

MADRAS RECORD OFFICE.**Government of Madras.***Revenue* **DEPARTMENT.**

G.O. No. / 425	<u>Press</u> <u>Mis.</u>
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

Order for the Government to carry out the proposed plan

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

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^o 172
From Clement Dale Esquire Government Pleader Sudder Adalat
To J. D. Sin Esquire Secretary to Government

Madras 23^d October 1861

Sir,

Dear Sir

Order 5th July 1861 N^o 1345
Revenue Department

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} Esq to His Excellency The Governor in Council under date the 28th May 1861.

2 In reply I would observe that Mr James & Mr Torr has in no way met the objection raised in the

Resolution dated the 28th of March, and to report to the

Government on the subject of the Memorial.

3 Mr James & Mr Torr has not in the Memorial shown any grounds whatever, whereby to form the slightest reason

for any concession being granted to him by Government; and

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 shows that in taking up

the leases, he had no intention of complying with that

"implied condition".

4 In para 7 Mr Torr 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, and

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'oor, who doubtless is a cunning man, should have made use of such an argument in advising 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'oor thinks that he is perfectly acquainted with the provisions of the instruments under which he holds the lands, and is quite alive to every point that works in his own favor, it cannot therefore be supposed, 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 those instruments, and on the part of himself to be performed. But if he had conducted himself with simplicity and honesty, there is no doubt that Government would not have interfered with his possession, and I submit that no hardship arises from the course proposed to be pursued, but what has been provoked by his own conduct, and which cannot be a ground for any consideration on the part of His Excellency in Council.

4. Mr. M'oor however expresses his willingness to relinquish his right to the land at Ootacamund, provided he be allowed to retain all the land at Hartaeri; 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 banny 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 1st July 1858 as regards the land at Hartaeri.

5. I am not certain that Mr. James M'oor has correctly stated the rules regarding the terms on which forests 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 M'oor 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 Hartaeri, 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 there are the views entertained by Government, it may not be the wish of His Excellency in Council to retain Mr. James M'oor 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 claim off his estate;—and as I have previously remarked, in my opinion Mr. James M'oor has not shewn the slightest ground for any favorable consideration being extended to him.

8. If however His Excellency in Council should

feel disposed to deal leniently with Mr. M^r Moor;
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 other 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^r Moor paying to Government the amount of back
rent or list, with any other charges, which would have
been payable under the ordinary arrangement for both
wards of land (at Ootacamund as well as Kartairi)
from the dates of the Leases, or the 27th of April 1854 when
Mr. James M^r Moor reported his having arrived, and
his having obtained the Leases, and on proper surrenders to
The Right Honorable the Secretary of State for India
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 of the land at Kartairi should
be granted in the name of The Secretary of State to
Mr. James M^r Moor for the unexpired portion of
the 25 years agreed to be granted, such surrenders and
Leases to be prepared by the Government Solicitor, and
the Leases 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.

10 The course I have suggested would, as I apprehend,
be granting a great boon to Mr. M^r Moor, and one which
from his previous conduct he has no right to expect.

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

12 Referring to the 3rd para of Mr. M^r Moor'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 instru-
ment 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
not only not warranted, but from the unsatisfactory and incorrect
manner of wording that clause however, it may be
doubtful whether the alienation by one to another
of the Leases could be taken advantage of, but however,
that may be, any "conspiracy" between Messrs M^r Moor
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^r Moor refers to an Extract from The Minute of Council
dated the 2nd March 1853 Aⁿo 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. Bassett, then Assistant
Collector to Mr. C. B. Thomas from which it may be

inferred that it was officially communicated to Mr. McShor
under orders from the collector, I can scarcely imagine that
Government intended a Minute of that Character to be
communicated to Mr. McShor; It may be considered
very honorable not to withhold 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 espe-
cially when dealing with a man of the Character of Mr.
James McShor, 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 Minutes and proceedings, only intended
for the guidance of Government Officers, the same case
of fiction 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
endeavored 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 shown that the
paper was communicated to the opponent by 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 Minute 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 front of the Minute which
he left with Mr. James McShor: If this be correct in
this premise 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 at p. 48, in which I
stated that in Timber Land, from the soil the
species in which is determined, and suggested a
franchise being given 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 Indian Council might be maintained
for the value of the Timber felled, if Mr. James
McShor 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 McShor; their
value together with Copies of the so called Leases; and
a full statement showing the names and descriptions of

3rd August 1861 at p. 1541
30 September 1861 at p. 1585
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. McShor ought to have a separate statement by each witness; in which such witnesses ought to state fully and distinctly, as he would in a Deposition, all the facts he can speak to from his own knowledge - I am in great doubt, 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 Cochin and one judge of the same court, showed great discretion in not complying with the applications which Mr. Thomas states were made to them.

17. Should proceedings be instituted against Mr. James McShor for the value and 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. Return the original letter from the Collector of Cochin dated the 30th of January 1861 N^o 4 with its enclosure forwarded to me with the order of Government dated the 7th February 1861 N^o 299.

I have the honor to be

Sir,
Your most obedient servant.

Wm. A. A. A.
Esq. Secy. to Govt.

P. S. If any communication be opened with Mr. James McShor, 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.

W. A. A.

Esq. Secy. to Govt.

Proceedings of the Massachusetts Government V. 125- Ad
 Read again
 Mr McLean's Memorial
 of 28 May, records in Pro: 5th July 1861/26/13/45.
 See also Mr Bates' Report.
 (See entry 23 of Oct 1861/12/17)

1 The Govt are in-
 formed by their Legal
 adviser that Mr J. W.
 G. McLean has not,
 in his Memorial above
 recorded, shown any
 valid reason whatever
 why Govt should grant
 him any concession or
 abstain from ^{proceeding to} ejecting him
 from his Farm as already
 determined.

2 The Govt are fur-
 ther advised that any
 communication which they
 may open with Mr McLean
 must be on the distinct
 understanding that such
 communication

* This
 part to be printed
 The Govt are in-
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27 2 March 1889 71-72
 - 72 - 73 84-85
 - 28 - March 1871 - 496
 - 3 June - 17-18.
 - 5 July - 81-82
 - 3 August - 27-28
 - 30 Sept - 245-246

Recd 1861 Dec 14
 25 34
 John Lynn to Reader of
 to Secretary to Government.
 Date 25 October 1861
 Recd

1861/12
 (With 2 Enclosures)

Following on the same
 to the Governor with the
 all Govt with reference to
 his Memorial of 28 May
 1861 -

Returning the original
 letter and its enclosure from
 the office of the Governor
 with the order of the Governor
 dated 9 February 1861 17 399
 S. C. R. 1861 26 26

1861/12

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 paragraphs, 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 Govt that he has no intention of coming to India, and that

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 Acres of land leased to him at Ootacamund, provided the land ^{to him} leased at Hartley, measuring

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It Grounds and 1789

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 Cawing 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

Rupies

Rupies 1640, which he

offers as indemnity for

a gross violation of

contract, persisted in,

until entire forfeiture

of his property is in-
table. Had Mr. McIvor

honestly sought the land

for the purposes to

which in breach of

his contract he has

applied, it is very un-

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 un-

der adequate to the offence

nor likely to deter others

The

The Governor in
 Council, ^{however} has made
 since to go beyond
 those objects and he
 is willing therefore
 to allow Mr. McIvor
 to retain the land
 taking ~~the same~~ as a
 condition of his
 giving up the ~~entire~~ land at Otacannu
 and of the free ^{occupancy} ~~tenure~~
 of that at Shurtairy
 being reduced to
 4 years - that is to say
 if Mr. McIvor
 agrees to pay at
 the same former
 rate of 1 Rupee
 whether cultivated or uncultivated
 per acre ^{or}
 in all Rupees 934
 per annum from

This is equal to
~~694 x 6 = Rs 4164~~
 934 x 6 = 5604 Rs.

This is equal to
 934 x 6 = 5604 Rs.
 The same 10 Rupees per acre
 is payable as to the land
 which is cultivated and the
 same is payable as to the
 land which is not cultivated
 the same is payable as to the
 land which is not cultivated

the end of the fourth year
 since the land was made
 over to him for the fifth
 and each succeeding year
 then the Govt. will drop
 further proceedings against
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 Mr. McIvor accepting the
 offer, which is made
 subject to the proviso
 in para 2 of this order
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 to make what use he
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 to cut out it
~~with the same~~
~~in the same manner~~
~~the same manner~~
 The boundaries of the
 land will be clearly
 marked
 and 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 Governor.
Heads,
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Dale to whom Mr.
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Mr. Dale will proceed
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Mr.

Mr. McEwen does not Regarding Mr. McEwen
consent to the terms
offered in parco

J. D.

3 Copies to Gov. Pender.

1 - Copy to Mr. McEwen

14 - Ad of Jan 28

1 - Coll of Locust Grove

4 - Conservator of Forests

Revenue 1862 Deptt
Pro: of Govt for February

No 425.

Pro: of the Madras Govt.

26. February/62

Further Pro: 22 March/62
Nos 372-373.

Having taken into
consideration the
report of the
Commissioner of
the Madras District
concerning the
proceedings of
the District Court
in the case of
the Government
of the Madras
District.

No 28 & 529.