M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 396 Press ~~Mis.~~

220.221

Dated 18-2-~~19~~ 1867

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 18th February 1867.

No. 220. Read the following letter from W. G. McIVOR, Esq., Inventor and Patentee of the Chinchona Mossing Process, to the Secretary to Government, Madras, dated Ootacamund, 1st February 1867:—

1. I beg to acknowledge your Official Memorandum of the 18th instant, No. 11, returning my letter of the 22nd December 1866, as disrespectful. I have the honor to state that it was not my intention to offer any disrespect to Government, and to express regret that any expression deemed disrespectful should have escaped me in that communication. I now lay before Government the facts and my arguments upon them, in the most becoming language I can select. I must first, however, respectfully observe that I did not previously, nor do I now, address this remonstrance as a servant of Government.

2. I am the servant of Government in my capacity of a cultivator, but the Government of Madras expressly, in their letter No. 97 of 12th September 1863, declined to place me in the position of the "head of a scientific department," as sought by my letters of the 13th August and 10th October 1863. Having elected this course, the Government have no claim to my scientific knowledge, which alone led to my invention for increasing thirty-fold the yield of Chinchona bark and alkaloids. This invention, formed solely on complicated chemical research, and on long continued and minute microscopical investigations, does not, therefore, come within the terms of the Secretary of State's despatch of 16th June 1866, as "the result of "the labors of officers in India, *obtained in the discharge of their official* duties." It was not obtained in the discharge of my official duties, but by scientific qualities, which the Government had refused. The patent for this invention was, therefore, entirely disconnected with the only service which Government admitted in me. That patent has been cancelled at the request of the Madras Government; I therefore address this remonstrance to the Madras Government simply as a British subject, who has had his property taken from him by Government only on secret and *ex-parte* proceedings; contrary to law, opposed to his rights, and most injurious to his interests.

3. I say "on secret and *ex-parte* proceedings," because the Madras Government worked to destroy my patent in a way which was kept secret from me, and was done behind my back. In my letter of the 24th November 1865, after obtaining permission to file, but before filing my specification, I furnished the Madras Government with an outline of this process, together with the results procured by it, adding that in "order to procure to myself a participation in the benefits of results "so important, I considered it desirable to secure this discovery by patent rights "under Act XV. of 1859." The Madras Government honored me with a direct reply to this communication, in which no objection is raised to my taking out this patent. Yet the correspondence on this matter, published in the Chinchona Blue Book of the 18th June 1866, shows that at this very time the then Madras Government not only objected to my taking out this patent, although they withheld the intimation from me, but, unknown to me, were writing strong Minutes to prevent my having this patent granted to me. Had I been informed that Government meant to oppose my getting this patent, my answer would probably have led the Governor General to make the enquiries prescribed by Section 3 of the Inventor's Privilege Act, and my patent would either have been granted, or refused, on cause

shown, and argument heard, for and against. Whereas, in the course that was adopted, the Minutes of the Madras Government remained unknown to, and unsuspected by, me till my receipt of the Blue Book of the 18th June 1866, on the 22nd November 1866, just twenty days before those Minutes led to the destruction of my property on the 12th December 1866, without my even having been heard against it. This concealment also placed me in a false position, leading me to file my specification, thus making known the whole of my secret. Had I been informed, in November 1865, that the Madras Government intended to oppose my patent, I could then have met them on fair grounds. If, after hearing both sides, the Governor General had refused my patent, I should still have had my secret, and retained all that was necessary to have enabled me to turn the invention to my own benefit.

4. Whereas, under the secret course which was adopted, I was led to disclose my whole invention, in reliance on the Act of Parliament and its privileges, only to find that, after my valuable invention was disclosed, I was to be deprived of the privilege for which I disclosed it, on the secret and *ex-parte* statement of the then Madras Government.

5. I say "in a manner contrary to law," because according to my reading of the Inventor's Privilege Act, even the Governor General in Council has no power to cancel an existing patent on the ground of "public prejudice," except after that has been found by a Court of Judicature.

6. The Legislature perceived that the Governor General of India in Council could not be a judge of facts, because not in a position to investigate the intricate points necessary to the establishment of truth. Therefore Section XXVI, Act XV. of 1859, prescribes that the Advocate General may, at the instance of the Governor General, apply to any of the "Courts of Judicature for a rule calling upon the "petitioner, his executors, administrators, or assigns, to show cause why the question "of the breach of any special condition, upon which the leave to file a specification "has been granted, *or any other question of fact on which the revocation* of the exclusive "privilege by the Governor General in Council *under the power hereinbefore reserved* "*may*, in the judgment of the said Governor General in Council, *depend*, should "not be tried in the form of an issue directed by the said Court."

7. I trust the Government will not deny me the justice of having the matter of fact thus tried, and will cause such application to be made by the Advocate General to the High Court at Madras, since the Act gives me no power of initiating this process. The High Court will then decide whether the fact of "public prejudice" is for them to settle or for the Governor General; and, in the former case, will decide whether my exclusive privilege is prejudicial within the meaning of the Act or otherwise.

8. Even if it be held that "public prejudice" is by the Act left solely in the discretion of the Governor General in Council, I still say my property has been destroyed contrary to law, as both reason and justice demanded that the declaration of the Governor General of India in Council should not have been issued, until I had been apprised and heard in defence of my property. My birthright is not to have my property destroyed without first being challenged and called upon to defend myself. It is for this reason that I feel an anxiety in

the just issue of this matter, as deep as if life itself depended on it. Hence no fear of injury, no loss, no power shall cause me to be silent while I feel that I suffer from an act of Government (unintentional no doubt) which not only ignores fact, but appears to defy all inquiry into fact.

9. To my understanding it appears impossible that a Court can rule in favor of Government, because the power of a Court can only be brought into action to maintain law, not to destroy it. The Legislature decreed, when passing the Patent Act, that Patentees should be paid for, and protected in their inventions. To destroy a patent as "prejudicial," on the ground that a Patentee has to be paid for the use of his invention, is to trample the Legislature under the foot of power; it is to place our constitutions and our laws subservient to the caprice of might.

10. I say my property has been taken from me "in a manner opposed to my rights," because, if the public benefit required the appropriation of my property, it ought, like any other property required for the public, to have been taken by notice under the "Public Purposes Act." This would have entitled me by law to compensation from Government, according to the value which I could show such property would have brought me in if not taken.

11. But this would have been the very thing deprecated by Sir Thomas Pycroft and the other members of the former Madras Government, as shown by their Minutes at pages 207, 208, and 209 of the Blue Book of 18th June 1866. Those Minutes put the "public prejudice" more even on the prospect of Government having to pay me, than on the exclusion of the public from the free use of my invention. The purposes avowedly sought by those Minutes could only be attained by the course which has been adopted, viz., the destruction of my privilege and the throwing my invention open to the public, without giving me a legal right to compensation and payment, whether from Government, as representing the public, or as the owners of Chinchona Plantations.

12. I learn that one reason for the course which was adopted, was that the Advocate General advised the Governor General in Council that my patent was invalid at law, as being an attempt to patent a process of nature. I humbly submit that this was a strong reason why the request of the Madras Government, that my patent should be cancelled by the declaration of the Governor General in Council, should not have been complied with. If my patent was bad in itself, the secret I had disclosed was free and open to the public use gratuitously, without any cancelment. But the Advocate General's opinion is not law, and I should, in that case, have been left to try the question in Court, which I am still perfectly prepared to do. But to cancel my property without compensation, because it was said to be bad, without allowing me an opportunity of showing that it was good, was surely all the more unjustifiable on account of the very doubt thrown on my title. The requirements of the Madras Government were probably not to be otherwise met, for had I been allowed to prove in Court that my invention to save thirty lives for one was really not "prejudicial," but was such as to entitle me to the exclusive privileges of a patent, it would have become impossible to cancel it as prejudicial to the public, thus leaving me without legal claim to compensation, and the Minutes of Sir Thomas Pycroft and his colleagues were as much against compensation to me as against exclusive rights towards the public,

13. Two of the members of the Madras Government, in addition to the arguments advanced to deprive me of my patent, infer that I treated Government in this matter with a want of candour. They say that my letters to Government "must be regarded as somewhat disingenuous." My having withdrawn paragraphs 28 and 29 from my report of 1865, seems to have given rise to this impression. These paragraphs were withdrawn only because they conveyed that which was erroneous and imperfect. The Government having, however, published in the Blue Book and in my report these paragraphs notwithstanding I withdrew them, has circulated incorrect information, which may lead to consequences for which I decline to be responsible.

14. Some three years ago I discovered the natural process by which the alkaloids are deposited. This I well knew I could not patent, and never attempted to do so. But this knowledge suggested the possibility of art being made to control this natural process, and convert it to our advantage on the one hand by facilitating and multiplying the action of the natural process, and on the other hand by retarding or totally arresting it. My first attempts failed. After long and careful consideration I again attempted and failed. I made farther attempts and gained a partial success. At last, between the date of my report of 16th August 1865 and the 25th September 1865, I discovered the means of rendering this great natural process entirely subservient to my will. I had detailed each of these steps successively to the Government, and my letter of 25th September 1865 merely sought to correct my former statements, then found to be erroneous. What greater candour could have been shown, or how could my letters have been more ingenuous. The Honorable H. D. Phillips inferred that I withdrew the matter, not because it was incorrect, but because I did not wish it published. This is quite erroneous, and would have been without object; inasmuch as prior to my letter of the 25th September 1865, withdrawing the two paragraphs in question, I had put in my petition for leave to file my specification, and no subsequent publication could, therefore, under the Act, in any manner affect my interests with reference to my patent, still to be granted.

15. My specification patented not the process of nature which I had discovered, but the means of controlling it, by facilitating and multiplying, by retarding and arresting it, which I maintain is a good patent. To admit an argument to the contrary would destroy every patent. Against the inventor of the spinning jennies it could have been urged that fibre had been spun from time immemorial; therefore his discovery was not new, and could not be the subject of a patent. Against all inventions in steam and its applications it could be urged that this was a mere natural process the power of steam having been in action on the earth since water existed. Like arguments could be adduced against every patent. Steam is truly a natural process, and could not be the subject of a patent; but the power of controlling this natural process and applying it to our benefit has formed the subject of hundreds of patents. Newton's greatest discovery was the law of gravitation, this could not be the subject of a patent. But let ingenuity devise the means of arresting this law, and we secure a perpetual motion. Let the means of arresting and retarding it be discovered, then we can transport ourselves and our produce from India to England in a few hours; and surely this, as also a perpetual

motion, would be subjects of good patents. We must thus look at the effect, and not at the agent. If there is a new invention in the world, it is my application of moss to produce and preserve Chinchona bark and alkaloids.

16. This invention is no doubt simple when known. All discoveries of real utility are so. For nearly 300 years has it been a trade to remove bark from Chinchona trees for the alkaloids, yet during this period no knowledge of this discovery was ever conceived. Had I overlooked it, we have no fact to justify us in supposing that it might not have remained undiscovered for 300 years yet to come.

17. As before mentioned, Government has no shadow of a claim to this invention, made solely by means of scientific qualifications, the employment of which they deliberately refused in 1863. But independent of this, the arguments in the Blue Book of the members of the Madras Government seem to overlook the fact, that all servants are paid for ordinary services, which reason tells us cannot be made to include payment for unforeseen and unexpected discoveries of great value; therefore the patent law has been often applied in England to protect the employed against their discoveries being filched by their employers, and turned to their employers' own benefit. So well is this there understood, that there is hardly a tradesman in Britain but would feel degraded by the imputation of an attempt to appropriate to himself the benefits of a discovery made by any of his workmen. On the other hand, the instances are numerous where employers have paid heavily for the inventions of their servants, even in their ordinary employments.

18. The records of the Patent Office teem with instances of Government servants having obtained patents, and, strange to say, that in every instance but this, Government have rather encouraged than discouraged such proceedings. The experiments of Major Jacobs were developed at the expense of the Bombay Government, and when perfected Major Jacobs secured his discoveries by patent rights; and in many instances the Home Government and the British Parliament have given large grants to develope experiments, subsequently secured by patent rights, as recently done in the cases of Whitworth, &c. The experiments in the mossing process did not cost the Government a farthing, nor was it applied to a single tree on the Government Plantations, until I received the preliminary protection.

19. The Government having refused my scientific services in 1863, has since paid and employed me as a "cultivator" only. I have patented no process connected with the cultivation, although in this respect I have made discoveries and invented appliances which have secured the performance of the work entrusted to me by Government at one-half the cost that must otherwise have been incurred. The advantages of these discoveries are not limited to the Government Plantations, but extend to the public generally, and also to the Government in other departments.

20. When the Chinchona cultivation was introduced, the Government was content with the prospect of reaping a harvest in thirty or forty years. I introduced the system of open cultivation against the opinions of all authorities, and for this I received much opposition. Still this course has obtained for the Government and the public the great result of reducing the time when a harvest can be attained to seven years, instead of thirty or forty. All my opponents now recog-

nize the accuracy of this system of cultivation, and to it alone is due the extensive cultivation of Chinchona by private planters.

21. The best botanists in England, India, and in Java, wished to force upon your Government the cultivation of Chinchona Pahudiana, a species which I knew to be entirely worthless. I stated this conviction, although at the time it gave great offence to parties interested. By stopping the cultivation of this species, I saved the Government the great outlay and disappointment necessarily attending the extended cultivation of a worthless plant. It is now admitted by all that this species is worthless. We received another species from Java said to be valuable, named C. Lancеolata, which I also pointed out as worthless, which is now confirmed.

22. I do not trouble the Government with a repetition of the various appliances which I have brought to bear, in practice, for the security and facility of conducting Chinchona cultivation, these have been described in my reports. One, however, has been omitted, namely, I discovered that excellent sand for propagation, and also for buildings, could be washed out of the decayed felspar rocks so common on these hills, at one-tenth the cost of the inferior sand with which up to that time we had to be content. This, trifling as it may appear, has effected in propagation alone a saving to Government of more than the entire sum I have drawn as salary. The benefit of the discovery does not rest here, but the Government are now reaping the advantage of it at the Lawrence Asylum works, where I pointed out to the officer in charge how this sand could be procured.

23. Although the Madras Government refused my scientific services and knowledge in any capacity which would give me a claim to be paid for them, still in all instances where it was necessary to protect the Chinchona plantations from injury, I have tendered that knowledge gratuitously. The accuracy and value of the results of this gratuitous information have now been established by developed facts. The advantages it conveyed to Government are matter of record.

24. I say that my property has been taken in a manner most injurious to my interests, because, notwithstanding my extra services, the Madras Government have so far succeeded in depriving me, without remuneration, of the valuable offspring of my own brain, to which I looked for an easy competency in old age, and that in a manner which, instead of giving me a clear legal redress, obliges me to appeal to the consideration of Government.

25. I respectfully solicit the favor of this letter being forwarded to His Excellency the Governor General of India in Council, and to the Right Honorable the Secretary of State for India, with a view to obtaining the withdrawal of the Notification of the 12th December 1866, cancelling my patent privileges, or that I may be granted legal compensation, as in the case of any other property taken for public purpose.

No. 221. ORDER THEREON, 18th February 1867, No. 396.

Miscellaneous.

1. Ordered that Mr. McIvor's letter be forwarded for the consideration of the Secretary of State.

2. The Government deem it useless to forward it to the Supreme Government, as they see no reason to modify their views or recommendation on which the Supreme Government proceeded in cancelling the patent, or to doubt the legality of those proceedings with reference to the provisions of Act XV. of 1859.

3. Mr. McIvor's present letter and these Proceedings of Government will, however, come under the notice of the Supreme Government in the ordinary course of business.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Superintendent of the Government Chinchona Plantations, Ootacamund.

Exd. S. T. Augustin.

Recd 1867 Feby 11th

From Proprietor Cinchona Mossing

The Inventor & Patentee of the Cinchona Mossing Process. No 291

To / The Secretary to Govt
Rev. Deptt.
Fort St George.

Dated 1st February 1867.
Recd 11th

Submits an amended remonstrance against the decision of Govt on his offer to dispose of his mossing patent at a valuation.

Solicits the favor of this letter being forwarded to the Governor General and the Secretary of State, with a view to obtaining a withdrawal of the Notification cancelling his patent privileges.

S. Ce No 296. 18 Feby

5

To Home Govt No 120 of 1863.
Do 12 September 1863 Nos 175-176
- 5 November " " 61-62
- 27 September 1865 " 542-546
- 31 October " " 586A 586C
- 21 December " " 202-203
- 14 March 1866 " 217-222
- 11 August " " 285-287.

Reported to England
by 25th February No 14 of 1867
Mem:

No 220.

C 11 Feby 1867

Revenue Depart.

No. 396.

Proceedings of the Madras Government

Under date the 18th February 1867.

Read the following letter from the Inventor and Patentee of the Circliona Mossing Process

Submits an amended remonstrance against the decision of Government on his offer to dispose of his inventions patent at a valuation &c. —

Solicits the favor of this letter being forwarded to the Governor General and the Secretary of State, with a view to obtaining a withdrawal of the notification cancelling his patent privileges —

Rec'd inter. 1st Feby 1867

Ordered that Mr. Mc Ivor's letter be forwarded for the consideration of the Secretary of State —

The Government do not see cause to forward it to the Supreme Government, as they see no reason to modify

modify their views or recommendation on which the Supreme Government ~~acted~~ proceeded in cancelling the patent, or to doubt the legality of these proceedings with reference to the provisions of Act 15 of 1859.

Mr. McIvor's present letter and these proceedings of Government will, however, come under the notice of the Supreme Government, in the ordinary course of business.

Ordered that the following letter be despatched.-

To the Right Honorable the Secretary of State for India } Here enter

1 Copy to the Supdt. Govt. Chin. Plantations Deft. No. 19.

Marshall

Revenue 1864 Depts.
Pro of Govt. for Feby.

No. 396.

Pro of the Madras Govt.
of 18th February 1864

Letter from Mr. McIvor, remonstrating against the cancelment of his patent for mossing of Chinchona, the former as illegal

Despatched to England
of 25th February 1864 No.

No. 220-221.

C 11 Feby 57.