M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 425	Press ~~Mis.~~
528. 529	
Dated 26-2-1862.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
26th February 1862.

No. 528. Read again Memorial of JAMES WESTWOOD GRAHAM McIVOR, a Coffee Planter, residing on the Neilgherries, dated Ootacamund, 28th May, and recorded in Proceedings 5th July 1861, No. 1,345.

Read also the following Report from Mr. Dale.

(Here enter 23rd October 1861, No. 172.)

No. 529. ORDER THEREON, 26th February 1862, No. 425.

1. The Government are informed by their legal adviser that Mr. J. W. G. McIvor has not, in his Memorial above recorded, shown any valid reason whatever why Government should grant him any concession or abstain from proceeding to eject him from his farm as already determined.

2. The Government are further advised, that any communication which they may open with Mr. McIvor must be on the distinct understanding that such communication shall in no way interfere with or prejudice the notices served on him or any proceedings which may be taken thereunder, should such communication not terminate in any arrangement being made with him.

3. Subject then to the express understanding and condition stated in the preceding paragraph, the Governor in Council proceeds briefly to notice Mr. James McIvor's Memorial.

4. It must first be premised that Mr. John McIvor has informed the Government that he has no intention of coming to India, and that he will not take part in any proceedings against Government in the matter of these farms and leases.

5. Mr. James McIvor points out that if Government "carry into force the determination "arrived at in the notice of the 28th March last, it would be tantamount to a confiscation" of his property, and he offers to surrender the 600 Cawnies of land leased to him at Ootacamund, provided the land leased to him at Kartairy, measuring 934 Cawnies, 4 Grounds and 1,789 square feet, according to the plan in his possession, be granted to him, rent free for the first five years since he took possession and thereafter subject to the uniform assessment of 1 Rupee per Cawny annually.

6. Under the original lease the land was to be held free of assessment for 10 years, the terms proposed by Mr. McIvor, amount, therefore, to a penalty of five years' assessment or about Rupees 4,670, which he offers as indemnity for a gross violation of contract, persisted in until entire forfeiture of his property is inevitable. Had Mr. McIvor honestly sought the land for the purposes to which in breach of his contract he has applied, it is very improbable that more favorable terms would have been granted to him than those he now offers. To accept these therefore would be to inflict a punishment neither adequate to the offence nor likely to deter others from similar conduct.

7. The Governor in Council, however, has no desire to go beyond these objects, and he is willing therefore to allow Mr. McIvor to retain the Kartairy farm on condition of his giving up the land at Ootacamund and of the free occupancy of that at Kartairy being reduced to four years, that is to say, if Mr. McIvor agrees to pay at the uniform rate of 1 Rupee per Cawny whether cultivated or uncultivated or in all Rupees 934 per annum from the end of the fourth year since the land was made over to him for the fifth and each succeeding year, then the Government will drop further proceedings against him. In the event of Mr. McIvor accepting this offer, which is made subject to the proviso in paragraph 2 of this order, he will be at liberty to make what use he pleases of the land and timber on it. The boundaries of the land will be clearly marked out according to the plan annexed to the original lease.

8. With these remarks the Governor in Council leaves the matter entirely in the hands of the Government Pleader, Mr. Dale, to whom Mr. McIvor will communicate his acceptance or rejection of this offer. Mr. Dale will proceed against Mr. McIvor in due course of law without further instructions from Government, and he is authorized to arrange with Mr. McIvor on the

portion for experimentally carrying out a project for

above terms, if Mr. McIvor accepts them, but legal proceedings will not be stayed for any further discussion.

9. As regards the timber felled by Mr. McIvor, the Government are advised that the interest of a Lessee in timber is determined by its severance from the soil, and that a suit may be maintained for the value of any timber felled by Mr. McIvor, if he has sold it or refused to deliver it upon demand. Mr. Dale is requested to communicate with the Collector and submit a report on the measures he would suggest for enforcing the rights of Government in this respect, if Mr. McIvor does not consent to the terms offered in paragraph 7.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

N° 172

From Clement Dale Esquire Government Master Leudder Salaist
To J. D. Sim Esquire Secretary to Government

Madras 23d October 1861

Sir,

Para 1 I do myself the honor of acknowledging the receipt of the Proceedings of the Madras Government of the date and number noted in the margin whereby my opinion is requested on the 7th and 8th paras of the Memorial presented by James Westwood Graham McIvor to His Excellency The Governor in Council under date the 28th May 1861.

Order 5th July 1861 N°1345 Revenue Department

2 In reply I would observe that Mr James McIvor has in no way met the objection raised in the letter dated the 28th March, and to report to the [illegible] His Excellency in Council my opinion [illegible] Mr James McIvor has not in that Memorial shewn any grounds whatever, whereon to found the slightest reason for any concession being granted to him by Government; indeed his Memorial is really an aggravation of his former conduct, for while admitting that the "implied condition" in granting the leases was to encourage the carrying out on the Hills of farming operations upon the English model, in para 6 he evidently shews that in taking up the leases, he had no intention of complying with that "implied condition".

3 In para 7 Mr McIvor alludes to what he thinks would be a great hardship if the leases are now cancelled; from this it would seem that his opinion is, that when an arrangement is entered into between 2 parties for experimentally carrying out a project, [illegible]

which both parties Expect to derive a benefit, one of such parties is to be at liberty to disregard such of the provisions of the arrangement as may interfere with his realising advantages, not contemplated by such arrangement, and that, utterly Regardless of the rights and interests of the other Party to the arrangement. It is surprising that Mr. James M'Ivor, who doubtless is a cunning Man, should have made use of such an argument in addressing His Excellency in Council; He could not have imagined that such a monstrous proposition would have been recognised by His Excellency for an instant; Mr. M'Ivor shews that he is perfectly acquainted with the provisions of the Instruments under which he holds the Lands, and is acute, alive to every point that works in his own favor. it cannot therefore be supposed, but that in bestowing his labor and Expending his money if he has Expended any, he was fully aware of the power he placed in the hands of government, if he did not fulfil the conditions contained in these instruments, and on the part of himself to be performed - But if he had conducted himself with propriety and honesty, there is no doubt that Government would not have interfered with his profession, and I submit that no hardship arises from the course proposed to be pursued but what has been provoked by his own

ground for any consideration on the part of His Excellency in Council.-

4 Mr. M'Ivor however Expresses his willingness to Relinquish his right to the land at Ootacamund, provided he be allowed to retain still the land at Kartairi; further proposing, in accordance with what he states to be the Rule ordinarily prevailing in the District, that he should pay for both lots of land the uniform Rate of 1 Rupee per Cawny per annum from the end of 5 years of his original occupation, that is the 29th December 1857 as Regards the Land at Ootacamund, and the 14th July 1858 as Regards the Land at Kartairi.

5 I am not certain that Mr. James M'Ivor has correctly stated the Rule Regarding the terms on which forest Lands are let by Government; or whether, if such a Rule Existed in 1857/8, the same now prevails; but I have Reason to believe no such Rule is now in force.

6 I believe I am correct in the impression, that Government would wish to obtain possession of the tract of land at Ootacamund as there is no longer any chance of the land being converted by Mr. James ~~Scott~~ into a farm to be conducted on English principles, I also presume that so long as the ordinary Rent is paid on the land at Kartairi, Government would not object to its being rented, and cultivated in any manner which the Tenant might consider most conducive to his own interests.-

7 But even if these are the views Entertained by Government, it may not be the wish of His Excellency in Council to retain Mr. James M'Ivor as a Tenant, and I entertain no doubt, that any private Landlord would gladly avail himself of the present opportunity and get such a troublesome Man off his Estate; - and as I have previously remarked, in my opinion Mr. James M'Ivor has not shewn the slightest ground for any favorable consideration being Extended to him.-

8 If however His Excellency in Council shall

feel disposed to deal leniently with Mr. M'Ivor, I submit he should not be allowed to retain the land at Kartairi on more favorable terms than those which would have been granted to any Man who in 1853 had in the ordinary manner applied for land in that locality for cultivation. If His Excellency in Council should take this view, then I would suggest that on Mr. James M'Ivor paying to Government the amount of back Rent or Fist, with any other Charges, which would have been payable under the ordinary arrangement for both parcels of land (at Potwannund as well as Kartairi) from the dates of the Leases, or the 27th of April 1854 when Mr. James M'Ivor reported his having arrived, and his having obtained the Leases, and on proper Surrenders to the Right Honorable the Secretary of State in Council of the two instruments so called Leases dated the 29th day of December 1852 and the 14th July 1853 being Executed, then that a Lease of the land at Kartairi should be granted in the name of the Secretary of State to Mr. James M'Ivor for the unexpired portion of the 25 years agreed to be granted, such Surrenders and Lease to be prepared by the Government Solicitor, and the lease to contain all proper covenants &c.

9 If the Recent alterations relative to the terms on which Land is now granted by Government have been Extended to the Hill Districts, probably His Excellency in Council may prefer adopting the course there laid down to the granting of a Lease as suggested by me in para 8.

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10 The course I have suggested would, as I appreheno, be granting a great boon to Mr. M'Ivor, and one which from his previous Conduct he has no right to Expect

11 My attention is solely directed to the 7 and 8th paras of the Memorial, I however think it may be desirable that I should offer a few observation on other portions of the papers laid before me.

12 Referring to the 3rd para of Mr. M'Ivor's Memorial, I would observe that, so far as I have been informed, the Government were not parties to the Arrangement there alleged to have taken place, and that agreeably to the Spirit of the 4th Clause of the Instrument dated the 14th July 1853 (I have not a Copy of that dated the 29th December 1852) any alienation without the previous permission of Government was void and void; from the unskilful and incorrect manner of Wording that Clause however, it may be doubtful whether the alienation by one to another of the Lessees could be taken advantage of, but however that may be, any "Compromise" between Messrs M'Ivor to which the Government were not Parties and did not Consent, would not interfere with the Rights or powers of the Secretary of State in Council.

13 I observe that in para 5 of his Memorial Mr. M'Ivor refers to an Extract from the Minute of Consultation dated the 2 March 1858 No 275 Revenue Department. He does not say how he obtained such Extract; but on referring to the Copy set out in page 5, I observe it is attested as a true Copy by Mr. Boswell, then Assistant Collector to Mr. E. B. Thomas from which it may be

inferred that it was officially communicated to Mr. M'Ivor under orders from the Collector, I can scarcely imagine that Government intended a Minute of that Character to be Communicated to Mr. M'Ivor; It may be considered very honorable not to withold from an opponent all information in your power, and even to communicate to him your opinions of the weak points of your own Case; but such notions are too quixotic to be Carried out with any degree of Safety, the more especially where dealing with a man of the Character of Mr. James M'Ivor, and unless an ordinary amount of intelligence and discretion is Exercised by Officers of Government, holding such Responsible positions as Collectors, the interests of Government may be most materially prejudiced. The perusing of Minutes and proceedings, only intended for the guidance of Government Officers, the same Case of diction may not always be used as though it were intended for the Eye of a Party having interests opposed to Government; Moreover if such a glaring want of discretion is Evinced in one instance, it is impossible to conjecture how far it has been, or may be carried; and when conducting a Case in Court the Law advisers of Government may be met with some Minute or proceedings of Government which it might be Endeavoured to convert into an admission, and it would be rather difficult to induce a Court to look upon it as a privileged Communication. Should it be shewn that the paper was communicated to the apparently a Servant of Government: indeed there are many ways in which Government, as well as Individual Members, and

Officers, and Advisers might be prejudiced by such a Course.

14 With reference to the Memo signed by Mr. Thomas at the Top of page 4, I conclude it is a Copy of an Endorsement made by Mr. Thomas on the part of the Notice which he left with Mr. James M'Ivor: If I be correct in this Surmise the Endorsement Cannot do any harm, although there was no necessity for it; and it would have been better not to have put it.-

15 While this Letter was under preparation I have Received the proceedings of Government noted in the Margin; and although my advice is not asked, I venture to draw attention to paras 23 to 25 of my Letter to Government under date the 7th of March 1861 No. 48, in which I shewed that in Lumber severed from the Soil the Lessees interest is determined, and I suggested a Notice being served if Government desired to obtain possession of the wood; I ought possibly to have added that a Suit by The Right Honorable The Secretary of State for India in Council might be maintained for the value of the Timber felled, if Mr. James M'Ivor sold it, or refused to deliver it upon demand; and should Government now desire to pursue that Course, I would suggest that full information be laid before me, describing the number of each sort of Trees felled on each farm, when felled; what has been done with them by Mr. James M'Ivor; their value, together with Copies of the so called Leases; and a full Statement shewing the names and descriptions of

3 August 1861 No. 1541
30 September 1861 No. 1885
Revenue Department

the Witnesses who can prove the felling, the numbers and descriptions of the trees felled, when felled, and their value as also what has been done with the trees by Mr. McIvor I ought to have a separate Statement by each witness; in which such witness ought to State fully and distinctly, as he would in a Deposition, all the facts he can speak to from his own knowledge - I recommend this course, for then I should be better able to advise whether any preliminary Steps were advisable; and also to frame the plaint, for it is very evident from the steps already pursued, and the language used by Mr. Thomas it would not be safe to leave the Conduct of a suit in his hands.-

16 In my opinion the Magistrate of Cotacamund and the Judge of the Civil Court, shewed great discretion in not Complying with the applications which Mr. Thomas states were made to them.-

17 Should proceedings be instituted against Mr. James McIvor for the value or delivery of the Trees, he might possibly deem it prudent not to continue further waste; This the Right Honorable the Secretary of State would appear to desire to have done.-

18 I return the original letter from the Collector of Combatore dated the 30th of January 1861 No. 4 with its enclosure forwarded to me with the order of Government dated the 7th February 1861 No. 299.-

I have the honor to be
Sir
Your most obedient Servant
[illegible]
Govt. Pleader
[illegible]

c1

P. S. If any Communication be opened with Mr. James McIvor, he should be Expressly told, that such Communication is made, on the Express understanding that any Communication which may pass is in no way to interfere with or to prejudice the notices served on him or any proceedings which may be taken thereunder, should such communications not terminate in any arrangement being made with him.-

C.D.
Govt. Pleader

Proceedings of the Madras Government No. 1425.

Read again the Memorial of Mr Mc Ivor, recorded in Pro: 6th July 1861 No. 1345.

d/28th May, recorded in Pro: 6th July 1861 No. 1345.

Read also Mr Secy Cockburn's letter dated 23rd October 1861 No. 179

Here enter 23rd October 1861 No. 179

1 The Govt are informed by their Legal adviser that Mr J. H. G. Mc Ivor has not in his Memorial above recorded shown any valid reason whatever why Govt should grant him any concession or priority to obtain from ejectment him from his Farm as already determined.

2 The Govt are further advised that any communication which they may open with Mr Mclvor must be on the distinct understanding that each communication

Revenue 1861 Oct 16

Despatch from Govt. to Collector dated 25th October 1861

Read

Ordered

That a Despatch be addressed to the Collector of Tinnevelly informing him that the Memorial of Mr Mc Ivor has been considered by Government and that the Collector is requested to inform Mr Mc Ivor that Government cannot comply with his request.

(Signed) H. Sullivan
Chief Secretary

Revenue Department
Fort St George
25th October 1861

To
The Collector of Tinnevelly

Sir

I am directed by the Right Honble the Governor in Council to transmit herewith a Memorial addressed to Government by Mr J. H. G. Mc Ivor, dated 28th May 1861, and to request that you will inform Mr Mc Ivor that Government cannot comply with his request.

I am Sir
Your most obedient Servant
(Signed) H. Sullivan
Chief Secretary

Revenue Department
Fort St George
25th October 1861

Nos 171 to 172
" 173 to 174 February 1862
" 28 to March 1862 — 84-85
" 29 to 31 June — 496 & 497
" 3 July — 17-18
" 5 July — 81-82
" 3 August — 27-28
" 30 September — 275-276

Revenue

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Chief Secretary

Revenue Department
Fort St George
25th October 1861

No. 1425

828 1/2

No. 1425

(With 2 Enclosures)

Submitting on the Court

To the Secretary with Mr Mc Ivor's Memorial dated 28th May 1861.

Returning Mr Campbell's letter and its enclosure from the Collector of Coimbatore forwarding with the order of Government dated 23rd February 1861 No. 299

C. R. 5528.

communication shall in no way interfere with or prejudice the notices served on him or any proceedings which may be taken hereunder, should such communication not terminate in any arrangement being made with him.

3 Subject then to the express understanding and condition stated in the preceding paragraph, the Governor in Council proceeds briefly to notice Mr. James McIvor's memorials.

4 It must first be premised that Mr. John McIvor has informed the Govt that he has no intention of coming to India, and that he will not take part in any proceedings against Govt in the matter of these farms and leases.

5 Mr James McIvor points out that if Government carry into force the determination arrived at in the notice of the 28th March last, it would be tantamount to a confiscation of his property - and he offers to surrender the 600 Cawnies of land leased to him at Ootacamund, provided the lease to him leased at Kartary, measuring

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& Grounds and 1789
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to the plan in his
possession be granted
to him, rent free for
the first five years
since he took possession
and thereafter subject
to the uniform
assessment of 1 Rupee
per Cawny annually.

6 Under the
original lease the
land was to be held
free of assessment
for 10 years. the terms
proposed by Mr. Mc
Ivor amount there-
-fore to a penalty
of 5 years assessment or about
Rupees

37

Rupees 4,670, which he
offers as indemnity for
a gross violation of
contract, persisted in,
until entire forfeiture
of his property is inevi-
table. Had Mr. McIvor
honestly sought the land
for the purposes to en-
which in breach of
his contract he has
applied, it is very im-
probable that more
favourable terms would
have been granted
to him than those he
now offers. To ac-
cept these therefore
would be to inflict
a punishment en-
neither adequate to the offence
nor likely to deter others
from similar conduct.

The

7

The Governor in Council however has no desire to go beyond those objects and he is willing therefore to allow Mr McIvor to retain the Harbour Farm on condition of his giving up the ~~cultivated~~ land at Ootacamund occupancy and the free ~~tenancy~~ of that at Shortanny being reduced to 4 years - that is to say if Mr McIvor agrees to pay at the ~~same~~ same rate of 1 Rupee per Cawnie on all Rupees 934 per annum from the

° This expression had better be altered as inappropriate & the objected to - he would not be a tenant but a proprietor liable to a land tax. He

~~This is equal to~~
~~Rs 1 x 6 = / Rs 4104~~
~~/934 x 6 = / 5604 Rs.~~

× This tax of 1 Rupee per Cawnie is payable on all the land whether cultivated or uncultivated and it seems advisable to state this in direct & distinct terms so as to be beyond all dispute The

the end of the fourth year since the land was made over to him for the first and each succeeding year then the Govt will drop further proceedings against him - In the event of Mr McIvor accepting this offer, which is made subject to the proviso in para 2 of this order he will be at liberty to make what use he pleases of the land and timber on it ~~cultivate or cause to be cultivated~~ ~~or improve~~ ~~the land~~

The boundaries of the land will be clearly marked out according to the plan annexed to the original Lease.

With these remarks

remarks the Governor in Council leaves the matter entirely in the hands of the Govern-
Reader,
ment ~~Dodd~~, Mr. Dale to whom Mr. McIvor will communicate his acceptance or rejection of this offer. Mr. Dale will proceed against Mr. McIvor in due course of law without further instructions from Govt. and he is authorized to arrange with Mr. McIvor on the above terms, if Mr. McIvor accepts them. As regards the timber felled by Mr. McIvor, the Govt. are

legal proceedings will not be stayed for any further discussion.

yr. letter of the 22nd inst. to the Provincial Secretary and in reply thereto I am directed to state that the Executive Council are advised that the interest of a Lessee in Timber is determined by its severance from the soil and that a suit may be maintained for the value of any timber felled by Mr. McIvor, if he has sold it or refused to deliver it upon demand. Mr. Dale is requested to communicate with the Collr. and submit a report on the measures he would suggest for enforcing the rights of Govt. in this respect, if Mr.

Mr. McIvor does not consent to the terms offered in parco

J. D.

Regarding Mr. McIvor

3 Copies to Govt. Pleader.
Coll. No. 27.
1 — Copy to Mr. McIvor
14 — Bd. of Rev. 28
1 — Coll. of Coimbatore 29
4 — Conservator of Forests

Revenue 1862 Sept 10
Pro: of Govt. for February

No 425.

Pro: of the Madras Govt.
Dy 26. February 1862

Further Pro: 22 March 1862
Nos 372-373.

Passing orders on the
G. M. G. Memorial praying that Govt would grant certain concessions or desist from proceeding to set him from his farm &c

Enclosures.