned in his bed and said to himself, 'I have not yet got to sleep.' He looked at his watch and found that it was six in the morning, and that he had, therefore, had his usual amount of sleep."

(124)—Nep. No. 9, p. 84.

(125)—It should perhaps be said that notwithstanding Gourlay's emphatic protest, a pardon had passed the Great Seal May 14th, 1857; and he was quite helpless, as no subject can refuse such an act of grace on the part of the Crown.

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