

Mr. Burnett

DEMS

PRIVATE AND CONFIDENTIAL.

[No. 2.]

APPENDIX

TO A

NARRATIVE OF THE CASE

OF

JOHN BURNETT, Esq.,

LATE

COLONIAL SECRETARY

AT

VAN DIEMEN'S LAND.

LONDON :

PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD-STREET.

1837.

D. Fitzhugh

[No. 2.]

A P P E N D I X

TO A

NARRATIVE OF THE CASE

OF

JOHN BURNETT, Esq.,

LATE

COLONIAL SECRETARY

AT

VAN DIEMEN'S LAND.

LONDON:

PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD-STREET.

1837.

APPENDIX TO MR. BURNETT'S CASE.



No. 1.—On the 22nd August, 1836, I received the following letter from Dr. Turnbull, acting Private Secretary to Lieutenant-Governor Arthur :—

MY DEAR SIR,

Government House, 20th August, 1836.

The Lieutenant-Governor directs me to inform you that he has received the Secretary of State's decision upon your letter to Mr. Hay of the 17th September last, considered in connexion with his Excellency's despatch of nearly the same date. His Excellency deeply regrets the unfavourable result of these representations.

His Lordship states that he has not failed to bestow the best attention upon your case; but that, after a careful review of all the circumstances of it, he cannot hold out to you a prospect of your being again employed under the Colonial Department, nor is it in his Lordship's power to direct the Lieutenant-Governor's proposing to the Council to make any provision for you in the shape of a pension.

His Lordship is, however, desirous of affording any possible relief to your family, and he requests that his Excellency will avail himself of any opportunity which may offer of employing your sons in the service of his government; and if any of them are already in the service, of promoting them, provided they deserve it by their conduct.

His Excellency requests me to assure you, that if you can point out to him any way in which he might still be of service, or could he in any way promote the views of your family when in London, it would be gratifying to him to manifest the interest he really feels in their welfare.

I beg to remain, my dear Sir, &c.

(Signed)

ADAM TURNBULL.

J. Burnett, Esq.

No. 2.—In reply I wrote as follows :—

MY DEAR SIR,

New Norfolk, 22nd August, 1836.

In acknowledging your letter of the 20th inst.; which I have only this evening received, conveying to me the very adverse decision of the Secretary of State, on the appeal which the Lieutenant-Governor was last year pleased to make in my behalf, I beg you will express to his Excellency my acknowledgments for the very feeling manner in which he has directed your communication to be made.

This blow, from being altogether unexpected, falls upon me with redoubled violence, as my friends, both in this Colony and in England, had all along induced me to anticipate a very different result from his Excellency's application; and I, therefore, am at present totally unequal to meet it with the necessary fortitude, or to decide what measures it will be best to adopt in order to mitigate the calamity; but I beg you will assure Colonel Arthur that I duly appreciate his kind offer of still being of service to me, although I am as yet altogether unable to point out any means by which I can avail myself of it.

I beg to remain, my dear Sir, &c. &c.,

(Signed)

J. BURNETT.

To Dr. Turnbull, Private Secretary.

No. 3.—On the 25th August I wrote to the Private Secretary as follows :—

MY DEAR SIR,

Having received a statement drawn up in the Colonial Office, of the circumstances of my case, upon which the recent decision of the Secretary of State was founded, which Lord Glenelg sent to the Duchess of Atholl and several other friends of mine, I am now most desirous to obtain the particulars of all that passed from this Government to Downing-street in the years 1834 and 1835, from which the statement I have alluded to must have been compiled; will you therefore do me the favour to ask the Lieutenant-Governor to have the kindness to allow me to be furnished with copies of all those letters and despatches which are referred to? or should his Excellency object to this, at least permit me to peruse them?

I am sure both his Excellency and yourself will at once see how extremely important it is that I should be furnished with this information, without which it is impossible for me to ascertain the exact position in which I at present stand, and the interest which the Lieutenant-Governor evinced for my family in your letter of the 20th inst., induces me to hope that his Excellency will be disposed to comply with my request.

I beg to remain, &c. &c.

(Signed)

J. BURNETT.

Dr. Turnbull, Private Secretary.

No. 4.—To the foregoing I received the following reply :—

MY DEAR SIR,

Government House, 27th August, 1836.

I have submitted to the Lieutenant-Governor the request contained in your letter of the 25th inst., and his Excellency desires me to inform you that the Secretary of State having sent to the Duchess of Atholl and your other friends such a statement as expressed the grounds of his Lordship's decision, his Excellency does not consider that he could at present consistently accede to your desire. The Lieutenant-Governor would nevertheless observe, that he has always deemed the document signed by your friends the most important, containing as it does full explanations. [*See Memorandum signed by Messrs. Stephen and Swanston, No. 39, and pages 17, 18, 19, and 20 of the Narrative.*]

His Excellency understood from Mr. Stephen that the point to which the Secretary of State attached the greatest importance, was the fact of your having alienated your grant. This, though under the circumstances a measure to have been deprecated, his Excellency should not, in communicating with his Majesty's Government, have thought necessary to notice prominently, and it therefore occurred to him, when I wrote to you on the 20th inst., that he might, when in London, be of service to your family.

I beg to remain, &c.

(Signed)

ADAM TURNBULL.

No. 5.—The *Precis* or *Analysis* of my case, drawn up in the Colonial Office, Downing-street, was as follows :—

VAN DIEMEN'S LAND.

Mr. Burnett held the office of Colonial Secretary at Van Diemen's Land, and the accompanying papers relate to his dismissal from that office. The circumstances which led to his removal from his appointment were as follows :—

In the year 1832 a Commission was appointed in Van Diemen's Land for the purpose of investigating the titles of Settlers to their Grants before issuing the Title Deeds.

So many cases had been found to exist in which the conditions of the grants had been violated, that it was deemed prudent not to enforce the extreme penalty, which, in most cases, involved the resumption of the Land, but to substitute a lighter penalty, and one more likely to be generally enforced in the shape of a fine of 6*d.* per acre. Amongst other persons who applied for their Title Deeds, Mr. Burnett also put in his application for his Title to 2560 acres of land.

This Grant had been made to him under peculiar circumstances; it had been resumed by the Crown from another individual, a Mr. Hammond, on the ground

that he had alienated it, and had left the Colony without having performed the conditions under which it had been placed in his possession.

It was an unfortunate circumstance that land so forfeited to the Crown should have been bestowed on a Public Officer immediately connected with the Head of the Government, and that circumstances rendered it still more imperative on the Colonial Secretary strictly to perform all the conditions.

When Mr. Burnett made his application to the Commissioners he accompanied it by the usual declarations. Two of the questions put by the Commissioners and answered by Mr. Burnett are as follows:—

1st.—In whose possession or occupation is the land so applied for by you, and every part thereof, and under what title, as far as you know, or believe?

Answer.—The land is in my own possession, and I am now applying for a Title to it.

2nd.—Is the land applied for, or any part thereof, subject to any mortgage or other incumbrance, if so, when, and to whom, and by whom, and for whose benefit was every such mortgage and incumbrance made or created, as far as you know or believe?

Answer.—It is subject to no mortgage nor incumbrance*.

The Commissioners appear to have been the less strict in pursuing the inquiry in consequence of the position held by Mr. Burnett, but it came to the knowledge of the Lieutenant-Governor that the land had been actually sold long before. Mr. Burnett was accordingly interrogated as to the fact, and persisted in his denial and in a course of evasion to cover the falsehood.

The inquiry was carried before the Executive Council, and when the truth was about to be made apparent, Mr. Burnett deputed two of his friends to acknowledge the fact of the sale, and to beg that any further proceedings in the Council, and before the Commissioners, might be stayed.

It was further prayed by Mr. Burnett that he might be allowed to retire from his office on twelve months' leave of absence, ostensibly on account of his health, but with the hope, that within that period his removal to another Colony (which he had before been endeavouring to effect) might take place.

In order to form some judgment as to the real motives which could have influenced Mr. Burnett in adopting so extraordinary a line of conduct, it is necessary to consider his real position at the time. He was appointed to his office in December 1826†. He was then, as he states, forty-four years of age; he was but little accustomed to habits of business, and sought employment solely with the view to retrieve his private affairs. He accordingly performed with considerable difficulty the heavy duties which devolved upon him, so much so, as seriously to impair his health; at the same time, his pecuniary affairs seem to have become, from accidental circumstances, still more embarrassed, and his difficulties led him to make an irregular sale of his land.

The only consequence which would have resulted from his acknowledgment of his having so done, would have been a fine not exceeding 64*l.*, which was in reason scarcely to have been balanced against the hazard of concealing and denying the fact; but he seems to have been influenced, as he states, (during a fit of extreme physical and mental debility,) by a repugnance to acknowledge the fact, which hesitation was, in all probability, heightened by a recollection that he, a public officer, had been guilty of the same irregularity which had led to the forfeiture of the land by a private individual. This is the light in which the case is put by Mr. Burnett's friends, and seems to afford the only probable explanation of his having pursued so otherwise inexplicable a course.

The first irregularity, that of selling the land, was of common occurrence, and in a private individual would have been fully allowed for by the regular fine; but in his case it was certainly aggravated by the additional fact that, as Colonial Secretary, he was particularly bound to uphold and observe the regulations of the Government; but by the falsehood and evasion of which he was guilty, he destroyed the dignity of his public character, not only as Colonial Secretary, but as a Member of Council, before which board the case was investigated.

* This was strictly true; for I had never granted any security whatever upon the land.

† I was appointed to my office on the 6th of March, 1826.

Lord Aberdeen confirmed the leave of absence granted to Mr. Burnett, but directed his dismissal without the hope of any pension. [No. 14, 13th Mar. 1835.]

[Case of Mr. Burnett, Colonel Arthur, No. 65, 2nd September, 1835; Private, 11th Sept., do. 5th October. Mr. Burnett, 17th Sept. 1835; Mr. Hamilton, 4th Feb. 1836; Col. Leith Hay, 12th Feb.—Vide Colonel Arthur, No. 4920, Sept. 1834.]

No. 6.—By the “Elphinstone,” which sailed on the 30th October, I transmitted the following letter to Lord Glenelg:—

MY LORD, *Van Diemen's Land, 12th September, 1836.*

It is with extreme reluctance that I find myself compelled to intrude on your Lordship's notice; but the copy of a precis or analysis of my case, drawn up in the Colonial Office, which you were pleased to send to the Duchess of Atholl and some of my other friends, having been transmitted to me, I am by it, *for the first time*, apprized of the particulars of the charge which Lieutenant-Governor Arthur has preferred against me; and as I feel convinced that many circumstances in extenuation of my conduct, as well as the motives by which it was influenced, have not yet been fully brought under the consideration of his Majesty's Government, I avail myself of the earliest opportunity of forwarding the accompanying statement of facts, *all of which I have it in my power to substantiate and prove*; and for that purpose, as well as to afford any further explanation which may be deemed requisite, it is my intention, very shortly, to present myself to your Lordship in Downing Street, in the hope that what I have now stated will be sufficient to induce your Lordship to re-consider my case; and when you shall have satisfied yourself of the accuracy of my statements, that you will be pleased to mitigate the extreme severity of Lord Aberdeen's decision.

With this object in view, I should have proceeded to England by the first possible opportunity, had I not been very desirous that Sir John Franklin, on his arrival in this Colony, should inquire into the accuracy of all the facts which I have stated in the accompanying Memorandum, previous to my departure.

I have the honour to be, my Lord, &c. &c.,

(Signed) J. BURNETT.

To the Right Honourable the Lord Glenelg, &c. &c. &c.

7.—With the foregoing letter I transmitted the following Memorandum and Appendix to Lord Glenelg:—

MEMORANDUM.

Van Diemen's Land, 12th September, 1836.

With reference to the precis or analysis of my case, drawn up in the Colonial Office, and transmitted to the Duchess of Atholl and some of my other friends, upon which the very severe decision of the Earl of Aberdeen appears to have been founded, I beg most respectfully to solicit your Lordship's consideration of the following *facts, all of which I have it in my power, and am ready fully to substantiate and prove*, and which I have every reason to hope and believe will induce your Lordship to view my conduct, in respect to the circumstances which led to my removal from the office of Colonial Secretary at Van Diemen's Land, in a far less unfavourable light than you have hitherto done.

The particulars of my case may be divided into three heads:—

- 1st. The peculiar circumstances of the land which had been located to me.
- 2nd. The causes which led to an arrangement for the sale of that land.
- 3rd. The concealment of that arrangement, and the non-payment of the alienation fine.

First.—*As to the peculiar circumstances of the land.*

1.—Soon after my arrival in the colony, and before I was aware of the peculiar circumstances under which a grant of land had been resumed by the Crown, from

an individual of the name of Hammond, on account of a flagrant violation of the regulations of the local government, I was unfortunately induced, by the advice of some persons long resident here, and supposed to be experienced in such matters, to apply for it, and it was located to me accordingly; which, when I became better acquainted with colonial affairs and the exact position of Hammond's case, I very much regretted.

2.—From circumstances which subsequently occurred, I became so strongly impressed with the impropriety of *this land* being possessed by any public officer, that I was desirous to give it up; and in the year 1830, I offered to do so, on being permitted to select another grant elsewhere, either *with* or without the usual restrictions, although none nearly so valuable could then be obtained. This the Lieutenant Governor would not permit me to do; but I transmitted my correspondence upon this subject with his Excellency to the Secretary of State, and it was not until I received an entire approval of my conduct and a confirmation of my location from Mr. Hay, by direction of Sir George Murray, that I, in any respect, availed myself of the land.

3.—This explanation will, I am confident, completely exonerate *me* from all blame in respect to the original location of the land.

Secondly.—*As to the causes which led to my arrangement for a sale of the land, the nature of that arrangement, and the alienation fine.*

1.—I had originally let my land upon an improving lease, the whole proceeds of the rent, with some addition to be expended upon it by the tenant, and I being in no shape to derive any immediate pecuniary benefit therefrom; and it was only when compelled by unforeseen and unavoidable misfortunes and losses in England, that I first contemplated parting with it.

2.—The Government regulations provide for and allow the alienation of land, in cases of unavoidable misfortune, *previous* to the fulfilment of the conditions; and I did not consider that there could be any impropriety in making timely arrangement for the sale of my grant as soon as its conditions should have been fulfilled (for which I carefully provided in my agreement), the losses before alluded to having led me to anticipate that I should, at an early day, have occasion to dispose of my property.

3.—With regard to the line of conduct I adopted when called upon to state whether my land was sold, and liable to the *subsequently established* fine, I must observe that I never did consider the transaction between Mr. O'Connor and myself of the nature contemplated by the regulations imposing the penalty.

4.—The abuses so frequently brought under the notice of the Government, and which it considered called for some check, were the numerous cases wherein the grantees had sold their lands immediately on obtaining them, without making any outlay whatever upon the ground, or in any shape providing for the fulfilment of the Government conditions, putting thereby into their pockets the whole value of the land, and frustrating the primary object of his Majesty's Government in granting the waste lands of the crown, *viz.*, the expenditure of capital on the soil. *My transaction was not of this nature.*

5.—My first arrangement with Mr. O'Connor was, as I have already stated, a *bonâ fide improving lease*, and to such a disposition of a public officer's land the most rigid stickler for the regulations certainly could not object.

6.—Subsequently unforeseen misfortunes obliged me to enter into an agreement for the ultimate disposal of my land at a future period. A simple inspection of that document, which was "done upon honour," and was legally binding upon neither party, will show that the following are its leading features:—

1st. The sum to be eventually paid by Mr. O'Connor was agreed upon, but no part of the purchase-money was to be immediately paid.

2nd. The transfer was not to take place until the deed of grant should be issued (Mr. O'Connor being already in occupation of the land in virtue of the lease before-mentioned).

3rd. The original conditions of the location were to be fulfilled before the deed of grant could be obtained, and Mr. O'Connor was bound for the complete redeeming of these conditions, under the penalty of becoming liable to the loss of the land, in the event of his failing to do so.

7. The obvious effect of such an agreement, therefore, was, that the Government

conditions should be completed, and *at my own expense*, since the sum requisite for effecting them was necessarily taken into consideration, when the amount agreed to be ultimately paid by Mr. O'Connor was fixed, or, in other words, since I was to obtain for the land a value diminished by the amount to be expended upon it.

8.—Such being the nature of my transaction with Mr. O'Connor, I have from the beginning considered that I was fully justified in denying that the land was completely alienated at the period of my application to the Commissioners. And as far as my own opinion goes, I am still of the same way of thinking.

9.—*I would here beg to call your Lordship's particular attention to the fact*, that the apparent inconsistency of my statements on this head should be received with considerable allowance—since the admission of my having so greatly erred was made by my friends, *and not by myself*. They, when I put the case into their hands, were of opinion that I had been wrong, *and to their judgment I bowed*, as I had requested their advice and assistance at a time when illness prevented me from longer carrying on the unequal contest without aid. I entreat a candid consideration of this important fact. [See Appendix No. 1.]

10.—That I was not singular in conscientiously believing that my transaction with Mr. O'Connor was not such as to entail the alienation fine, the certificates in Appendix No. 2 will show. And as a farther proof that my judgment in considering the agreement not tantamount to a final alienation of the land such as would be deemed a breach of the regulations was correct, I may add that had Mr. O'Connor applied for the deed of grant without my concurrence, he could not have proved that the property was his; as it had not, in truth, passed to him, and by an action at law he never could have obtained it.

11.—It was, at the time, a great object of the Government to issue the title-deeds for all locations, and under the circumstances existing, it was obviously my part to be the applicant; and as the conditions as to the improvements were very nearly, if not entirely fulfilled, and the property had never been transferred to Mr. O'Connor, I think it will be admitted, by most persons conversant with the question, *as it stands in this Colony*, that I was entitled to the deed, without the stigma of having violated the Government regulations.

12.—I was wrong in concealing from the Government the precise nature of the transaction with Mr. O'Connor, and I now exceedingly regret that I did not at once produce the agreement*; but it is to be borne in mind that Mr. O'Connor and myself were mutually pledged to secrecy on the occasion of its being entered into; and it cannot be considered unnatural or unusual that such an agreement should be wished by the parties to remain secret: for few men desire to have their private affairs made public; and rather than disclose what the nature of the agreement called on me to conceal, I wrote a letter, volunteering to pay the fine, but my friends advised me to withhold it, which is certified by Mr. Stephen. [See Appendix No. 3.]

13.—I mention this principally with the view of showing what I am most desirous to impress on your Lordship's mind, that my consistent and reiterated refusals to admit that I had incurred the fine, so long as I acted on my own sole judgment, were grounded, NOT on any desire to avoid the trifling loss of sixty-four pounds, if it could have fallen upon me, which, as the fine is invariably paid by the purchaser, and not by the seller, *it never could*, but in my extreme reluctance to *acknowledge* that I had in any respect violated the regulations, an act, which, in my situation, I should have considered blameable.

Thirdly.—*As to the concealment of my arrangement, and the non-payment of the fine.*

1.—I have already stated, and can distinctly prove, that such concealments as I adopted, and the course I pursued, are of very common occurrence in this Colony, where, it is a notorious fact, that they have been practised by gentlemen of the highest honour, without any impeachment of their integrity, more than the concealment which military officers were formerly obliged to observe when they bought, sold, or exchanged commissions at a higher price than the regulations allowed, cast upon theirs; and the very nature of the local regulations rendered such concealments unavoidable, from the ruinous exposure of private affairs which they

* This admission more mature reflection has induced me to retract; and I cannot now admit that I was wrong in withholding the agreement.

required, and the consequent destruction of credit which must have resulted from them.

2.—My extreme desire scrupulously to observe the Government regulations, which was in fact the sole cause of my concealment, lest my arrangement might at first sight appear to be a departure from them, as well as my total disregard of all pecuniary considerations when opposed to them, will be strikingly evinced by the following fact:—I, voluntarily and unasked, surrendered to the Crown a valuable allotment which had been located to me, and which would now sell for several thousand pounds, rather than incur the imputation of having in any respect deviated from the regulations; and this I did at a time when I was labouring under considerable pecuniary embarrassment. That other high public officers, members of both councils, have *not* been equally scrupulous, I can prove, and also that mine is the only instance in this Colony of so valuable an allotment being thus voluntarily surrendered.

Having now touched upon all the leading features of my case, perhaps your Lordship will pardon my briefly adverting to some other circumstances connected with it, which are noticed in the *Precis* drawn up in the Colonial Office.

1.—It has been stated that I originally sought my appointment solely to retrieve my private affairs;—if I did so, the foregoing fact will at least prove that *I did not use it for that purpose*, and I can with confidence appeal to Colonel Arthur, as well as to the whole of this community, whether I ever allowed any considerations of advantage to my fortune, my family, or my health, to interfere with my public duty.

2.—It is alleged that, because I was but little accustomed to business habits, I with considerable difficulty performed the heavy duties which devolved upon me; the accuracy of this statement, together with the inferences to be drawn from it, I must, *in some measure, be permitted to question*; for I can appeal to the general testimony of the Colony at large, to prove the unwearied assiduity and zealous attention, which, from the day of my entering office, I invariably devoted to my public duties; and, for the manner in which I performed them, I would refer to Mr. Boyes, the Colonial Auditor, who, from occupying the adjoining chambers to my office in the same building, and from having been in daily communication with me for so many years, had a better opportunity than any other individual of forming a correct judgment,—to Mr. Hill, the late Port Officer, who also occupied an office adjoining to mine,—to Mr. Driscoll, and to all the Clerks in my office,—to all the gentlemen who successively held the situation of Private Secretary to the Lieutenant Governor,—and more especially to Mr. Hamilton, who provisionally acted as Colonial Secretary previous to myself, and afterwards held several other high appointments in this Government, who has repeatedly expressed his astonishment at the remarkably short period in which I made myself acquainted with all my duties, as well as at the efficient manner in which I discharged them.

3.—Mr. Hamilton and Mr. Boyes will also testify that it was by a *long continuance* of intense application, and AFTER my habits of business had become fully confirmed, that my health was ultimately impaired; for I had scarcely a single day's illness for the first five years.

4.—Upon this point, I may perhaps be excused for quoting the following extract of a letter from Colonel Arthur to myself, dated 14th August, 1833:—

“It required much greater effort on your first entering on your office than would otherwise have been the case, from your want of all business habits; and *the zeal and application which you so remarkably manifested*, to qualify yourself to discharge the multifarious duties of your Department, I have always considered undermined your constitution, and laid the foundation of the serious complaint, from which you have so severely suffered during the last two years.”

5.—It is stated that my first irregularity, that of selling my land, was one of common occurrence, and would have been fully allowed for, in the case of a private individual, by the fine, but that, in my case, it was aggravated from my being Colonial Secretary; on this point, I would beg most respectfully to call your Lordship's attention to the fact, that almost *every other Public Officer* of Colonel Arthur's Government had previously sold his land *unimproved*, and without fulfilling the conditions; whereas I had provided for their ample fulfilment, before my grant could be alienated, as will be proved by an inspection of my agreement. [See Appendix No. 2.]

6.—It was my over anxious desire in no respect to impeach my official character, by the acknowledgment of even an apparent deviation from those Government regulations which I ever felt it to be so peculiarly *my* duty to uphold and observe, that alone caused the unfortunate course, which a variety of concurring circumstances, at a time when my nerves were weakened and my judgment impaired by illness, induced me to resort to. But it still affords me some consolation to be assured, by the unanimous testimony of all classes in this Colony, where the particulars of my case are well known, and the motives by which my conduct was influenced justly appreciated, that, notwithstanding the error into which I was led, in the estimation of this Community, the dignity of my character as Colonial Secretary and a Member of Council, and my integrity as a private gentleman, are neither lessened nor impaired. [See Appendix No. 4.]

J. BURNETT.

The Right Hon. Lord Glenelg, &c. &c. &c.

His Majesty's principal Secretary of State for the Colonies.

A P P E N D I X.

No. 1.

October 8th, 1836.

MY DEAR MR. BURNETT,

Whatever may have been Captain Swanston's and my own opinion respecting the true character of your arrangement with Mr. O'Connor as to the land of which the Grant was applied for by you, you are certainly entitled to the benefit of a distinct admission from us, that, up to the time of our first interview, *your own impressions of the matter were different*. Our written narrative of the case will show you that we always put this forward as your excuse. It matters comparatively little that *we* conceived, and that you admitted, that you did wrong in not revealing the facts. If you continued up to a late period under the impression (as I believe you did) that the arrangement in question was one of prospective sale only, and such as (resting on honour between you) there was no legal tie on you to enforce, *the graver portion of the charge against you unquestionably is unfounded*. That the arrangement did really amount to a sale, *we* afterwards admitted; but I should hold it to be unjust to deprive you for that reason of the full right of saying, that (up to the time of that opinion being expressed and acted on by us) you did really yourself think differently. *I must admit, too, that I have recently heard several honourable persons say, that they should have looked on the transaction in that light themselves.*

I am yours, truly,

(Signed)

ALFRED STEPHEN.

To J. Burnett, Esq.

No. 2.

STATEMENT OF MR. BURNETT'S CASE.

Mr. Burnett originally let his Grant to Mr. O'Connor, on an improving lease; the proceeds of the rent to be expended upon the land.

In 1831 Mr. Burnett agreed to sell his location to Mr. O'Connor for a stipulated price, on condition of Mr. O'Connor performing the necessary improvements. The purchase-money to be paid *at a future day*, unnamed, and in the mean time an annual sum of 143*l.* as interest on it. **THE TRANSFER NOT TO BE MADE** until the whole of the purchase-money should be paid, and the purchase-money not to be paid until the deed of grant was issued. The following is A COPY of the agreement.

1st.—John Burnett agrees to sell to Roderic O'Connor his location of 2560 acres of land, at the junction of the South Esk and St. Paul's Rivers, for the sum of 1430*l.* sterling.

2nd.—Roderic O'Connor hereby agrees to pay to John Burnett the sum of 1430*l.* sterling, WHENEVER THE GRANT OF THE SAID LOCATION SHALL BE ISSUED; and in the mean time, and until the principal shall be paid to J. Burnett, ten per cent, interest thereon; that is to say, 143*l.* sterling, by half-yearly payments, on the 1st of January and 1st of July in each year; the first payment of 71*l.* 10*s.* commencing on the 1st of January, 1832.

3rdly.—Roderic O'Connor hereby binds himself to fulfil the government conditions affecting the land within three years from the date of this agreement.

4thly.—If the conditions are not fulfilled by R. O'Connor, it is agreed that the consequent loss of the land (if resumed) is to fall upon him.

5thly.—It is agreed that the *title-deeds are to be executed by J. Burnett, when the whole of the purchase-money is paid up, and not before.*

Done, *bonâ fide, and UPON HONOUR*, at Hobart Town, this 24th day of May, 1831.

(Signed)

RODERIC O'CONNOR,
J. BURNETT.

Witness, W. H. Hamilton.

Subsequently to the arrangement Mr. O'Connor advanced money to Mr. Burnett, on the faith of their agreement *on honour*; but no part of the interest was ever paid, nor was any security, upon the land or otherwise, given for the money so advanced.

On the 15th day of June, 1833, Mr. Burnett, desiring to take up his grant-deed, applied to the Commissioners appointed for such purpose, and filled up the usual printed letter of application by the following answers to their queries.

<i>Queries to be answered in the Letter of Application.</i>	<i>Answers.</i>
1.—Do you claim a grant in fee simple, or a lease for years; and if the latter, for what term?	A grant in fee-simple.
2.—In what town or district is the land you apply for situate?	
3.—Describe, accurately, the actually existing boundaries and the true quantity of such land; and state the name of the surveyor who gave possession of such boundaries, and the period of his so doing?	2560 acres.
4.—Has there been any grant, or lease, or location-order made of the land, or of any part thereof, and when, and to whom, were, or was, the same made?	The location-order was made 9th November, 1827, by Lieutenant-Governor Arthur.
5.—Set out a true copy of the description of the land, contained in any such grant, lease, or location-order?	Bounded on the east by a reserve of 1440 acres, the boundary-line bearing south 15 west; from the junction of the South Esk and St. Paul's River, by a west line of 92 chains; on the west by a line bearing north 10 east to the South Esk River; and on the north by the South Esk River, to its junction with the St. Paul's.
6.—In whose possession or occupation is the land so applied for by you, and every part thereof; and under what title or titles so far as you know or believe?	The land is in my own possession, and I am now applying for a title to it.

7.—Is the land applied for, or any part thereof, subject to any mortgage or other incumbrance ; if so, when, and by whom, and to whom, and for whose benefit, was every such mortgage and incumbrance made or created, as far as you know or believe ?

It is subject to no mortgage or incumbrance.

8.—To what quit-rent do you believe the land applied for, and every part of it, to be subject, and to what conditions ?

I believe it is intended to charge quit-rent at the rate of 5 per cent. on the value of my grant.

(Signed)

J. BURNETT.

It was known that the land was in the occupation of Mr. O'Connor ; but the Commissioners, not considering it to be alienated, passed the claim without a fine, the conditions being very nearly if not quite redeemed ; and it likewise passed the Executive Council.

Subsequently, the Lieutenant-Governor, having understood, some time before, that Mr. O'Connor was the owner of the land, addressed several communications to Mr. Burnett, with a view to elicit the exact nature of the transaction, being impressed with the belief that the circumstances were such as would not justify the Government in issuing the deed without fine. In his replies to these letters Mr. Burnett denied that his arrangement with Mr. O'Connor was such as made the land liable to a fine : he concealed the agreement made on honour with Mr. O'Connor, and avoided admitting that the transaction was a sale.

We, the undersigned, declare, on our honour, that we have carefully perused the whole of the correspondence above alluded to, and that this is an accurate abstract of the case.

Thomas Anstey, M.L.C.
Thos. Archer, M.L.C.
C. M'Lachlan, M.L.C.
Richard Willis, M.L.C.
P. Murdoch, J.P.

E. Dumaresq, J.P.
W. Effingham Lawrence.
W. P. Ashburner, J.P.
James Gibson, J.P.

We have carefully perused the above statement and certificate, and, from our knowledge of the practice followed in the colony in respect to similar transactions, as well as from our acquaintance with Mr. Burnett's high character for integrity and honour, we feel no hesitation in declaring it to be our conviction that, in denying his agreement with Mr. O'Connor to be a legally binding sale, he was not actuated by any unworthy or dishonourable motive, or considered he was asserting what was not the fact. We likewise declare that, although the whole matter is generally known throughout the Colony, we do not believe that Mr. Burnett's dignity as a public functionary, or his integrity as a man, has in consequence suffered any diminution in the estimation of the Colonists.

Signatures to the Statement with the Certificates transmitted to Lord Glenelg by Lieut. Colonel Snodgrass, per *Mary*, 29th November, 1836 :—

Thos. Anstey, M.L.C.*
Thos. Archer, M.L.C.
Richd. Willis, M.L.C.
P. Murdoch, J.P.
A. Gardiner, J.P.
W. A. Bethune, M.L.C.
H. Dixon.
J. F. Margetti.
A. M'Pherson, J.P.
H. B. Torlesse, J.P., Lt. R.N., Police
Magistrate, Hamilton.
C. O. Parsons.
J. Gibson, J.P. late Major in the Army.
W. Archer, J.P.
Ed. Archer.

R. R. Davies, Gov. Chaplain, Norfolk
Plains.
J. A. Youl.
W. E. Lawrence, Bank Director.
W. P. Ashburner, J.P.
E. Dumaresq, J.P., late Surveyor-Gen.
W. Wood, late Capt. and Paymaster,
— Regt.
W. Barnes, J.P., Bank Director.
C. S. Henty, Do. Do.
W. Kenworthy, J.P., Inspect. of Works,
Launceston.
J. Henty, J.P.
R. P. Stewart, late Capt. 40th Foot.
Samuel Martin, the Rev.

* M.L.C. stands for Member of the Legislative Council.

Wm. Moriarty, J.P., Commander R.N., P.M., Westbury.	C. M'Lachlan, M.L.C., Bank Director.
A. Burdett Jones, J.P.	J. Beamont, J.P., Sheriff of the Colony.
Pearson Foote, J.P., Lieut. R.N.	James Smith, J.P.
G. C. Groom, Landowner and Colonist.	W. Bedford, J.P., Sen. Gov. Chaplain.
Thos. Parker, Do. Do.	Ed. Bedford, Gov. Assist. Surgeon.
J. J. Parker, Do. Do.	G. Frankland, J.P., Surveyor-General.
Horace Rowcroft, Do. Do.	J. Scott, J.P., Gov. Colonial Surgeon.
A. W. Horne, J.P., Police Magistrate, Norfolk Chains.	A. F. Kemp, Bank Director.
R. Armstrong, J.P., late Capt. Bengal Army.	J. J. Collicott, J.P., Postmaster-Gen.
Ed. Boyd, Dep. Surv. Gen., late Capt. in the Royal Staff Corps.	R. Douglas, Ordnance Storekeeper.
W. Sorell, J.P., Registrar of Supreme Court.	Stephen Adey, J.P., Bank Director.
	A. Murray, J.P., Town Surveyor.
	J. Hewitt, Bank Director.
	Wm. Bunster, Do.
	J. Nicholson, Commissioner for Titles to Lands.

I have satisfaction in being able to testify in general to the respectability and high stations in life of the fifty-two gentlemen who have affixed their names to the above statement and certificates of Mr. Burnett's case. The greater number of them are known to me either personally or by character, and the fullest reliance on their honour and judgment may be placed.

(Signed)

R. SNODGRASS,

Administering the Government.

26th November, 1836.

Additional signatures since the above dates :—

John Kerr, Member of the Legislative Council.	J. Garrett, A.M., Government Presby- terian Chaplain.
R. Officer, J.P., Government Assist. Surgeon.	Thomas Dove, A.M., Government Pres- byterian Chaplain.
M. Fenton, late Capt. 13th Regt.	F. J. Park, Government District Surg.
David Jamieson, Landed Proprietor.	Robert Hamson, J.P.
J. F. Sharland, J.P., Government Dis- trict Surgeon.	Rev. Wm. Garrard, Government Chap- lain, New Norfolk.
A. Reid, J.P., Landed Proprietor.	Rev. Wm. Bedford, jun., Government Chaplain, Campbell Town.
W. S. Sharland, Government Surveyor.	Benj. Berthon, J.P.
John Whitefoord, J.P., Police Magis- trate, Oatlands.	C. Driscoll, J.P., Assist. Police Magis- trate, Hobart Town.
Robert Barr, J.P.	

No. 3.

SIR,

Macquarie-street, 17th July, 1834.

I am just now favoured with your letter of yesterday's date, transmitting, by direction of the Lieutenant-Governor, a copy of your communication to the Commissioners, requesting further information of "the precise particulars of the arrangement" under which my land is occupied by Mr. O'Connor; and I have the honour to state, for the information of his Excellency, that, as my agreement with that gentleman is purely *of a private nature*, and cannot be disclosed without making public the state of my pecuniary affairs, I must decline producing it, or affording any other information respecting it than I have already given; and I am therefore now willing to submit to the payment of the fine.

I have further to request that you will submit to his Excellency the extreme importance of which it is to me, to receive my Deed of Grant without any further delay; and as it has already been recommended by the Commissioners, and, I believe, been advised by the majority of the Council, to be issued, subject to the fine, I entreat that you may be authorized to give the necessary instructions for that purpose from your office.

I have the honour to be, &c.

(Signed)

J. BURNETT.

To John Montagu, Esq., Clerk of the Councils.

At Mr. Burnett's request, I certify that (on, I think, the first occasion when I saw him) he showed this letter to me, as one which he proposed to send to the Clerk of the Councils; and I certify that it was not sent, in consequence of my advice.

(Signed)

ALFRED STEPHEN.

September 8th, 1836.

No. 4.

In illustration of the estimation in which my character is held in this Colony, I may perhaps be excused for mentioning the following fact:—I was recently chosen foreman of three special juries, on which I served; and upon two of these occasions I was selected in preference to a Member of Council, who was upon the same jury, and upon all of them in preference to several magistrates.

(Signed)

J. BURNETT.

14th October, 1836.

8.—The following letter was addressed by Mr. Stephen, and Captain Swanston, M.L.C., to Lieut. Governor Arthur, who pledged himself to them to send it to the Secretary of State, with his first report on my case. Whether his Excellency did send it home, as he promised, I have never been able to ascertain.

SIR,

August 2nd, 1834.

In reference to the conversation which we have had the honour of holding with your Excellency on the subject of Mr. Burnett's agreement with Mr. O'Connor for the sale of his land, we feel no hesitation in declaring to you what we have verbally stated already, our deliberate conviction and opinion, which we have formed after full knowledge of the circumstances, that Mr. Burnett's concealment of the transaction did NOT arise from any design to deprive the Crown of the alienation fine. We are satisfied that it arose out of a natural reluctance on his part to disclose an arrangement which (in itself the result of sudden pecuniary embarrassment, occasioned by an unexpected disappointment in England, wholly beyond his control) he had reason to apprehend that you would disapprove of. We are convinced, moreover, that, had not this apprehension operated on his mind from the outset, neither the fine, nor the disclosure itself, would have been regarded by Mr. Burnett as a matter of any importance.

We are, Sir, &c. &c. &c.

(Signed)

ALFRED STEPHEN.
CHAS. SWANSTON.

To his Excellency the Lieut. Governor.



LONDON:
Printed by WILLIAM CLOWES AND SONS,
Stamford Street.

AN: 27002 324

OSM
Q 351.4
B

DSM
Q351.4
B