

Mr Burnett

[No. 3.]

PRIVATE AND CONFIDENTIAL.

OFFICIAL CORRESPONDENCE

AND

DOCUMENTARY EVIDENCE

IN THE CASE OF

JOHN BURNETT, ESQ.,

LATE COLONIAL SECRETARY OF VAN DIEMEN'S LAND.

LONDON :

PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD STREET.

1837.

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SCHEDULE



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OFFICIAL CORRESPONDENCE.

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OFFICIAL CORRESPONDENCE,

&c. &c. &c.



(Copy.)

No. I.

SIR,

Hobart Town, 21st November, 1836.

I HAVE the honour herewith to enclose the duplicate copies of a letter and memorandum which I transmitted to Lord Glenelg by the "Elphinstone;" and if your Excellency will do me the favour, after perusing the certificates forming No. 2 of the Appendix to the latter, to attest their authenticity, and express your opinion of the respectability of the signatures, and accompanied by such remarks as your own knowledge of my case may warrant, forward them with the documents by the ship "Mary," for the consideration of the Secretary of State, you will greatly oblige, Sir,

Your Excellency's obedient humble Servant,

(Signed)

J. BURNETT.

To his Excellency Lieut.-Col. Snodgrass, C.B.,

&c.

&c.

&c.

P.S. I enclose the original certificate with its signatures, which I shall feel obliged by your Excellency's returning to me.

(Copy.)

No. II.

SIR,

Hobart Town, 23rd November, 1836.

WITH reference to my communication of the 21st instant, wherewith I had the honour to transmit the duplicates of a letter and memorandum that I sent home by the ship "Elphinstone," to the Secretary of State, I now beg leave to enclose for your Excellency's consideration copies of a correspondence which has taken place between Mr. Gregory, the Colonial Treasurer, and myself, and I do so with the hope that you will also submit them to Lord Glenelg by the ship "Mary," which is now on the point of sailing.

As Mr. Gregory was from the first the member of the Executive Council who appeared to take the most unfavourable view of my case, and as upon his opinion the very adverse decision of the Earl of Aberdeen would seem to have been chiefly founded, the present change of sentiments with regard to it, which he has so handsomely expressed, is the more important.

For the sake of reference, and in order the more forcibly to contrast the opinion which Mr. Gregory formerly delivered with that which, upon further information, he at present holds, I have taken the liberty to enclose a copy of it in the form in which it was sent to me by the Clerk of the Councils; and, with regard to that opinion, I shall perhaps be excused for respectfully offering one or two remarks. Mr. Gregory says, "It cannot be supposed that Mr. Burnett, having held the appointment of Colonial Secretary for eight years, could be ignorant of the real intent of the regulations under which he is declared to be liable to a fine; it is therefore difficult to understand why he did not originally disclose to the Commissioners the fact of his having leased the land." Upon this I would simply observe, that even the Surveyor-General was *at that time* no less ignorant than myself of what was construed to be the true intent of the regulations, for *he* did not then suppose that to part with the temporary occupation of land rendered it liable to the fine. Again, Mr. Gregory states, that "the papers now laid upon the table clearly show that if such fact had not come to light the pecuniary interests of the Crown would have been affected by a loss of sixty-four pounds." With regard to this point, I would respectfully submit, that if parting with the actual occupation of the land (which I never concealed that I had done) incurred the fine, it could be of no use to ascertain whether that occupation had been given by lease or otherwise, nor could any deed which might have been executed at all change the aspect of the case; and consequently, whatever the papers to which Mr. Gregory alluded

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had brought to light, the interest of the Crown could not have been thereby in any way affected.

I have the honour to be, Sir,

Your Excellency's obedient humble Servant,

Signed)

J. BURNETT.

His Excellency Lieut.-Col. Snodgrass, C.B.,
&c. &c. &c.

(Copy.)

Enclosure No. 1.

MY DEAR SIR,

Hobart Town, 19th November, 1836.

I NEED scarcely assure you how highly gratified I have been to learn from my son James the change which the perusal of my agreement with Mr. O'Connor, respecting my land, has produced in your view of my case.

That I never did myself conscientiously believe *that* agreement to amount to an actual sale, you are already aware; but to find that you are now disposed to concur with me in that opinion is indeed most satisfactory, as it must greatly tend to remove the unfavourable impression which has been entertained of my conduct throughout this unfortunate transaction.

Perhaps, therefore, you will do me the favour, in reply, to repeat to myself the sentiments upon this subject which you have so handsomely expressed to my son.

I remain, my dear Sir, yours truly,

(Signed)

J. BURNETT.

To John Gregory, Esq., Colonial Treasurer.

(Copy.)

Enclosure No. 2.

MY DEAR SIR,

Colonial Treasury, 21st November, 1836.

IN reply to your letter of the 19th instant, requesting me to state, in writing, the opinion which I have recently expressed in conversation with your son. As to the agreement entered into between Mr. O'Connor and yourself, I have no hesitation in frankly stating, that I think you were not justified in concealing from the "Commissioners for examining Titles" the fact of your having entered into such an agreement for the sale of your land.

As a public man, holding one of the highest offices in the colony, you were, I think, bound to let the Commissioners know under what circumstances you had allowed the land to pass into the *occupation*, at least, of Mr. O'Connor, such occupation being a matter of notoriety in the colony; and had I been a member of the commission, I certainly should have had no scruples in calling upon you to furnish such information, in order that the Board might be enabled to decide whether the title-deed should issue subject to the "Alienation" fine, or not.

But, if I am called upon to say whether, when you stated in writing to the Commissioners that the land was "*in your possession*," you were guilty of having stated what was untrue, I am bound in justice to you to declare my own opinion, that you were *not*.

I certainly *do* think that you omitted to tell the *whole* truth; but I do not think that, in what you *did* say, you stated anything that was not true.

For my own part, I must say, now that for the first time I have seen the agreement, that, had I been in your situation, I should *not* have regarded the sale as having actually taken place. You had unquestionably agreed to sell the land; but it does not appear to me that the sale could be said to have actually taken place until the second and fifth articles of the agreement had been carried into effect,—that is to say, until the title-deeds had been applied for and obtained by yourself, and until the whole of the purchase-money had been paid up by Mr. O'Connor.

There can be no doubt that the land either *was* or was *not* your property at the time you penned your answer to the interrogatory of the Commissioners. If it *was* your property, you were guilty of no falsehood in stating that it was still "*in your possession*;"—meaning thereby, not occupation, but proprietorship: if, on the other hand, it was *not* your property, you had no right whatever to claim it: but in that case, it is to be presumed that the moment your claim to it had been advertised by the Commissioners, Mr. O'Connor would have hastened to put in his own caveat or counterclaim. His not having done so has always struck me as the strongest argument in favour of the views you took of the matter.

Since I have seen the agreement (which was only shown to me ten days ago by your son), I have felt more satisfied than ever that I was consulting the true

interests both of the Government and yourself, when, as a member of the Executive Council, I advised the Lieutenant-Governor to call upon you to produce every deed connected with the transaction, in order that the Council might form its own conclusion, from a perusal of the deeds, as to the sufficiency of your grounds for maintaining, as you did, that the land was still "in your possession." Had you followed that advice, when Colonel Arthur communicated it to you, it is more than probable that an open disclosure of the agreement would have subjected you to a certain degree of censure, to which I apprehend that, upon mature reflection, you must be conscious that you were liable; but it is equally probable, in my opinion, that it would have warded off that more severe blow under which you and your family are now suffering.

I have thus freely and frankly given you my opinion of your case; and though I should object to your making it public*, I cannot, in justice to you, object to your mentioning what it is to the Secretary of State, if you think that it would in any degree conduce to your benefit in the appeal you are making to Lord Glenelg.

Believe me to remain, my dear Sir,

Yours, very truly,

(Signed)

JOHN GREGORY.

John Burnett, Esq.

Enclosure No. 3.

The Clerk of the Councils presents his compliments to the Colonial Secretary, and is directed by the Lieutenant-Governor to transmit for his information the opinion and advice offered by Mr. Gregory in the Executive Council yesterday, upon the Commissioners' supplementary report, recommending a fine to be imposed upon the issue of a grant of 2560 acres of land at St. Paul's Plains to Mr. J. Burnett, and to inform him that the other members of the Council were of opinion that the land was neither in the possession nor occupation of Mr. Burnett, and advised the imposition of a fine.

The Clerk of the Councils is further directed to state that the whole of the correspondence which has passed between the Lieutenant-Governor and Mr. Burnett, so fully setting forth Mr. Burnett's views and explanations, was perused in Council yesterday; but his Excellency has not yet given the Clerk of the Councils instructions to communicate his decision upon the case to Mr. Burnett.

Council-Office, 3rd July, 1834.

Enclosure No. 4.

Mr. Gregory's opinion and advice in the Executive Council, 2nd July, 1834.

Mr. Gregory was of opinion that, considering the high station held by the Colonial Secretary, the circumstances brought under the notice of the Council respecting the title-deed of Mr. Burnett were of a nature to call for a further investigation than has yet taken place before the deed is issued. It cannot be supposed that Mr. Burnett, having held the appointment of Colonial Secretary for eight years, could be ignorant of the real intent of the regulations under which he is declared to be liable to a fine, and it is therefore difficult to understand why he did not originally disclose to the Commissioners the fact of his having leased the land. The papers *now* laid upon the table clearly show, that if such fact had not come to light, the pecuniary interests of the Crown would have been affected by a loss of sixty-four pounds.

Mr. Gregory therefore advises that Mr. Burnett should be apprised of the intention of the Council to call for an inspection of the deed under which the lessee now occupies the land, with the hope that by such inspection they may feel themselves warranted in concurring with Mr. Burnett in the opinion he entertains and the declaration he has made in writing to the Commissioners, that he is still in possession of the land, and that there is no mortgage or incumbrance on it.

(Copy.)

No. III.

SIR,

New Norfolk, 28th November, 1836.

WITH reference to a letter from Mr. Gregory, the Colonial Treasurer, informing me of the change that had taken place in his sentiments with regard to my case, and

* Mr. Gregory afterwards gave me permission to make this letter public.—J. B.

expressing his opinion that I had only stated what was true, in denying that a sale of my land had taken place previous to July, 1834, a copy of which I had the honour of submitting to your Excellency on the 23rd instant, in order that it might be transmitted to the Secretary of State, I now most respectfully beg to request, that in consequence of this circumstance, as well as many others which I am able to adduce in justification of the line of conduct I pursued in concealing the precise particulars of an arrangement I had entered into with Mr. O'Connor, respecting my land, that the subject may again be brought under the consideration of your Excellency in the Executive Council, and that I may be there permitted to substantiate several facts of a highly important nature, which appear to have been altogether unknown to his Majesty's Government at the time the Earl of Aberdeen pronounced his very adverse decision in my case.

In a letter which I had the honour of transmitting to Lord Glenelg, dated the 12th September last, I stated that it was my intention to apply to Sir John Franklin, on his arrival in this colony, to inquire into the accuracy of a number of facts I had submitted to his Lordship in a memorandum which accompanied my letter; but the change which I have since ascertained to have taken place in Mr. Gregory's opinion, as well as my belief that, owing to my illness at the time my case was formerly before the Council, many important circumstances connected with it are still unknown to that body, induces me now to solicit that the whole matter may be reconsidered at an earlier period; and I do so with the most perfect confidence that it will be no less your Excellency's desire than that of the Council to afford me that justice, which a misapprehension of facts and circumstances has hitherto prevented me from receiving.

In consequence of my having taken my passage for England, I trust your Excellency will pardon my again urging the extreme importance to me of an early compliance with my request.

I have the honour to be, Sir, your most obedient humble servant,

(Signed)

J. BURNETT.

His Excellency Lieut.-Colonel Snodgrass, C.B.,
&c. &c.

(Copy.)

No. IV.

SIR,

Government House, Hobart Town, 1st December, 1836.

I HAVE the honour to acknowledge the receipt of your letter of the 28th ultimo, and will lay it before Sir John Franklin on his arrival, with a view to the subject of its contents being brought before the Executive Council.

I have the honour to be, Sir, your most obedient servant,

(Signed)

R. SNODGRASS.

John Burnett, Esq.

(Copy.)

No. V.

SIR,

Hobart Town, 16th December, 1836.

WITH reference to my letter of the 28th ultimo, requesting that in consequence of Mr. Gregory's change of opinion, and other circumstances which I am able to adduce in justification of my conduct in respect to the circumstances that led to my removal from office, which are probably still unknown to his Majesty's Government, and your Excellency's reply of the 1st instant, wherein you are pleased to say that you will lay my communication before Sir John Franklin on his arrival, with a view to a compliance with my request, I have now the honour to solicit that I may be furnished with copies of the documents enumerated in the margin, in order to enable me to afford a full, and, I trust, a satisfactory explanation of every circumstance which may have been alleged against me.

In respectfully urging this request, I trust I shall be excused for stating to your Excellency that *I have never yet been informed of the precise particulars of the charges which have been preferred against me*, and consequently that I have hitherto been deprived of the opportunity of meeting them. I therefore feel confident that your Excellency and the Council will consider me justly entitled to the perusal of any documents which I may deem necessary for my defence. I may,

perhaps, add, that some recent communications which I have received from England strongly tend to confirm the impression I have entertained that the true bearings of my case were altogether misapprehended by the Secretary of State when Lord Aberdeen's very adverse decision was pronounced.

I have the honour to be, Sir,
Your Excellency's most obedient humble servant,

(Signed)

J. BURNETT.

His Excellency Lieut.-Colonel Snodgrass, C.B.,

&c. &c. &c.

Administering the Government.

DOCUMENTS ENUMERATED IN THE MARGIN.

1. Despatch, No. 49, from Lieutenant-Governor Arthur to the Secretary of State, dated Sept., 1834.
2. Despatch, No. 65, from ditto to ditto, dated 2nd September, 1835.
3. Private, from ditto to ditto, dated 11th September, 1835.
4. Private, from ditto to ditto, dated 5th October, 1835. (Supposed to be addressed to the Under Secretary of State.)
5. Any other communications which may have been addressed by Colonel Arthur to his Majesty's Government, relative to my case, in the years 1834 and 1835.

(Copy.)

No. VI.

SIR,

Hobart Town, 22nd December, 1836.

I HAVE the honour to acquaint you that I have thought it advisable to consult with the Colonial Secretary previous to replying to your letter of the 16th instant, not only as being best able to point out where the drafts of the letters you quote, as being necessary for your defence, are, but also as to the propriety of transmitting copies of those marked private; and his answer was as follows:—"I feel no difficulty, in the absence of Colonel Arthur, to state, that I am sure he would not have objected to have allowed Mr. Burnett access to his Despatches, if he had stated that he imagined they did not contain all the circumstances that led to his removal from office; and as my advice is asked, whether I would now adopt a similar course, I have no hesitation in saying that I would."

The "Eden" prison ship arrived in Hobart Town this forenoon, with the certain intelligence of Sir John Franklin's being at the Cape of Good Hope in the "Fairlie," which was to sail for this colony in a few days after the "Eden," so that the Lieutenant-Governor may be daily looked for.

I consider that it would not be acting with courtesy to Sir John were I to take upon myself to comply with your request, on the eve of the arrival of a Lieutenant-Governor appointed by the King, and my consequent very temporary hold of the administration of the government of the Colony (having for the same reason already declined to resume the inquiry before the Council); but I will bring your request under his consideration at the first convenient opportunity after his arrival.

I have the honour to be, Sir, your most obedient servant,

(Signed)

R. SNODGRASS.

John Burnett, Esq.

(Copy.)

No. VII.

SIR,

New Norfolk, 10th January, 1837.

I HAVE the honour to submit for your information copies of a letter and memorandum, together with its appendix, which I transmitted to the Secretary of State by the ships "Elphinstone" and "Mary," in October and November last; and with reference to the conversation which I had the honour to hold with your Excellency, and the official correspondence upon the same subject, which I had with the officer administering the government, previous to your arrival, I take the liberty respectfully to repeat the request which I made in my letter of the 28th November, to which I beg to refer, for the reasons that render me so desirous to have my case brought under the consideration of your Excellency in the Executive Council.

I should not thus early have ventured to intrude upon your Excellency's time and attention, had I not understood that Colonel Snodgrass intends almost immediately to return to N. S. W.; and had I not considered it an object of the utmost importance, both to the Government and to myself, that he should be present in the

Council when I bring forward the proofs of my perfect innocence of all the charges (as far as I have yet been enabled to ascertain what they are) which have been alleged against me; and that I shall be permitted so to do, I am encouraged to hope, not only from your Excellency's sense of justice, but from your predecessor's having given me reason to expect that my request would be complied with on your arrival.

In addition to the reasons assigned in my letter to Col. Snodgrass, of the 28th November, for being so extremely desirous to have my case reconsidered, and to bring forward proofs of the perfect accuracy of all that I have stated to Lord Glenelg, I shall perhaps be excused for adding that I was prevented by illness, at the time my case was before under the consideration of the Council, from personally affording that full explanation of my conduct, which I was then no less desirous than I now am, to give; and to the want of which, and the consequent misapprehension of the facts, even by my own friends, who undertook to explain them to Lieutenant-Governor Arthur, I can alone attribute the very unfavourable view which has been taken of my case by his Majesty's Government.

It is, however, far from my wish to urge either your Excellency or the Council to express any opinion or come to any decision upon my case, should you, under the circumstances, not consider it expedient to do so; but I feel confident that you will allow me to substantiate my innocence by the proofs which I am able to produce, and that you will transmit them to the Secretary of State by the earliest opportunity.

It is proper also, I should state, that I would at a much earlier period have preferred my present request, had I been informed of the exact particulars of the charges against me, the real nature of which I have only recently been able to collect from a *Precis* of my case drawn up in the Colonial Office; and this circumstance induces me to hope that you will see the justice of directing that I should be furnished with copies of all Col. Arthur's letters and despatches to His Majesty's Government relative to my case.

I have enclosed a schedule of the different letters and documents which I transmitted to the officer administering the government, and which Col. Snodgrass has kindly promised to lay before your Excellency, accompanied by his own explanation and remarks upon their contents.

I have the honour, &c.

(Signed) J. BURNETT.

His Excellency Sir John Franklin,
&c. &c.

(Copy.)

No. VIII.

SIR,

Government House, 12th January, 1837.

I AM directed by the Lieut.-Governor to acknowledge the receipt of your communication to him of the 10th instant, and to assure you that it would afford His Excellency great pleasure to be enabled to serve you in your very painful and difficult position.

As circumstances at present appear to him, however, His Excellency does not see distinctly the advantage that would accrue to you from having your case brought under the consideration of the Council, and he is strongly impressed with a sense of the inconvenience which, amidst the pressure of business consequent necessarily on his recent arrival in the Colony, would arise from directing the first attention of the Council to a personal matter of this description.

It seems that Lieut.-Colonel Snodgrass has already taken your present representations into consideration, and, besides transmitting Mr. Gregory's letter, has warmly seconded your application for a re-hearing by the Secretary of State, and has testified to the respectability of the gentlemen who have expressed a favourable opinion of your case; and to these steps His Excellency does not see that he could add anything which, even if favourable to your wishes, would not be merely formal.

His Excellency does not, therefore, so much refuse your application as invite you to consider whether your position is not as good without a re-hearing before the Council as it could become with one; and whether, therefore, you might not spare him the necessity of choosing between the pain of disappointing you, or the

inconvenience of directing his own attention, and that of the Council, immediately on his arrival, from public to private business.

I have the honour to be, Sir,

Your very obedient servant.

(Signed)

A. MACONOCHIE,
Private Secretary.

John Burnett, Esq.,
&c. &c.

(Copy.)

No. IX.

SIR,

New Norfolk, January 16th, 1837.

IN acknowledging the receipt of your letter of the 12th, in reply to mine of the 10th Instant, which I had the honour to address to Sir John Franklin, requesting to have my case brought under the consideration of the Executive Council, I beg you will do me the favour to express to His Excellency the sense I have of the very handsome manner in which he has directed you to reply to my communication.

Although the Lieutenant-Governor has been pleased to say that he does not so much refuse my application as invite me to consider whether my position be not as good, without a re-hearing before the Council,—yet, as His Excellency seems to be so strongly impressed with the inconvenience which a compliance with my wishes might at the present moment cause to his government, I feel no hesitation in declining to urge it again, though perhaps I may be excused for adding that I cannot consider my unfortunate case to be altogether of a private nature.

In a letter which I had the honour of addressing to Lord Glenelg, on the 12th of September last, I informed his Lordship that I should have proceeded to England by the first possible opportunity, had I not been very desirous that Sir John Franklin should inquire into the accuracy of all the facts which I had stated in a memorandum which accompanied it, and I was indeed most desirous to be afforded the opportunity of proving to his Excellency in Council my entire innocence of every charge I either knew or suspected to have been preferred against me, and that I should have been permitted to have done this on the spot where my offences were supposed to have been committed, by the oral testimony of a very considerable number of the most respectable gentlemen in this colony.

That my exculpation from all blame should be complete, it appeared to me necessary that my witnesses should be cross-examined and their evidence sifted, which could only be done where it was given *vivâ voce*, and in my own presence; for although I shall be enabled to adduce the most unexceptionable documentary evidence, it will not by any means be so satisfactory to me, when taken in a manner that will not admit of its being questioned.

These, and these alone, are the reasons why I was so desirous that my case should be re-considered, or, I should more properly say, be fully considered (for it has never yet been so), in the Executive Council; but, as I have already said, I bow to Sir John Franklin's wishes, and shall not again urge my request.

But as his Excellency has expressed his desire to be of service to me, under the painful and difficult circumstances in which I am at present placed, I trust he will have the goodness, after perusing the documentary evidence which I shall have the honour to submit in vindication of myself from every charge which I suppose to have been preferred against me, to transmit it, accompanied by such remarks and observations as his own sense of justice may dictate, for the favourable consideration of the Secretary of State.

I have the honour to be, Sir, your very obedient humble servant,

(Signed)

J. BURNETT.

To Captain Maconochie,
Private Secretary.

(Copy.)

No. X.

SIR,

New Norfolk, 17th January, 1837.

I MOST respectfully beg to call your Excellency's attention, and to refer you to a letter which on the 16th ultimo I addressed to Lieutenant-Colonel Snodgrass when administering the government.

In the letter to which I have referred, I requested that I might be furnished with copies of the despatches and letters enumerated in the margin, in order to enable me to vindicate myself from the aspersions that have been cast on my character, which I need scarcely remark it is out of my power to do until I know exactly what charges have been preferred against me.

Should this information be afforded, I feel the most perfect confidence that I shall be able to remove those imputations from which I have so severely suffered. Should it be refused, I must continue to contend with shadows in the dark, as I have been compelled to do for the last two years. In illustration of which, I trust your Excellency will pardon my mentioning that, until recently, I had every reason to believe that I had been deprived of my office on a charge of endeavouring to defraud the Crown of the alienation fine on my land: my friends in England then communicated to me that they had been informed in Downing-street that my removal from office had been caused by some breaches on my part of the regulations of the local government. I have, however, since collected from a precis of my case drawn up in the Colonial Office, that it is *deliberate falsehood* with which I have been charged, and that the dignity of my character is thereby so much impaired, both as a Member of Council and Colonial Secretary, as to render me unfit for Office. I find that other matters must also have been alleged against me, of which, until I obtained a copy of this precis, I was altogether ignorant; but whatever the charges against me may have really been, I am sure your Excellency will consider it just that I should be distinctly informed of the particulars of them to the full extent; and under this impression I have ventured to renew my request.

I have the honour to be, &c.

(Signed)

J. BURNETT.

To His Excellency Sir John Franklin.

1. Despatch, No. 49, from Lieutenant-Governor Arthur to the Secretary of State, dated Sept., 1834.
2. Despatch, No. 65, from ditto to ditto, dated 2nd September, 1835.
3. Private, from ditto to ditto, dated 11th September, 1835. } These two were probably letters to the
4. Private, from ditto to ditto, dated 5th October, 1835. } Under Secretary of State.
5. Any other communications, official or private, relative to my case, which may have been made by Lieutenant-Governor Arthur to the Colonial Office in Downing-street.

(Copy.)

No. XI.

SIR,

Government House, 23rd January, 1837.

I AM directed by the Lieutenant Governor to acknowledge the receipt of your communication of the 17th instant, and to state to you in reply, that so much of the application therein contained as relates to Colonel Arthur's private letters, it is out of his power to grant, that officer having taken his private letter-book with him: and there is a positive order from the Home Government against furnishing individuals with copies of public despatches.

His Excellency will, however, permit you to inspect, in the Private Secretary's Office, whatever documents therein deposited it may appear to you desirable to consult on the present occasion; and he will be happy to forward your subsequent communication to the Secretary of State, without, however, adding to it note or comment on his own part, which the extent of his information on the subject, and the pressure of other business claiming his immediate attention, will not allow him adequately to mature.

I have the honour to be, Sir,

Your very obedient servant,

(Signed)

A. MACONCHIE.

(Copy.)

No. XII.

SIR,

New Norfolk, 24th January, 1837.

IN acknowledging your letter of yesterday's date, in reply to the communication which I had the honour to address to the Lieut.-Governor on the 17th instant, I beg you will do me the favour to express to Sir John Franklin my acknowledgments for the permission which His Excellency has been pleased to give me to inspect, in your office, whatever documents therein deposited it may

appear desirable for me to consult on the present occasion ; of which permission, if perfectly convenient to you, I intend to avail myself upon Thursday next. Previously to the receipt of your letter, I had taken the liberty of addressing Sir J. Franklin, at some length, in a communication which will accompany my documentary evidence, and which I only delay to transmit until I can get my papers attested by a notary public. In that letter I have ventured again to urge my request that his Excellency, after perusing the conclusive evidence of my innocence of every charge which I suppose to have been preferred against me, will afford me the benefit of his own observations upon my case, when he is pleased to forward my papers to the Secretary of State.

Should it still, however, be deemed inexpedient to comply with my request, I trust Sir J. Franklin will do me the favour to peruse the documents himself, and, if he makes no comment upon them, that he will at least express his concurrence in the opinion which his predecessor in the Government has already expressed to Lord Glenelg.

I have the honour to be, Sir,

Your very obedient servant,
(Signed) J. BURNETT.

Capt. Maconochie, R.N.,
Private Secretary.

(Copy.)

No. XIII.

SIR,

New Norfolk, 26th January, 1837.

I HAVE herewith the honour to submit for your Excellency's information, in a documentary form, attested copies of the evidence which it was my intention to have adduced in vindication of my character and conduct before the Executive Council, had I been permitted so to do.

2nd. This evidence, which contains the sentiments of the most honourable and high-minded gentlemen in this colony, requires no comment from me ; and, indeed, nothing that I could say would add to the weight of such testimony. Nothing more is, therefore, necessary, than to solicit that your Excellency will carefully peruse it yourself, and that you will then be pleased to transmit it, accompanied by such observations as your sense of justice may dictate, for the favourable consideration of the Secretary of State.

3rd. That I have fully met and refuted every charge which I either knew or suspected to have been alleged against me, I feel persuaded will be admitted by every impartial person ; but your Excellency is aware that I have had to contend against the almost insuperable difficulty of never having been distinctly informed of what those charges really were.

4th. I, however, have reason to believe that I have been accused,

First, of endeavouring to defraud the Crown of the alienation fine upon my land, by means of a blameable concealment of the terms of an agreement which I had entered into for its ultimate sale.

Second, of deliberate falsehood, in order to maintain that concealment, by which my dignity as a public functionary, and my honour and integrity as a private gentleman, were so much impaired, as to render me unfit for any official employment ; and,

Third, that from a want of business' habits, I inefficiently performed my duties as Colonial Secretary.

5th. If these, and these only, are the offences of which I have been accused (and I know of no other), I cannot for a moment doubt that your Excellency, after having perused the accompanying evidence, will fully acquit me of the whole of them.

6th. The first and second charges are disproved by the evidence which I have now the honour to submit, strengthened and supported by the certificates and declaration of fifty-two of the most honourable gentlemen in this colony, which the officer lately administering the government has already transmitted to the Secretary of State ; and should this evidence not be deemed sufficient fully to refute both the second and third supposed charges, the petition to his Majesty, which has been signed by nearly the whole of the most respectable inhabitants of this island, will, I should hope, triumphantly supply whatever may be considered wanting for that purpose.

7th. Your Excellency will observe, that Messrs. Gellibrand and Horne, certainly both gentlemen of the first eminence in their profession, are of opinion that my agreement with Mr. O'Connor did constitute a sale *in equity*; but two other lawyers, Messrs. Cartwright and Nicholson, the latter being also one of the Commissioners for claims to land, have come to a very opposite conclusion; and where there is a doubt I am in justice entitled to the benefit of it. It is in fact, however, a matter of little importance to my case, whether the agreement did or did not constitute a sale either in law or equity. The question is, did I or did I not conscientiously believe it to be such, at the time I stated that the land was in my own possession, thereby meaning proprietorship? That I did not, the evidence abundantly proves; and that I was not singular in thinking so, I would respectfully call the attention of your Excellency to the fact that every one of the witnesses, with the exception of Messrs. Gellibrand and Horne, are of the same opinion with myself, and that even Mr. O'Connor concurred in it. That such was always my own opinion the Attorney-General has proved, as also that his admission to Lieutenant-Governor Arthur to a contrary effect, at a time when I was prevented by illness from acting for myself, was altogether in opposition to my judgment.

8th. With regard to the concealment of the agreement for the sale of my land, which is considered censurable by the Colonial Treasurer in his letter of the 21st of last November, which is already before the Government, it is probably necessary that I should advert at somewhat greater length.

9th. Mr. Gregory has been pleased to say, that although I stated *nothing that was not true*, yet that I had not told the whole truth, and that I was liable to a *certain degree* of censure for not having made the disclosure which the Government required.

10th. In this view of the case I was at first disposed to concur, and have expressed my regret that I did not produce the agreement when it was called for, and admitted in my communications to my friends in England that the concealment was to a CERTAIN EXTENT blameable, but that it was the only feature in my case wherein I myself acknowledged that I had done wrong.

11th. Further and more deliberate reflection has, however, convinced me that I was wrong in making this admission, (and it is the only one that ever really emanated from myself,) for I am now satisfied that, under the circumstances, my concealment was not only justifiable but proper.

12th. On the 22nd of June, 1834, in answer to a letter from Lieutenant-Governor Arthur, making inquiries respecting my land, I wrote as follows:—

“Major Gray long since applied to me, either to purchase or rent my land, when I told him that I had already let it on an improving lease to Mr. O'Connor, so that he might have afforded your Excellency more authentic information than he appears to have done, *of a circumstance of which I never made any secret.*”

In reply to the above, Colonel Arthur, in a letter dated the 23rd of June, says:—

“I believe your having let your land on an improving lease, under the express terms of the Government order, renders it liable to the fine.”

Immediately on the receipt of the foregoing (on the same day, June 23rd), I informed the Commissioners, in writing, that I had let my land to Mr. O'Connor upon an improving lease, they being previously aware that it was occupied by that gentleman.

On the 26th of June his Excellency wrote to me as follows:—

“Certain I am, it was the intention to make the grantees liable to the fine who had let their lands before they made an adequate outlay in improving them.”

On the 19th of August his Excellency, in recapitulating the points of my case, wherein he considered me blameable, says:—

“It is (whatever the motive may have been) the act of getting rid of the fine fixed by the Government to be imposed upon every grantee, who had, in fact, *parted with the occupation* of his land, whether by sale, lease, or otherwise.”

13th. Now, it must be evident to your Excellency, that I never did attempt to get rid of the fine; for if I had intended to do so, I would not have acknowledged, both to Colonel Arthur and the Commissioners, that I had parted with the occupation of my land, AFTER his Excellency had expressly, and repeatedly informed me that that act rendered it liable to the fine. It was not the fine to which I objected, but the acknowledgment of having intentionally incurred it, and the disclosure of an agreement which I was bound in honour to keep secret.

14th. It will I think be admitted, that the local government had no just right to scrutinize and inquire into my private affairs, further than was necessary for the

protection of the pecuniary interests of the Crown; and that object being fully attained by the acknowledgment that I had parted with the occupation of my land, I submit that there existed no grounds whatever for requiring the production of my agreement with Mr. O'Connor, and, therefore, that I was fully justified in withholding a document which could not be produced by *either party without a breach of honour.*

15th. That such, too, was the opinion of all the members of Council, except the Colonial Treasurer, I have a right to infer from the Clerk of the Councils, by direction of the Lieutenant-Governor, informing me on the 3rd of July, 1834, that the other members (meaning thereby all but Mr. Gregory) recommended the imposition of the fine, on the information that was then before them; and yet on the 16th of the same month the Clerk of the Councils stated to me, in writing, that the Commissioners had been instructed to institute further inquiry into "the precise particulars of the arrangement" under which my land was occupied by Mr. O'Connor, and to call for "the production of my agreement."

16th. This inquisitorial scrutiny into my private affairs, when it was manifestly unnecessary for the ostensible purpose for which it was instituted, I submit to your Excellency that I was fully justified in resisting, and, therefore, that my concealment was justifiable and proper, and that I am not liable to any *degree* of censure for not making the required disclosure, or, in Mr. Gregory's words, for "not telling the *whole truth.*"

17th. Having thus, I trust, satisfactorily and fully disproved every one of the accusations, which I either know or suspect to have been preferred against me, I cannot doubt that your Excellency's sense of justice will induce you to remove from the mind of the Secretary of State the impression which he has entertained to my prejudice, and that you will assist me in obtaining redress for the sufferings to which my family and myself have been subjected, by the severe and highly adverse decision which the Earl of Aberdeen, under a misapprehension of the facts, was led to pronounce, so that I may again be restored to my office of Colonial Secretary in this Colony, of which I have been deprived on account of supposed offences that I am wholly guiltless of.

18th. I shall, perhaps, be excused for here mentioning to your Excellency that previous to my supercession I had long been endeavouring to obtain an appointment in some other colony; but the circumstances under which I desired to be removed from this being altogether altered, I no longer wish for any change, but am, on the contrary, above all things, anxious to be reinstated in my former office.

19th. I enclose a schedule of the evidence, numbered in the order in which it should be read, being that in which I intended personally to have examined my witnesses before the Council.

I have the honour to be,
Sir,
Your Excellency's most obedient humble Servant,
(Signed) J. BURNETT.

His Excellency Sir John Franklin,
&c. &c. &c.

P. S.—I beg respectfully to add, since writing the foregoing pages I have been favoured with Mr. Hone's opinion as to the validity of my agreement, and it is of great importance, in consequence of his being a barrister of very old standing, both of Gray's Inn, in London, and the Supreme Court in this Colony, and Chairman of the Commissioners for the Examination of Claims to Land, and I am happy to find that he concurs with me in thinking (in opposition to the opinions of Messrs. Gellibrand and Horne) that my agreement *did not constitute a sale, and that it could not be enforced in any court of law or equity.*

(Copy.)

No. XIV.

SIR,

Hobart Town, 23th January, 1837.

WITH reference to my letter, bearing date the 26th instant, which I have had the honour to address to Sir John Franklin, wherein I have stated that I had transmitted *attested* copies of the documentary evidence in vindication of myself, I beg you will do me the favour to acquaint his Excellency, that it was not considered

necessary by my friends that I should have the papers *attested*, as I shall carry home the originals, and will personally submit them to the Secretary of State, should his Lordship desire to see them.

I have the honour, &c.

(Signed) J. BURNETT.

*To Captain Maconochie, R. N.,
Private Secretary.*

No. XV.

SCHEDULE of Documentary Evidence in the Case of John Burnett, Esq., late Colonial Secretary at Van Diemen's Land.

1. George Frankland, Esq., Surveyor-General, Commissioner for the Valuation of Land, &c. &c.
N. B. Mr. Frankland was a Commissioner for the Examination of Claims for Land at the time my application for a title was made.
2. Joseph Hone, Esq., Chairman of the Commissioners for Claims to Land, Chairman of the Sessions, Commissioner of the Court of Requests, &c. &c.
Mr. Hone is also a Barrister, of old standing, of Gray's Inn, in London, and the Supreme Court, Van Diemen's Land; and a Chancery Lawyer.
3. Thomas Nicholson, Esq., also one of the Commissioners for Claims, and a Barrister and Solicitor of the Supreme Court of Van Diemen's Land; formerly Under-Sheriff for Hertfordshire.
4. Captain Boyd, Deputy Surveyor-General.
5. Edward Dumaresq, Esq., J. P., late Surveyor-General and Commissioner for the Valuation of Lands, Collector of Internal Revenue, Police Magistrate, &c. &c.
6. Peter Murdoch, Esq., J. P., late Commissioner for the Survey and Valuation of Lands, Police Magistrate, &c. &c.
7. John Gregory, Esq., Colonial Treasurer, and a Member of the Executive and Legislative Councils.
8. J. H. Moore, Esq., J. P., Collector of Internal Revenue, &c.
9. Alfred Stephen, Esq., Attorney-General, and Member of the Legislative Council.
10. Thomas Anstey, Esq., a Member of the Legislative Council, and late Police Magistrate.
11. Thomas Archer, Esq., a Member of the Legislative Council.
12. R. Willis, Esq., a Member of the Legislative Council.
13. Charles Maclachlan, Esq., a Member of the Legislative Council.
14. P. A. Mulgrave, J. P., Chairman of the Sessions, and Commissioner of the Court of Requests for the Northern Districts of the Island, late Chief Police Magistrate, &c.
15. Major Grey, J. P., a colonist, whose land adjoined Mr. Burnett's, on St. Paul's Plains.
16. J. T. Gellibrand, Esq., Barrister, and Solicitor in the Supreme Court.
17. George Cartwright, Esq., Barrister, and Solicitor in the Supreme Court.
18. Thomas Horne, Esq., Barrister, and Solicitor in the Supreme Court.
19. Robert Pitcairn, Esq., Solicitor in the Supreme Court.
20. G. Butler, Esq., a Solicitor in the Supreme Court.
21. W. T. Parramore, Esq., J. P., late Private Secretary to Lieutenant-Governor Arthur, Police Magistrate, &c. &c.
22. G. T. B. Boyes, Esq., J. P., D. A. C. G., Auditor of Civil Accounts.
23. C. Driscoll, Esq., J. P., Assistant Police Magistrate, and Member of the Assignment Board, formerly Chief Clerk in the Colonial Secretary's office.
24. James Scott, J. P., Chief Government Colonial Surgeon.
25. Rev. W. Garrard, Government Chaplain at New Norfolk.
26. Robert Officer, Esq., J. P., Government Assistant Surgeon at New Norfolk.
27. Arthur Gardiner, Esq., J. P., late Acting Police Magistrate at New Norfolk.

J. BURNETT.

(Copy.)

No. 1.

MY DEAR SIR,

New Norfolk 13th January, 1837.

YOUR annexing answers to the subjoined queries, and returning them to me, with your earliest convenience, will greatly oblige,

My dear Sir, yours very truly,

*George Frankland, Esq.,
Surveyor General,
&c. &c. &c.*

J. BURNETT.

1st. Were you one of the two Commissioners for the Examination of Claims at the time I applied for a title to my land?

1st. I was.

2nd. Are all applications for titles to land advertised, and is it usual, if there are any other claimants, for them to enter their caveat against the issuing of the deed to the applicant?

3rd. Was there any caveat put in against my claim?

4th. You have seen my agreement with Mr. O'Connor for my land, do you consider it to constitute a sale?

5th. Could it be properly so considered, until its second and fifth articles were carried into effect, or could any agreement be so considered which might be broken through by either party at pleasure?

6th. Had you heard it reported that my land was in the occupation of Mr. O'Connor previously to my application for a title?

7th. At the time you made your first report on my case did you suppose that the temporary parting with the occupation of land rendered it liable to the alienation fine?

8th. Had you been instructed to give the most liberal interpretation to the regulations?

9th. Do not the regulations authorize the alienation of land, in cases of unavoidable misfortune, previously to the fulfilment of the condition?

10th. Did you not understand the fine to be intended to cover all breaches of the regulations?

11th. Where the fine is tendered are there any grounds for further investigation, either with regard to possession or occupation of land, as far as the pecuniary interests of the Crown are concerned?

12th. Does the fine usually fall on the purchaser and not on the seller of land, unless where a previous agreement exists to the contrary?

13th. Have you understood that almost all the public officers have sold their lands unimproved?

14th. Was it usual for the public officers to conceal their agreements for such sales, and to evade their acknowledgments?

2nd. Such applications are invariably advertised, for the express purpose of ascertaining whether there are any claims on the lands besides those of the applicant. Should there be other claimants, they put in their caveats against the title being issued to the other party.

3rd. There was not any caveat put in.

4th. I have seen the agreement, but I had not seen it when I was in the Commission. I consider it to be an agreement to sell at a fixed price, *the transaction to be completed only when the stipulated conditions should be performed.*

5th. I do not consider that the sale could properly be termed *perfect* until the conditions under which the agreement was made should have been fulfilled. I should not consider that an agreement of such a nature was a *legally binding sale*, but, being an agreement upon honour, I consider that it could not have been broken through by one party without dishonour, unless both had agreed to cancel it.

6th. Yes; I had heard such a report.

7th. No; I certainly did not suppose such to be the intention of Government in establishing that fine.

8th. I had.

9th. Yes, they do, in respect to town allotments, and with the concurrence of the Government, the purchaser being held responsible for completing the stipulation improvements.

10th. Certainly: and on this principle titles have been issued ever since the establishment of the Commission.

11th. No: there are no other grounds where the claimant tenders the fine: he becomes exempt from all further objections to his obtaining a deed of grant, as far as regards the non-fulfilment attached to the location.

12th. I believe it is generally paid by the holder of the property, as respects sales made before the establishing of the fine. In subsequent transactions I should conceive the subject would be specially provided for by the parties in their agreement.

13th. I believe that most of the public officers who could not reside on their grants sold them, covenanting for the fulfilment of conditions.

14th. Before such sales were sanctioned by the Government accepting a fine in lieu of the redemption of conditions, those, whether public officers, or otherwise, who preferred disposing of their lands to retaining them generally avoided openly avowing the transaction to the Government, who fixed the fine as an equivalent.

The true policy of the Colony was found to be inconsistent with the land regulations, so they fell into disuse. Thus a man who would not hesitate to inform every member of the Government, in private society, that he had sold his land, would have declined avowing it to the same individuals in their official character, as much out of consideration to them as from any other motive; as the Government might consider itself bound to endeavour

15th. Were the improvements agreeably to the conditions upon my land officially reported to you to be nearly completed at the time I applied for a title?

16th. Had Mr. O'Connor applied to you for a title to the land, under this agreement, could he have obtained it?

17th. Did I voluntarily and unasked, surrender to the Crown a valuable allotment, of three acres, which had been located to me, in the best part of Hobart-Town?

18th. Would this allotment, in your opinion, now sell for several thousand pounds?

19th. Might I have retained this allotment if I had thought proper to do so?

20th. Are you aware of any cause for my giving it up, except my desire strictly and scrupulously to observe the regulations?

21st. Are you aware of any other public officer having given back to the Crown so very valuable a piece of ground, after it had been located to him?

22nd. Are you aware of any other public officer having ever surrendered any allotment whatever, after it had been located to him?

23rd. Did I appear to you unremitting in my attention, and particularly zealous in the performance of my public duties?

24th. Are you of opinion that my dignity as a public functionary, or my honour and integrity as a gentleman, have at all suffered in the estimation of the colonists on account of the circumstances connected with my land?

25th. Are not these circumstances very generally known throughout the Colony?

(Signed) J. BURNETT.

(Copy.)

No. 2.

MY DEAR SIR,

YOUR annexing answers to the subjoined queries, and returning them to me with your earliest convenience will very greatly oblige,

Joseph Hone, Esq.,

&c. &c. &c.

Chairman of the Sessions, and Commissioner of the Court of Requests.

1st. Are you at present Chairman to the Commissioners for the Examination of Titles to Land?

2nd. You have seen my agreement with Mr. O'Connor respecting my land; do you consider it to constitute a legally binding sale?

3rd. Do you think it could be properly termed a sale until its second and fifth articles were carried into effect?

4th. Could any agreement be properly so termed, which might be broken through at pleasure by either party?

5th. Could my agreement have been so broken through?

to uphold its own regulations, if breaches of them were thrust officially before it, while, at the same time, it might deem such interference very impolitic.

This was the general tacit understanding throughout the Colony, as far as it can be described in a few words.

15th. *They were.*

16th. No; not without your express concurrence, delivered to the Commissioners.

17th. Yes, you did.

18th. Yes; certainly.

19th. Yes, I presume you might, for the present owner, who succeeded you, has never fulfilled the conditions of the allotment, and the Government has not attempted to resume it.

20th. I believe *that* was your sole motive for giving it up, as you were not prepared to build on the ground.

21st. No; I am not aware of any. I myself gave up an allotment, as I was not prepared to fulfil the conditions, but it was not so valuable a piece of ground as yours.

22nd. I am not aware of any, with the above exception.

23rd. Very unremitting and indefatigable in the upright and independent discharge of your public duties.

24th. No; they have not suffered in the estimation of the colonists.

25th. I believe they are universally known in the Colony.

(Signed) GEORGE FRANKLAND.

New Norfolk, 13th January, 1837.

My dear Sir, yours very truly,

(Signed) J. BURNETT.

1st, I am.

2nd. As a reply to the 2nd, 3rd, and 5th queries I would observe, that upon an attentive consideration of the agreement referred to, it appears to me altogether of a prospective nature, seeing that you had not any legal title yourself, and were consequently unable to make one to a purchaser, and that your object when making the agreement was, as I conceive, to place yourself in a condition to acquire the legal title by getting the necessary improvements made through Mr. O'Connor, who could not receive a conveyance from you until,

6th. Had Mr. O'Connor applied to you for a title under this agreement, could he have obtained it without my concurrence?

7th. Where other parties have claims on the lands applied for, do they not in all cases put in their caveats, in order to prevent the applicant from obtaining a title to the land if he has not a just right to it?

8th. Is the alienation fine considered to cover all breaches of the regulations, whether by lease, sale, or otherwise?

9th. Are you aware that where no express agreement to the contrary exists, the fine usually falls on the purchaser and not on the seller of land?

10th. Have you heard that nearly all the public officers who have received grants of land from the Crown have sold them unimproved?

11th. Have you known me ever since my arrival in the Colony, and did I always appear to you particularly zealous and attentive to the discharge of my public duties?

12th. Are you of opinion that my dignity as a public functionary, or my honour and integrity as a gentleman, have at all suffered in the estimation of the colonists from the circumstances connected with my land?

13th. Are those circumstances very generally known throughout the Colony?

(Signed) J. BURNETT.

(Copy.)

No. 3.

Thomas Nicholson, Esq.

1st. Are you not one of the Commissioners for the Examination of Titles for Land?

2nd. Do you consider this agreement to constitute a sale?

3rd. Are not caveats in all cases put in, where other persons have claims on the lands applied for?

by the issue of a grant to yourself, you obtained a legal interest in the land. As to the agreement, it is, in itself, such an original document, and, to use the lawyers' phrase, so loosely penned, that I am wholly at a loss to imagine how it could possibly be tendered to, or, if tendered, received by any court of law.

6th. Certainly not.

7th. They do.

8th. It does cover every breach.

9th. Purchasers of property not granted almost uniformly apply for the grants themselves, and whatever fines are then payable, they, the applicants, must pay before the grants are delivered. In the present case Mr. Burnett was to procure the grant, which, according to the spirit of the agreement, was not to be obtained till the property was improved, and Mr. O'Connor was to make the improvements, *which act would at once put the applicant (whether Mr. O'Connor or Mr. Burnett) into a situation to receive a grant without paying any fine.*

10th. I cannot say that I have; but I have heard it in reference to some of those gentlemen.

11th. I have so known you, and my reply to the latter part of your query is decidedly in the affirmative.

12th. I cannot entertain such an opinion, because it is personally known to me that to this instant you are on the same terms of friendly, family, and table intimacy with numerous gentlemen of the highest honour and station, as you were previous to your retirement.

13th. I have no doubt that they are; but not having been consulted, or in any manner conferred or advised with, directly or indirectly, on the business, or obtained a knowledge of its circumstances in detail, until the receipt of the papers on which I am now writing, which caused me to procure the loan of two printed pamphlets, one containing the agreement, and the other being a memorandum relative to the case, I am unable to speak with certainty.

(Signed) JOSEPH HONE.

1st. I am one of the Commissioners.

2nd. I do not consider the agreement as constituting an absolute sale.

3rd. In every case of an application for a grant by a locatee, who has sold his land previously to the application, a caveat would be entered by the purchaser against the issuing of a grant to the applicant, if the purchaser considered himself then entitled to the land, or to have the right to a grant. In the present instance the purchaser could not have claimed

4th. Would the Commissioners have issued a title to Mr. O'Connor, had he applied for it, under the agreement now produced?

5th. Did I not always appear to you zealous and attentive to the discharge of my public duty?

6th. Are you of opinion that my dignity as a public functionary, or my honour and integrity as a gentleman, have at all suffered in the estimation of the colonists, from the circumstances connected with my land?

7th. Are not those circumstances very generally known?

(Signed) J. BURNETT.
11th January, 1837.

(Copy.)

MY DEAR SIR,

YOUR favouring me with answers to the accompanying queries, and returning this paper with your earliest convenience, will very greatly oblige,

*Captain Boyd,
Deputy Surveyor-General,
&c. &c. &c.*

1st. You have seen my agreement with Mr. O'Connor respecting my land; do you consider it to constitute a sale?

2nd. Can any agreement be so considered which is not legally binding upon either party, and which may be broken through at pleasure?

3rd. Are you aware that most of the public officers, who have received grants of land from the Crown, have sold them unimproved, without fulfilling the conditions, and that it was usual to conceal such sales?

4th. Were such sales, nevertheless, matters of public notoriety, and do you think it credible, or even possible, that they were altogether unknown to Colonel Arthur and his Government?

5th. How long have you known me?

6th. Did you consider me while in office always zealous, and remarkably attentive to the performance of my public duties?

7th. Do you believe that either my dignity as a public functionary, or my honour and integrity as a gentleman, have at all suffered in the estimation of the colonists, from the circumstances connected with my land? and are those circumstances generally known throughout the colony?

(Signed) J. BURNETT.

(Copy.)

MY DEAR SIR,

YOUR favouring me with answers to the subjoined queries, and returning this paper with your earliest convenience, will greatly oblige,

Edward Dumaresq, Esq., J. P., Norfolk Plains.

a grant to himself, nor have impeded the issuing of one to the applicant, because the conditions of the contemplated sale had not been performed.

4th. The Commissioners could not have recommended a grant to Mr. O'Connor under the circumstances.

5th. I ever found you zealous and attentive in the performance of your public duty.

6th. I am of opinion that neither your dignity as a public functionary, nor your honour and integrity as a gentleman, have suffered in the estimation of the colonists, generally, from the circumstances connected with your land.

7th. I believe those circumstances are very generally known. I have not met with any respectable person ignorant of them.

(Signed) THOS. NICHOLSON.
15th January, 1837.

No. 4.

New Norfolk, 14th January, 1837.

My dear Sir, yours very truly,
(Signed) J. BURNETT.

1st. Most certainly not.

2nd. It was not a sale, and consequently the agreement was not legally binding.

3rd. I know that several of the public officers have received grants of land and have sold them unimproved, and that such sales have been usually concealed.

4th. Although such sales were usually concealed, they became matters of public notoriety, and I do not think it possible that they were unknown to Colonel Arthur and his Government.

5th. Seven years and a half.

6th. Nobody could have been more zealous and assiduous, or more attentive to the performance of his public duties than I have ever known you to be.

7th. The circumstances connected with your land are generally known throughout the Colony, nevertheless I believe that neither your dignity as a public functionary, nor your honour and integrity as a private gentleman, have at all suffered in the estimation of the colonists; on the contrary, I know you to be respected by all.

(Signed) EDWARD BOYD.

No. 5.

New Norfolk, 4th January, 1837.

J. BURNETT.

1st. You held the respective offices of Surveyor General, Commissioner for the Survey and Valuation of Lands, Collector of Internal Revenue, and Police Magistrate, successively, during the whole period that I was Colonial Secretary, and transacted a great deal of business, and had much official correspondence with me. Did you always consider me zealous and unremitting in the discharge of my duty?

2nd. Was I generally so considered, and did I give satisfaction as Colonial Secretary?

3rd. You have seen my agreement with Mr. O'Connor, should you have considered it to constitute a sale till such time as its 2nd and 5th articles had been carried into effect?

4th. Do you think any agreement that can be broken through at pleasure can be properly termed a sale?

5th. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

6th. If my land at St. Paul's Plains was worth 10s. per acre in the month of May, 1831, do you think it would have been worth 20s. per acre in June, 1834?

7th. Would the same land in the year 1836 not probably have been worth from 40s. to 50s. per acre?

8th. Have not nearly all the public officers, who received grants of land from the Crown, violated the conditions by selling them unimproved?

9th. Did they not, for the most part, under various pretences, endeavour to conceal their sales; but were they not, nevertheless, a matter of notoriety?

10th. Are you of opinion that either my dignity as a public functionary, or my honour and integrity as a private gentleman, have at all suffered in the estimation of the Colonists, from the circumstances connected with my land?

11th. Are those circumstances generally known throughout the Colony?

(Signed) J. BURNETT.

(Copy.)

No. 6.

New Norfolk, 13th January, 1837.

YOUR annexing answers to the subjoined queries, and returning this paper to me at your earliest convenience will greatly oblige,

My dear Sir, yours very truly,

J. BURNETT.

Peter Murdoch, Esq., J. P.

1st. How long have you resided in this Colony?

2nd. How long did you hold the office of Commissioner for the Survey and Valuation of Land?

3rd. Did your long residence, and the office you held, render you well acquainted with all matters connected with land, and afford you a perfect knowledge of the system, and general practice with regard to it?

4th. You have seen my agreement with Mr. O'Connor; should you consider it to constitute a sale?

5th. Was it legally binding on either party; and was there anything to have prevented me

No- 3.

1st. Yes; particularly so.

2nd. Yes.

3rd. Certainly not: and in the event of your death, previously, I cannot suppose an executor would have been justified in doing more than to repay Mr. O'Connor the sum of money advanced.

4th. No.

5th. Unquestionably; more than doubled.

6th. Certainly: 20s., if not more.

7th. Yes; it would.

8th. Yes; many of them, without even seeing the land; also, they obtained town allotments, on condition of building on them, nevertheless they sold them without fulfilling the conditions.

9th. Yes. It was a generally understood arrangement that the admission of the sales being made should be evaded.

10th. Certainly not. You were more than usually careful in providing for the fulfilment of the Government regulations; and in *giving up* your valuable town allotment you were *singularly* conscientious.

11th. They are.

(Signed) EDWARD DUMARESQ.

1st. Fourteen years.

2nd. About four years.

3rd. Yes.

4th. Not a legal one.

from breaking through it, had I thought proper so to do, except a sense of honour?

6th. Has the value of land in this Colony very greatly increased between the years 1831 and 1835?

7th. If my land was worth 10s. per acre in the month of May, 1831, would it have readily sold for upwards of 20s. per acre in June, 1834?

8th. Might I therefore have gained, at least, 1280*l.* by breaking through my agreement with Mr. O'Connor at that time?

9th. Have most of the public officers sold their grants of land unimproved, and without fulfilling the conditions?

10th. Did they all, or nearly all, enter into similar agreements with myself; and did they endeavour to conceal the arrangements they had made?

11th. Were they, nevertheless, matters of public notoriety?

12th. Do you think it credible, or possible, that Colonel Arthur, or his Government, could have been ignorant of them?

13th. Does the alienation fine in all cases fall on the purchaser, and not on the seller, of land?

14th. Does not this fine cover all breaches of the regulations?

15th. Where the fine is tendered, and the pecuniary interests of the Crown can in no shape be affected, do you think that the Government is justified in requiring any of its public officers to disclose their private affairs?

16th. If they were so called upon, unnecessarily, should you not consider it an inquisitorial scrutiny which they were fully justified in evading?

17th. How long have you known me?

18th. Did you always consider me zealous, laborious, and unremitting in the discharge of all my public duties, and was I generally so considered?

19th. Do you think that either my dignity as a public functionary, or my honour and integrity as a private gentleman, have at all suffered in the estimation of the colonists by the circumstances connected with my land; and are those circumstances generally known?

(Signed) J. BURNETT.

(Copy.)

No. 7.

John Gregory, Esq., a Member of the Executive and Legislative Councils.

1st. You have seen a copy of my agreement with Mr. O'Connor respecting my land; do you consider it to constitute a sale?

2nd. Are you of opinion that I stated what was untrue when I said, that my land was in my own possession at the time it was in the occupation of Mr. O'Connor?

3rd. Is it not evident, that by the word "possession" I meant "proprietaryship?"

4th. Had you been in my situation, would you have regarded the sale as having actually taken place when you agreed to sell at a future period?

5th. Is it probable, that if the land had actually belonged to Mr. O'Connor, he would have entered his caveat against a deed being issued to me, as soon as he saw my application advertised?

5th. No.

6th. Yes.

7th. Unquestionably.

8th. Certainly.

9th. I believe few have acted otherwise.

10th. It was supposed that they did so.

11th. In conversing of such matters it was always assumed as a generally understood fact.

12th. Quite incredible to suppose so for an instant.

13th. I believe so.

14th. I understood it was intended that it should do so.

15th. I should hope not.

16. Yes.

17th. Since your arrival in this Colony.

18th. Throughout the Colony you were considered a zealous and laborious public officer, in which opinion I heartily concur.

19th. It almost appears ridiculous to an inhabitant of this island to have such a question put to him; but as I suppose you want my opinion for the information of your friends in England, I say, unhesitatingly, *No*.

I remain, my dear Sir,
Yours truly,

(Signed) PETER MURDOCH.

6th. Had you seen my agreement with Mr. O'Connor at the time this case was formerly before the Council, would you have given the same opinion and advice as you then did?

6th. I presume you allude to the opinion and advice which I gave in Council on the 2nd of July, 1834, a copy of which was officially transmitted to you by the Lieutenant-Governor's desire.

Under that belief I answer, that had the agreement in question been produced, I neither *should* have given the same opinion, nor *could* I have given the same advice, which I did give in ignorance of its contents.

If you allude to any other opinion or advice given by me in Council, I need not observe to you, that my oath of secrecy as a member of Council, precludes my answering your question. It would also have precluded my giving even *this* answer, had not Colonel Arthur (who is not under the same obligation as to secrecy) thought proper to put you in possession of the opinion and advice I gave him in Council on the 2nd of July, 1834.

7th. Are you of opinion that I should have been removed from my office had my agreement with Mr. O'Connor been produced, when the investigation respecting my land formerly took place in Council?

7th. This, of course, is a mere matter of opinion. I have no means of knowing what particular point in your case struck Lord Aberdeen so forcibly as to have imposed upon him the necessity of removing you from the office of Colonial Secretary. Assuming, however, that his Lordship acted under the belief, that you had in the first instance, in your answers to the Caveat Board, denied the sale of the land, and that it was subsequently admitted by your friends that the sale had actually taken place,—and that his Lordship consequently inferred that you had stated what was untrue,—I can only offer it as my individual opinion, that had you laid the agreement upon the Council table, even ~~he~~ would most probably have taken a very different course.

I do not presume to say what would have been the opinion of the other members of Council, but in justice to you I ought not to hesitate in saying, that my own mind would have been relieved from all doubt upon the subject, and that to use the language of my advice in Council, which you have seen, “ I should have felt myself warranted in concurring with you in the opinion you entertained, and in the declaration you had made in writing to the Commissioners that you were still in *possession* of the land.”

(Signed) J. BURNETT. 19th January, 1837. (Signed) JOHN GREGORY, Colonial Treasurer.

(Copy.)

No. 8.—Letter No. 1.

MY DEAR SIR,

Belvidere, 26th November, 1836.

As the casual conversation I had with Mr. O'Connor, with reference to your grant, when talking with him about other land, was so far back as the close of the year 1833 or beginning of 1834, I cannot at this distance of time take upon me to state more than the general tenor of it, and by which I clearly understood from him at that time, that he was depending upon your honour respecting some money he had advanced you, the last sum being one of £400 I think. One expression he made use of was, that he feared it was in jeopardy, as he had nothing but your honour for it. I observed, that in my mind he need not fear, that I always understood you to be an honourable man, and no doubt would secure him by your grant, should your pecuniary affairs press you. He seemed doubtful, and spoke of the negotiation respecting your grant as a matter upon honour, and by no means as being a sale absolute, but as a measure in treaty, on the faith of which he made the advance he spoke of.

The above is as well as I can recollect the substance of our conversation respecting your grant.

Believe me, my dear Sir, truly yours ever,

John Burnett, Esq.
 &c. &c. &c.

J. H. MOORE.
 D 2

Letter No. 2.

MY DEAR SIR,

Belvidere, 15th Janu

I RECEIVED your note and the queries yesterday evening. Had I put to me by any commission or committee, I should feel bound to answer *seriatim*; but I hope my former note (which you are at perfect liberty to use of) will suffice, lest, by answering those queries in the form now before you, I ungenerously be considered as a partisan, and not one merely doing you an act of justice.

One part of my note requires some explanation however. When I stated to Mr. O'Connor my conviction that he might rely on your securing him for his advances with your land, and that he seemed to doubt it, I clearly understood him not to doubt your honour or intention, but your legal capability to do so to the prejudice of others whose claims were then pressing on you; hence it was he dwelt upon the fact of having "only your honour for it," which to my mind was conclusive he did not then feel the transaction as a sale absolute.

As I have never been a party to any sale made by a public officer of his grant of land, you will excuse me if I remain silent on this subject; but it is obvious that in any sale of the kind, the fine (if any) must of course have formed a feature in the adjustment of the payment by the purchaser; the fine, when paid into my office, is invariably entered in the name of the grantee, as expressed in the deed, and not the party or agent who may have actually paid in the money.

I can scarcely think that any observations of mine can add to the value of the testimonials you have already received from others; I can only add that nothing has been done by you to my knowledge to alter in the least that high sense I have ever entertained of your integrity and honour as a public officer and a gentleman.

Believe me, dear Sir, truly yours ever,

(Signed)

J. H. MOORE.

John Burnett, Esq.

(Copy.)

No. 9.

New Norfolk, 23rd January, 1837.

THE sudden and unexpected death of Mrs. Stephen having deprived me of the benefit I should otherwise have derived from the answers which the Attorney-General intended to have given to my queries, obliges me to substitute for them the copy of a letter that he addressed to me on the subject upon the 8th of October, 1836.

This letter, however, sufficiently proves the fact that I did not myself conscientiously believe my agreement with Mr. O'Connor respecting my land to constitute a sale at the time Messrs. Stephen and Swanston admitted to Lieutenant-Governor Arthur in my name that it was such.

Had I received answers to my queries, I should also have proved that the admission was quite opposed to my own judgment.

J. BURNETT.

MY DEAR MR. BURNETT.

October 8th, 1836.

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 shew you that we always put this forward as your excuse.

It matters 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.

Captain Swanston was in New South Wales at the time the foregoing letter was written, which, as Mr. Stephen informed me, alone prevented his giving a similar declaration under his hand.

(Signed)

J. BURNETT.

(Copy.)

No. 10.

MY DEAR MR. BURNETT,

Hobart Town, January 28th, 1837.

AFTER having delayed so long replying to your letter and queries, I consider it a duty to devote my *first* hour of business, after my most melancholy bereavement, to your service.

I will answer your questions in the order in which you have put them, but without adopting your numbers, as I shall occasionally have to reply to two in one.

1st. At the time when Swanston, Pitcairn, and myself, admitted to Colonel Arthur that you had sold your land to Mr. O'Connor, I was certainly aware that you did not so far, or in such a sense, consider your arrangement "a sale," as to render your representations to his Excellency inconsistent with fact. I believe I was aware that you had occasionally used the term "sale," in reference to that arrangement, but this circumstance, as I now think, does not invalidate the argument, which I recollect was urged by you at our first interview, that, in replying to Colonel A.'s inquiries, you were not bound so to treat it. You have already my certificate on this point, written on the 8th of October last, to which I refer you.

2nd. It is my opinion that, considering the nature of your agreement and its terms, whereby each party distinctly repudiated all claims except on each other's *honour*, the Court here would not have enforced it; and that either party might consequently have violated it with impunity.

3rd. When you first put your case into my hands, and when, in conjunction with Swanston and Pitcairn, I undertook the duties of your adviser, your health was in a very shattered state; and it had been for some time previously. You were from this cause almost incapacitated to act for yourself. You did not at that time look at the correspondence between yourself and Colonel Arthur in the same serious light that we did; but, putting your case into our hands, you resolved to be guided by our opinion.

4th. It is undoubtedly the fact, that, after Mrs. Burnett became acquainted with the course adopted by us, she expressed to me very strong distrust of its wisdom. I then declined to proceed further in the case. Mrs. Burnett, however, after hearing the views and expectations which had led us to that course, yielded her objections. Disappointed as I have been in those expectations, and aware *now* that so many honourable men, certifying themselves to be acquainted with all that has transpired, would have arrived at a very different impression from mine, I must admit that my present advice would be the reverse of that which I gave in 1834.

5th. As to your conduct having been influenced by any desire to avoid the fine, both Swanston and myself (as you are aware) signed a declaration on honour, that the thing was, in our deliberate judgment, impossible. This declaration Colonel Arthur undertook to send to the Secretary of State; and it was not only my opinion, but that of other officers of the Government, that this document would at *least* have mitigated the severity of any adverse decision.

You showed me, at our first interview, a letter offering to pay that fine; but, it being the opinion of all of us (I believe of all, but certainly my own), that full disclosures would be insisted on, you were advised not to use that letter, since it would do no good.

6th. The signatures of so many men of station and high character attested the facts, that one cannot doubt the allegations certified by them, that the circumstances of your arrangement or sale are generally known, and yet that neither your dignity as a public officer, nor your integrity as a gentleman, has been impaired in the estimation of the colonists. For my own part, speaking of the nine years during which I knew you in office, I can only say that I believe the Crown had not a servant more zealous, more assiduous, more upright, or more generally esteemed.

I am, most faithfully yours,

(Signed)

ALFRED STEPHEN.

John Burnett, Esq.

(Copy.)

No. 11.

Anstey Barton, 11th January, 1837.

Thomas Anstey, Esq., Member of the Legislative Council.

1st. You have seen my agreement with Mr. O'Connor respecting my land. Should you have considered it to constitute a sale until such time as its second and fifth articles had been carried into effect?

2nd. Do you think any agreement which can be broken through at pleasure can be properly termed a sale?

3rd. Was there anything except my honour to have prevented me from breaking through my agreement, had I thought proper so to do?

4th. Did the value of land in this Colony very greatly increase between the years 1831 and 1835.

5th. If my land at St. Paul's Plains was worth 10s. per acre in the month of May, 1831, do you think it would have been worth 20s. per acre in June, 1834?

6th. Would not the same land, in the year 1836, most probably be worth from 40s. to 50s. per acre?

7th. Might I not, therefore, by breaking through my agreement with Mr. O'Connor, in June, 1834, have gained 1280l.?

8th. Are you aware that nearly all the public officers have sold their lands unimproved, and without fulfilling the conditions?

9th. Did they not, for the most part, under various pretences, conceal their agreements for such sales; but were they not, nevertheless, a matter of public notoriety?

10th. Does not the alienation fine, in all cases, fall on the purchaser, and not on the seller of land, where no express agreement exists to the contrary?

11th. Had you not much official correspondence with me during seven years that you held the office of Police Magistrate at Oatlands, and did you not, during the whole of that period, consider me zealous, laborious, and unremitting in the discharge of my public duties? And was I not so considered generally?

12th. Did I always appear to you remarkably anxious to observe and uphold all the regulations of the Government?

13th. Do you think that either my dignity as a public functionary, or my honour and integrity as a private gentleman, have at all suffered in the estimation of the Colonists from the circumstances connected with my land; and are those circumstances generally known throughout the colony.

1st. I first saw your agreement with Mr. O'Connor about a year since. I then thought, and still think, that it did not constitute a legal sale: and that Mr. O'Connor had no claim, even in equity, to the land, until the *second*, *third*, and *fifth* conditions had been performed.

2nd. No.

3rd. A verbal agreement would, I believe, have been quite as valid as this written one: consequently, there was nothing but your sense of honour to hinder you from breaking through such an agreement.

4th. Yes.

5th. Many people would have gladly given 20s. per acre for it in June, 1834.

Some would have given 30s. an acre.

6th. I have no doubt of it.

7th. By such a measure you would have gained, I dare say, 2000l.

8th. I have heard so. It is a matter of public notoriety, and I have no doubt of the fact.

9th. My reply to the 8th query applies equally to this.

10th. I believe that the alienation fine is always paid by the purchaser. I never knew an instance to the contrary on the lands which I have purchased. The payment of the fine has invariably fallen on myself.

11th. I corresponded with you officially during the long period you mention, and always found you zealous, laborious, and unremitting in the discharge of the public duties of your important office. These valuable qualities, combined with your mild and courteous manners, and your readiness in affording information and assistance to all classes of persons, were well appreciated by the whole community.

Two gentlemen now in England (Mr. Hamilton, formerly Colonial Secretary, and Lieut. Hill, R.N., our late Post Officer) were ever united with me in the sentiments I have just expressed.

12th. You were always considered by me a rigid supporter of every Government regulation.

13th. The circumstances connected with your land are generally known throughout the Colony. Your dignity as a public functionary, or your honour and integrity as a private gentleman, have not suffered in the estimation of the colonists from these circumstances. You enjoyed while in office a degree of popularity unequalled, I believe, by any other person during the thirteen years that I have been in the Colony: and you have carried with you into your retirement the sympathy, and good wishes, and respect, of the great mass of the people of V. D. Land.

(Signed) J. BURNETT.

(Signed) THOS. ANSTEY.

(Copy.)

No. 12.

Thomas Archer, Esq., Member of the Legislative Council.

1st. You are acquainted with the particulars of my agreement with Mr. O'Connor relative to my land; should you consider that agreement to constitute a sale until such time as its 2nd and 5th articles had been carried into effect?

2nd. Do you think any agreement which can be broken through at the pleasure of either of the parties entering into it, can be properly termed a sale?

3rd. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

4th. If my land at St. Paul's Plains was worth 10s. per acre in the month of May, 1831, do you think that it probably would have been worth 20s. per acre in June, 1834?

5th. Would the same land in the year 1836 probably have been worth from 40s. to 50s. per acre.

6th. Was there anything, except my honour, to have prevented me from breaking through my agreement with Mr. O'Connor, had I thought proper to do so?

7th. Might I not, by breaking through my agreement in June, 1834, have gained 1830%?

8th. Is it not in all cases usual, where no express agreement exists to the contrary, for the alienation fine upon land to be paid by the purchaser and not by the seller?

9th. Have you been a large purchaser of land in this Colony?

10th. Have you in every case, except one, paid the alienation fine as a matter of course, and in the case where you did not pay it, was there not an express previous agreement that it should be paid by the seller?

11th. Are you aware, or is it not generally believed, that most of the public officers, who have received grants of land from the Crown, have sold them unimproved and without fulfilling the conditions?

12th. Did they not for the most part conceal their agreements for such sales under various pretences, and were they not, nevertheless, a matter of public notoriety?

13th. Have you not known me since my first arrival in the Colony, and did you not always consider me zealous, laborious, and unremitting in the discharge of my public duties, and was I not so considered generally?

14th. Do you think that either my dignity as a public functionary, or my honour and integrity as a private gentleman, have at all suffered in the estimation of the colonists from the circumstances connected with my land, and are those circumstances generally known throughout the Colony?

(Signed) J. BURNETT.

New Norfolk, January 10, 1837.

1st. I have not a copy of the agreement at hand to refer to, but my impression at the time of perusing it was, that it did not amount to a full and conclusive sale, as there were certain conditions to be performed by the party agreeing to purchase, which I was given to understand had not been fulfilled by him.

2nd. Certainly not.

3rd. Yes; considerably.

4th. I should say, generally, that land worth 10s. per acre in 1831, would have sold for 15s. or 16s. per acre in 1834; but in prime situations, and of superior quality, it might have risen to 20s. an acre.

5th. I have already stated that the rate of increase in the value of land depends upon situation and quality. I have never seen your land; but, from what I have heard of it from competent judges, had it been mine in 1836 I would not have taken 40s. per acre for it.

6th. As far as I can judge from the documents I have perused, I think you might easily have evaded completing the arrangement with Mr. O'Connor had you chosen to do so.

7th. I conceive that you might have sold your land in 1834 for twice the sum you was to have received for it, according to your arrangement with Mr. O'Connor, in (I believe) 1831.

8th. I believe it is.

9th. I have.

10th. In every instance but one, and that was under a special agreement, I have considered myself (as a purchaser) bound to pay the alienation fine, where the grant was liable to it.

11th. It is so generally reported; but my own knowledge of the fact only extends to three instances.

12th. Such is the general report, but I have no personal knowledge of the fact. In the three instances to which I have alluded no concealment whatever was made.

13th. I have had the pleasure of knowing you during the whole time you have been in the Colony, and have always considered you very zealous and unremitting in the discharge of your official duties; and such I have always understood to be the opinion of the colonists generally.

14th. I believe the circumstances connected with your land are generally known throughout the Colony, and I do not believe that they are viewed in a light derogatory to your character either as a public functionary or a private gentleman: and, for my own part, I have no hesitation in declaring, that I know no one less likely to descend to the commission of a dishonourable or unworthy act than yourself.

(Signed) THOS. ARCHER.

(Copy.)

No. 13.

Richard Willis, Esq., Member of the Legislative Council.

1st. I believe you have some property very near the land which was granted to me on St. Paul's Plains, and are acquainted with it?

2nd. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

3rd. If my land was worth 10s. per acre in the month of May, 1831, should you have considered it worth 20s. per acre in June, 1834; and would you then have given that sum for it?

4th. Has not land in the neighbourhood, and not better than mine, been recently sold for 40s. per acre; and would not mine now bring that sum?

5th. Have you known me ever since my first arrival in the Colony, and did I always appear to you remarkably zealous and attentive to the performance of all my public duties?

6th. Was I generally so considered, and did I give satisfaction to the colonists as Colonial Secretary?

7th. Has either my dignity as a public officer, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists from the circumstances connected with my land; and are those circumstances generally known throughout the colony?

(Signed) J. BURNETT.

1st. I have upwards of three thousand acres of land near your late property on St. Paul's Plains, and I am well acquainted with the land.

2nd. The value of land in this colony has increased very considerably since the year 1831.

3rd. I am of opinion that your land was well worth 20s. per acre in June, 1834, and had it been on sale I would have given that price for it.

4th. Land has been recently sold in the neighbourhood, not so good as yours, for 48s. per acre.

5th. I have known you since your first arrival in this Colony, and I have always found you zealous and attentive to all your public duties.

6th. I believe the whole of the colonists were perfectly satisfied with your obliging and attentive manner; you were spoken of as a most efficient officer.

7th. I do not believe your character as a public officer, or as a gentleman, has suffered in the least degree from the circumstances connected with your land, which are generally known to the colonists, who consider you have been harshly treated.

(Signed) RICHARD WILLIS.

Wanstead, 14th January, 1837.

(Copy.)

No. 14.

Charles M'Lachlan, Esq., Member of the Legislative Council.

1st. You have seen a copy of my agreement with Mr. O'Connor, respecting my land; do you consider it to constitute a sale?

2nd. Could it be properly so termed until its second and fifth articles were carried into effect?

3rd. Was there, in your opinion, anything, except my sense of honour, to have prevented my breaking through it, had I thought proper to do so?

4th. Has the value of land greatly increased between the years 1831 and 1835?

5th. Is it not probable that land which, in May, 1831, was only worth 10s. per acre, in June, 1834, would have sold for 20s. per acre?

6th. If, therefore, I had broken through the agreement which I had entered into in the month of May, 1831, to sell my land for 10s. per acre, might I not have gained 1280l. in June, 1834?

7th. Is it generally reported, and believed, that most of the public officers have sold their lands unimproved, and without fulfilling the conditions?

8th. Have you known me, officially, since my first arrival in this Colony; and did I always appear to you remarkably zealous and particularly attentive to the discharge of my public duties?

9th. Was I so considered generally?

(Signed) J. BURNETT.

1st. I have seen a copy of the agreement, and consider the sale to have been prospective only.

2nd. Until the 2nd and 5th articles were carried into effect, I do not think it could be properly termed a sale.

3rd. There was nothing to prevent you from breaking through the agreement, except a sense of honour, the 2nd and 5th articles not having been completed.

4th. The value of land has increased from about 10s., in 1831, to about 30s. or 40s., in 1835 and 1836.

5th. I know this to be the case, and even more than 20s.

6th. Of course you could; but I presume a sense of honour prevented you from breaking through the agreement with Mr. O'Connor.

7th. I believe this to be quite notorious, that nearly all the Government officers sold their lands without having fulfilled the conditions.

8th. I have known you, officially, since your arrival in the Colony, near the end of the year 1826, and am glad to have an opportunity of stating my opinion, as to the zeal and attention which you paid to the discharge of your public duties.

9th. You were generally so considered.

(Signed) CHARLES M'LACHLAN.
23rd January, 1837.

10th. Do you think that either my dignity as a public functionary, or my honour and integrity as a private gentleman, have at all suffered in the estimation of the colonists from the circumstances connected with my land; and are those circumstances generally known throughout the Colony?

(Signed) J. BURNETT.

10th. I should say not. A feeling of regret has been generally felt that you should have resigned your situation at the time you did, and I have never heard it said that you ever suffered in public estimation.

(Signed) CHARLES M'LACHLAN.

(Copy.)

No. 15.

P. A. Mulgrave, Esq., J. P., Chairman of the Sessions, and Commissioner of the Court of Requests, for the Northern Districts of the Colony, late Chief Police Magistrate, &c. &c.

1st. Are you at present Chairman of the Sessions and Commissioner of the Court of Requests for the northern districts of the island?

1st. Yes: and have been so since the 1st of January, 1832.

2nd. Were you Police Magistrate of Launceston, when I arrived in the Colony in November, 1826?

2nd. Yes: and continued in that office until the 1st of July, 1829.

3rd. Did you subsequently hold the office of Chief Police Magistrate of Hobart Town; if so, for how long, and during what period?

3rd. I was appointed Chief Police Magistrate in July, 1829, and held that situation until the 1st January, 1832.

4th. Had you much official correspondence with me, both when in Launceston and in Hobart Town?

4th. Yes.

5th. Do you think, from your frequent communication with me, that you were enabled to form a correct judgment of the manner in which I performed my duties?

5th. Yes: to a very great extent.

6th. Did my several duties appear to you laborious, and did I discharge them with zeal, assiduity, and unremitting attention?

6th. I know Mr. Burnett's duties were laborious, and I believe he discharged them most zealously and assiduously, and with unremitting attention and courtesy.

7th. Did I appear to give general satisfaction as Colonial Secretary?

7th. As much general satisfaction as could be expected to attend the faithful discharge of your duty.

8th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists from the circumstances connected with my land, and are those circumstances generally known throughout the Colony?

8th. Not in my estimation, or in the estimation of a great majority of the most respectable colonists, by whom, I believe, the circumstances connected with your land are now well known.

(Signed) J. BURNETT.

12th January, 1837.

(Signed) P. MULGRAVE.

Launceston, 14th January, 1837.

(Copy.)

No. 16.

Major Gray, J. P., an extensive landowner at St. Paul's Plains.

1st. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

1st. Land has increased in value 200 per cent. in this district from 1831 to 1835.

2nd. Did you consider my grant of 2560 acres on St. Paul's Plains worth 20s. per acre in June, 1834, and would you have given that sum, or more, for it?

2nd. I would have given 25s. per acre for it in June, 1834, and then considered it a bargain.

3rd. Are you of opinion that I always evinced a remarkable desire strictly to observe the Government regulations, and did I not upon that account refuse to sell my land to you until the conditions upon which I received it were fulfilled?

3rd. As far as I know you did evince a dislike to break through the regulations, and more than once you did refuse to sell your land to me, saying, you did not think it right to sell it as you were a public officer.

4th. Did you consider me, and was I generally considered to be, zealous and unremitting in the discharge of my public duties, and did I appear to give general satisfaction as Colonial Secretary?

4th. I did myself consider you to be a very zealous public officer, and I have generally heard most persons express their satisfaction at the manner in which you conducted your duties.

5th. Are the circumstances connected with my land, which have caused me to be deprived

5th. I do not think they are generally well known. I did not myself know *some of the*

[No. 3.]

E

of my office, generally known throughout the Colony?

6th. Has my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists in consequence of those circumstances?

(Signed) J. BURNETT.

(Copy.)

No. 17.

J. T. Gellibrand, Esq., Barrister in the Supreme Court, &c. &c.

1st. Would you consider this agreement to constitute an actual sale?

2nd. Could it be properly termed so until its 2nd and 5th articles had been carried into effect?

3rd. Was this agreement legally binding upon either party, or might I have broken through it at any time had I thought proper so to do?

4th. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

5th. Is it probable that this land, which, in May, 1831, was worth 10s. per acre, would have sold for 20s. per acre in June, 1834?

6th. As I entered into this agreement to sell my grant of 2560 acres for 10s. per acre, in May, 1831, if I had broken through it in June, 1834, is it probable that I should thereby have gained 1280l.?

7th. Was there anything but my sense of honour to have restrained me from so doing?

8th. Is the alienation fine upon land in all cases paid by the purchaser and not by the seller, where no express agreement exists to the contrary?

9th. Did I always appear to you zealous and attentive in the discharge of my public duty, was I so considered by others generally, and did I give satisfaction to the public as Colonial Secretary?

10th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists, by the circumstances

circumstances now submitted by yourself; at least, I mean to say that the whole of the circumstances which your publication has made known were not public, although the affair of your land was a matter of very general discussion, and particularly as connected with your being deprived of your situation.

6th. It has not, as far as my acquaintance extends, suffered in the least in any one of these points.

(Signed)

N. GRAY.

January 6, 1837.

1st. I am of opinion that the agreement referred to is a valid contract for the sale of land, and that a court of *equity* would have enforced it; but it appears to me that in this particular case the matter is not resolved into a legal question, but what was the real honourable intention of the parties.

2nd. I think it could, because the clause contemplates a forfeiture by Mr. O'Connor in that event. I have no doubt Mr. O'Connor would have been compelled, by an action at law, to have paid the money as damages.

3rd. If Mr. Burnett had refused to convey the estate, Mr. O'Connor might have compelled him by a *bill in equity*, or he might have brought an action for breach of contract.

4th. From the year 1831 to 1833 land did not increase much in value, not more than 20 per cent.; from 1833 to 1835, at least 100 per cent., and in some cases much beyond that.

5th. I have no doubt that the estate in question was worth more than 20s. per acre in 1834, and that it is now worth 40s. or more.

6th.

7th. *Vide* No. 1.

8th. *I have bought and sold as much land as any gentleman in the colony, and I never heard of a single case where the seller was expected to pay the fine.* It has become as much a custom for the buyer to pay the fine as to pay for his own conveyance.

9th. I have known Mr. Burnett, officially, since the day of his arrival in Van Diemen's Land, and I believe that I possess the best means of knowing the opinion generally (I might add universally) entertained of him; and I feel great satisfaction in testifying that, for a zealous, honourable, and faithful discharge of his official duties, no officer stood higher; and the public were highly satisfied with him. As a private gentleman, and a man of the highest sense of honour, Mr. Burnett has always been looked up to as a pattern.

10th. I have already expressed my sincere regret that Mr. Burnett should have been induced, under any circumstances, to have concealed the sale, especially as nine-tenths of the

connected with my land; and are those circumstances very generally known?

(Signed) J. BURNETT.

public officers had openly sold theirs. I am perfectly convinced the *only* motive was that which Mr. Burnett has stated to Lord Glenelg, and that the *fine* never for one moment influenced Mr. Burnett.

His removal from office has excited one general feeling of regret and sympathy; and wherever any opportunity has presented itself, of openly testifying esteem and public respect, it has been invariably shown, and that too in a marked manner not to be misunderstood.

(Signed) J. T. GELLIBRAND.
15th January, 1837.

(Copy.)

No. 18.

G. Cartwright, Esq., Barrister and Solicitor in the Supreme Court.

1st. Should you consider my agreement with Mr. O'Connor to constitute an actual sale?

2nd. Could it be properly termed so until its second and fifth articles had been carried into effect?

3rd. Was this agreement legally binding upon either party, or might I have broken through it, at any time, had I thought proper so to do?

4th. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

5th. Is it probable that land which, in May, 1831, was worth 10s. per acre, would have sold for 20s. per acre in June, 1834?

6th. As I entered into this agreement to sell my grant of 2560 acres of land for 10s. per acre in May, 1831, if I had broken through it in June, 1834, is it probable that I should thereby have gained 1280l.?

7th. Was there anything but my sense of honour to have restrained me from so doing.

8th. Is the alienation fine upon land, in all cases, paid by the purchaser, and not by the seller, where no express agreement exists to the contrary?

9th. Did I always appear to you zealous and attentive in the discharge of my public duty; was I so considered by others generally; and did I give satisfaction to the public as Colonial Secretary.

10th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists, by the circumstances connected with my land, and are those circumstances generally known?

(Signed) J. BURNETT.

1st. Having perused the agreement alluded to, I am of opinion, considering the land regulations then in force, *that it could not be enforced either in law or in equity*; and that, therefore, it was not an actual sale, but an agreement upon honour to make such sale when you lawfully might.

2nd. It could not. No consideration was given by Mr. O'Connor, and you could not demand the money until the grant was obtained. If the Government should have refused to issue a grant the agreement would have become void.

3rd. *I do not think that the agreement was legally binding on either party.* I think it void for uncertainty.

4th. It did: very greatly.

5th. I think it would have sold at 20s., perhaps more.

6th. If you had broken through your agreement, I think that in June, 1834, you would have obtained 20s. an acre for the land.

7th. I think not.

8th. It is the opinion of myself and others in the profession that the alienation fine should be paid by the purchaser, unless there is an agreement to the contrary.

9th. To me you always appeared zealous and attentive in the discharge of your public duty, and were so considered by many others; and I believe you gave satisfaction to the public as Colonial Secretary.

10th. I believe not. The circumstances connected with your land are very generally known.

(Signed) GEO. CARTWRIGHT.
12th January, 1837.

(Copy.)

No. 19.

Thomas Horne, Esq., Barrister, &c.

1st. Should you consider my agreement with Mr. O'Connor to constitute an actual sale?

2nd. Could it be properly termed so until

1st. I should consider the agreement to constitute a sale, inasmuch as the statute is, in my opinion, satisfied by the agreement referred to.

2nd. It would be properly so termed: the

the 2nd and 5th articles had been carried into effect?

3rd. Was this agreement legally binding upon either party, or might I have broken through it at any time had I thought proper so to do?

4th. Did the value of land in this colony very greatly increase between the years 1831 and 1835?

5th. Is it probable that land which, in May, 1831, was worth 10s. per acre, would have sold for 20s. per acre in June, 1834?

6th. As I entered into this agreement to sell my grant of 2560 acres of land for 10s. per acre in May, 1831, if I had broken through it in June, 1834, is it probably that I should have thereby gained 1280%?

7th. Was there anything but my sense of honour to have restrained me from doing so?

8th. Is the alienation fine upon land, in all cases, paid by the purchaser, and not the seller, where no express agreement exists to the contrary?

9th. Did I always appear to you zealous and attentive in the discharge of my public duty; was I so considered by others generally; and did I give satisfaction to the public as Colonial Secretary?

10th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists by the circumstances connected with my land, and are those circumstances very generally known?

(Signed) J. BURNETT.

2nd and 5th articles refer solely to the payment of the price, which in the first case, for the security of Mr. O'Connor, is not to be paid till a good title is made by Mr. Burnett, but an occupation-rent is to be paid by Mr. O'Connor in the mean time, of 10 per cent. upon the purchase; and in the second case, for the security of Mr. Burnett, the deeds of conveyance are not to be signed till the purchase is wholly paid.

3rd. I have no doubt that the agreement was binding *in equity* and if broken through by Mr. Burnett that Mr. O'Connor would have recovered damages at common law.

4th. Very greatly indeed.

5th. Yes; no doubt.

6. I answer this question in the affirmative, but providing that my answer to the 3rd interrogatory enter not into the consideration of the present.

7th. My *firm* belief is, that Mr. Burnett's honour would not have allowed him to break any agreement which he had made, and that Mr. Burnett did believe this agreement to be merely honorary, whereas it is, in my opinion, drawn with the technicality of a professional man, and binding.

8th. I believe it is.

9th. I do not think any public officer more enjoyed the esteem of the people than Mr. Burnett, owing to his zealous discharge of his duty in his office, and his attention to every one who had any business to transact in his office, and a conviction in the public mind of his impartiality.

10th. I believe the circumstances connected with the sale of Mr. Burnett's land are generally known throughout the Colony: when spoken of I have always heard the expression of regret at Mr. Burnett's losing his office, and I should for that reason say that, both publicly and as a private gentleman, Mr. Burnett's character is unimpaired and unaffected by the transaction. It is a well-known fact that nearly all the Government officers sold their lands and yet continue in their offices.

(Signed) THOS. HORNE.

January 17th, 1837.

(Copy.)

No. 20.

Robert Pitcairn, Esq., Solicitor, &c.

1st. Is the alienation fine in all cases paid by the purchaser, and not by the seller of land, where no express agreement exists to the contrary?

2nd. Did I always appear to you zealous and attentive in the discharge of my public duty, and was I so considered generally?

3rd. Are the circumstances connected with my land, and the presumed cause of my removal from office, well known to you; and has either my dignity as a public functionary, or

1st. Yes, *in every case that I have known*, I believe; and I have known a considerable number.

2nd. My own opinion is, I believe, that of the public: that your conduct as Colonial Secretary was distinguished by zeal, assiduity, and integrity, as well as by courtesy to those who had to transact business in your office.

my honour and integrity as a private gentleman, at all suffered in your estimation, or in that of the colonists generally, as far as you know, therefrom?

(Signed) J. BURNETT.
New Norfolk, January 21st, 1837.

3rd. My opinion of your dignity as a public officer, and of your known integrity as a private gentleman, remains unchanged.

(Signed) ROBERT PITCAIRN.
January 23rd, 1837.

(Copy.)

No. 21.

G. Butler, Barrister and Solicitor in the Supreme Court, &c.

1st. Should you consider my agreement with Mr. O'Connor to constitute an actual sale?

2nd. Could it be properly termed so until its 2nd and 5th articles had been carried into effect?

3rd. Was this agreement legally binding upon either party, or might I have broken through it at any time, had I thought proper so to do?

4th. Did the value of land in this Colony very greatly increase between the years 1831 and 1835?

5th. Is it probable that land which, in May, 1831, was worth 10s. per acre, would have sold for 20s. per acre in June, 1834?

6th. As I entered into this agreement to sell my grant of 2560 acres of land for 10s. per acre, in May, 1831, if I had broken through it in June, 1834, is it probable that I should have thereby gained 1280l.?

7th. Was there anything but my sense of honour to have restrained me from so doing?

8th. Is the alienation fine upon land in all cases paid by the purchaser and not by the seller, where no express agreement exists to the contrary?

9th. Did I always appear to you zealous and attentive in the discharge of my public duty; was I so considered by others generally; and did I give satisfaction to the public as Colonial Secretary?

10th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffer in the estimation of the colonists by the circumstances connected with my land; and are those circumstances very generally known?

(Signed) J. BURNETT.

1st. Referring to the land regulations existing at the time, I should think the agreement did not constitute an actual sale, but a contingent one, depending on certain events.

2nd. I consider it could not, for you were not in a situation to carry the terms of contract into effect until the grant was obtained, and the time of obtaining it was uncertain, if ever.

3rd. I think the agreement was not *legally* binding on either party, and from the uncertainty of its nature could not have been enforced.

4th. Certainly, more than 100l. per cent.

5th. I have no doubt of the fact that land worth 10s. per acre in May, 1831, would have readily sold for 20s. per acre, or more, in June, 1834.

6th. Had your grant been for sale in June, 1834, you could have met with many purchasers at 20s. per acre.

7. I think not, legally speaking; but a question might have arisen in equity, whether an injunction would not have issued to restrain your selling to another party, if Mr. O'Connor had tendered a conveyance of your interest in the land with the amount of purchase-money.

8th. It is generally understood, and acted upon by the profession, that the purchaser pays the alienation fee, unless expressly provided for to the contrary, where locations have been sold before the grant issued.

9th. Most certainly, on every occasion that came under my knowledge, and was so considered by the public in general, who always spoke of you, as Colonial Secretary, with the utmost respect.

10th. By no means. The circumstances connected with your land are very generally known, and the result much regretted.

(Signed) G. BUTLER.
30th January, 1837.

(Copy.)

No. 22.

New Norfolk, January 25th, 1837.

Not having received answers to the queries which I addressed to Mr. Parramore, who held the office of Private Secretary to Lieutenant-Governor Arthur for between five and six years, I have subjoined a letter containing his sentiments and opinions upon this point, which he wrote to my sons.

(Signed) J. BURNETT.

From W. Parramore, Esq., formerly Private Secretary to Lieutenant-Governor Arthur, afterwards Police Magistrate at Richmond, and now residing upon and

managing Colonel Arthur's property in Van Diemen's Land, to Messrs. James and John Burnett.

GENTLEMEN,

Richmond, September 24th, 1835.

I beg to acknowledge your letter of the 18th instant, and readily bear my testimony to Mr. Burnett's unremitting attention to his public duties, and to the zealous and honourable manner in which he discharged them, as long as I held the office of Private Secretary to the Lieutenant-Governor, that is, until April, 1832.

Since then, my occupations in the country have much engrossed my attention, but, as far as I heard the expression of public opinion, Mr. Burnett's character and conduct have been held in high general estimation.

I am, Gentlemen,

Your very obedient servant,

(Signed)

W. J. PARRAMORE.

To J. L. Burnett, Esq.

Jas. Burnett, Esq.

The answers to the queries have been received since the foregoing was written.

1st. How long and during what period did you hold the office of Private Secretary to Lieut.-Governor Arthur?

1st. From March, 1827, to May, 1832.

2nd. Were Captains Bannister and Lane the gentlemen who succeeded you in that office, and have they both left the Colony?

2nd. I was succeeded by Captain Bannister, and that gentleman by Captain Lane. Both have left the Colony.

3rd. Did I appear to you unremitting and zealous in the performance of all my public duties, and did I discharge them in an honourable manner during the whole period that you were Private Secretary?

3rd. You appeared to me most unremitting and zealous, and I never had reason to doubt that you discharged your public duties in an honourable manner.

4th. If I had been remiss or inattentive in the performance of my duties, must it not have been known to you?

4th. Certainly it must.

(Signed) J. BURNETT.

(Signed) W. J. PARRAMORE.
30th January, 1837.

(Copy.)

No. 23.

G. T. B. Boyes, Esq., D. A. C. G., Auditor of Civil Accounts.

1st. Did you occupy chambers adjoining to my office in the same building for upwards of five years, and were you in almost daily communication with me for that period?

1st. Yes; from November, 1826, till I left the Colony on leave of absence in 1832, during which period I was in almost daily communication with you.

2nd. Did that circumstance afford you a better opportunity than almost any other individual of observing the manner in which I performed my public duties?

2nd. I am of opinion it did.

3rd. Did I always appear to you zealous, unremitting, and remarkably attentive to their discharge?

3rd. Invariably so.

4th. Was my health good for several years, and did it afterwards become impaired?

4th. I know that your health had become seriously impaired before I quitted the Colony.

5th. Do you attribute my loss of health to the confinement and incessant attention which I for many years paid to my official duties?

5th. I certainly do.

6th. Was it your opinion that my health would ultimately suffer, from want of air and exercise, and close application, long before it actually did so?

6th. It was, and I felt surprised that you preserved your health so long as you did.

7th. Did my habits of business appear to you to be fully confirmed, long before my health was impaired?

7th. If I had not conceived your habits of business to be fully confirmed, I should have entertained no apprehension for your health. It seems, therefore, that I have already answered this question in the affirmative.

8th. Did I appear to you to give perfect satisfaction to all persons transacting business at my office?

8th. I have strong reason to believe you did, as I cannot otherwise account for the popularity which you enjoyed in a very high degree.

9th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of

9th. From communications which I have had with a considerable number of individuals in various parts of the island, I cannot

the colonists from the circumstances connected with my land, and are those circumstance generally known?

(Signed) J. BURNETT.
New Norfolk, 20th January, 1837.

discover that either your public or private character has suffered in any degree by the circumstances connected with your land, and which circumstances are, I believe, generally known.

(Signed) G. T. B. BOYES.

(Copy.)

No. 24.

C. Driscoll, Esq., Assistant Police Magistrate.

1st. Were you Chief Clerk in the Colonial Secretary's Office with me from April, 1832, until I left in August, 1834?

2nd. Did I appear to you, during that period, remarkably zealous and unremitting in attention to the performance of all my public duties?

3rd. Did I appear to you particularly anxious that every instruction which I received from Lieut.-Governor Arthur should be carried into effect with accuracy and despatch?

4th. Was I very anxious that all the regulations of the Government should be strictly observed, both by myself and others?

5th. Did I appear to you to give satisfaction, generally, to all persons transacting business at the office?

6th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists, from the circumstances connected with my land, and are those circumstances generally known?

(Signed) J. BURNETT.

1st. I was Chief Clerk in the department of which you were Colonial Secretary, from April, 1832, until you retired, in August, 1834.

2nd. You appeared to me during that period remarkably zealous and unremittingly attentive to the performance of all your public duties, and you infused the same spirit throughout the department, which was one of great labour.

There never was, either at home or abroad, an office whose duties were conducted with more order and precision than those of the Colonial Secretary's, during the period in question.

3rd. Nothing could, in my opinion, exceed your anxiety to carry into effect, with promptitude, every instruction of His Excellency Lieut.-Governor Arthur.

4th. You were very particular in enforcing the various regulations of the Government. I have no recollection of any instance in which you departed from the regulations, or in which you permitted others to do so.

5th. You appeared to me to give very general satisfaction to the public in the discharge of your official duties.

6th. I am not aware of your dignity as a public functionary, or of your honour and integrity as a private gentleman, having suffered in the estimation of the colonists from the circumstances connected with your land question, which is known throughout the Colony.

(Signed) C. DRISCOLL.
Board of Assignment, 17th January, 1837.

(Copy.)

No. 25.

James Scott, Esq., J. P., Colonial Surgeon.

1st. Are you aware that my health was in a very bad state in the months of May and June, 1834?

2nd. To what cause did you attribute my loss of health?

3rd. Did you not recommend relaxation from all official business for a short time, as absolutely necessary for my recovery.

4th. How long have you known me?

5th. As the head of the Medical Department, had I much official correspondence and communication with you?

6th. Did I always appear to you laborious, remarkably zealous, and unremitting in the performance of all my official duties?

7th. Was I generally so considered, and did I give general satisfaction as Colonial Secretary?

8th. Has my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists, by the circumstances connected with my land, and are those circumstances generally known?

(Signed) J. BURNETT.

1st. During the greater part of 1834 your health was in a precarious state.

2nd. To confinement in your office, and anxiety relative to your various and numerous duties.

3rd. I did.

4th. Since your arrival in the Colony.

5th. You had.

6th. You did.

7th. You were; and I do not remember to have heard any complaints against your mode of conducting the duties of your office.

8th. In the estimation of the colonists I do not consider that you have at all suffered: and, relative to the matter of your land, I do not think that the public have been fully acquainted with it till lately.

(Signed) J. SCOTT, J. P.

(Copy.)

No. 26.

The Rev. William Garrard, Government Chaplain, New Norfolk.

1st. You are a Government Chaplain at New Norfolk; how long have you resided there?

2nd. I have resided at New Norfolk since I retired from office in the year 1834; what character have I borne, and do I still bear, there?

3rd. Do you think I have in any degree suffered in the estimation of the district from my loss of office?

4th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists by the circumstances generally known throughout the Colony?

(Signed) J. BURNETT.
New Norfolk, January 17, 1837.

1st. I have resided as Government Chaplain at New Norfolk nearly five years.

2nd. At New Norfolk you have been always considered an honourable and upright man, and your character as a gentleman, in the full sense of the term, has never been questioned. This is the estimation in which you are still held.

3rd. Not in any degree to the best of my knowledge and belief.

4th. As far as I have heard the subject discussed, since it has been fully understood, neither your dignity as a public functionary, or your honour and integrity as a private gentleman, have ever been reflected on. The circumstances are generally known throughout the Colony.

(Signed) H. GARRARD,
Chaplain, New Norfolk.

(Copy.)

No. 27.

Robert Officer, Esq., J. P.

1st. You are a Magistrate of the Territory, and Assistant Government Surgeon at New Norfolk; how long have you resided there?

2nd. I have resided at New Norfolk since my retirement from office, in the year 1834; is my character well known to you?

3rd. What character do I bear there, and in that district?

4th. Do you think I have, in any degree, suffered in the estimation of the district from my loss of office?

5th. Is it a matter of notoriety, that most of the public officers have sold their grants of land unimproved, and without fulfilling the conditions, and that they endeavoured to conceal such sales?

6th. Has either my dignity as a public functionary, or my honour and integrity as a private gentleman, at all suffered in the estimation of the colonists from the circumstances connected with my land; and are those circumstances generally known throughout the Colony?

(Signed) J. BURNETT.

1st. Upwards of fourteen years.

2nd. It is, fully.

3rd. A character of the highest honour and integrity, such as has excited the respect and attachment of all classes.

4th. Not in the slightest degree. To the former universal respect has been added universal sympathy.

5th. It is.

6th. Decidedly not. There are few persons in the Colony who are not fully acquainted with the circumstances attending your land.

(Signed) R. OFFICER.
17th January, 1837.

(Copy.)

No. 28.

Arthur Gardiner, Esq. J. P.

New Norfolk, 24th January, 1837.

1st. You are a Magistrate of the Territory, residing at New Norfolk, and have acted as Police Magistrate there, both for Mr. Mason and Mr. Charles Arthur?

2nd. I have resided at New Norfolk since my retirement from office, in the year 1834; is my character well known to you?

3rd. What character do I bear there, and in that district?

1st. Yes.

2nd. Yes.

3rd. "Facts are stubborn things," and the following one will show how your character is estimated:—A dinner was given in honour of Colonel Snodgrass, upon his retiring from administering the Government, on Thursday

19th January, 1837, by the gentlemen of the district. You were not permitted to join the party as a *subscriber*, but, as a special compliment, were invited as a *guest*!—placed beside the chairman—by whom your health was given, and drank with enthusiasm!

4th. No.

4th. Do you think that I have in any degree suffered in the estimation of the district from my loss of office?

5th. Has either my dignity as a public functionary, or my honour and integrity as a gentleman, at all suffered in the estimation of the colonists, by the circumstances connected with my land, and are those circumstances generally known?

5th. A stranger to Van Diemen's Land, ignorant of the respect you are held in from land's-end to land's-end of the island, could alone ask the question, and to that stranger my emphatic answer would be:—Mr. Burnett's character stands, at this moment, as high as that of any other gentleman in the Colony; in truth, I never heard it questioned, although all the circumstances respecting his land, and his consequent removal from office, are generally known.

(Signed) J. BURNETT.

(Signed) A. GARDINER.

(Copy.)

No. XVI.

MY DEAR SIR,

Hobart Town, 29th January, 1837.

I BEG leave through you to return my thanks to Sir John Franklin for his kind *intention* of permitting me to see Colonel Arthur's *Precis*, and the Correspondence enclosed in his Despatch, No. 49, of September, 1834; but the former having been unfortunately abstracted, I do not expect to derive much information from the latter, although it certainly will be desirable to know whether the whole of the correspondence in my case was transmitted to the Secretary of State.

I beg you will also do me the favour to inform Sir John, that as circumstances will *now* most probably render it necessary for me to bring under the notice of the Secretary of State the line of conduct pursued by Colonel Arthur in Captain Forster's case, which in every particular resembled my own, I am desirous to apprise his Excellency of my intention, so as to enable him to inquire into the circumstances, should he think proper so to do.

Captain Forster, in the end of the year 1831, entered into an agreement with Mr. O'Connor for the sale of his land at the expiration of five years; this agreement was made, certainly, before the land was in the possession, and, I believe, before it was even ordered by the Government for Captain Forster; it was by him carefully concealed, and the Commissioners informed that the land was in his own possession, which caused the grant to be issued without fine, although *no improvements had been made*, nor a single shilling expended upon it, either by Mr. O'Connor or Captain Forster.

Before the land was actually ordered, in the year 1831, Lieutenant-Governor Arthur was demi-officially informed by the Surveyor-General, in a letter addressed to his Private Secretary, that he, Mr. Frankland, advised his Excellency not to give it to Captain Forster, because he understood it to be his intention to sell the land; and a reference to the Minutes of the Executive Council will probably show that at least two of its Members gave him similar advice.

In the month of February, 1834, Major Gray informed Colonel Arthur that it was generally understood that Mr. O'Connor had bought *both Captain Forster's land, and mine* which adjoined it at St. Paul's Plains.

Notwithstanding these circumstances, which I have reason to believe were all well known to Colonel Arthur, Captain Forster's grant was issued UNQUESTIONED, and without the usual recommendation from the Surveyor-General as to the original selection of the land, or from the Commissioners of Claims as to the deed.

Shortly after the extraordinary proceedings which took place in my case, about the month of August, 1834, Captain Forster wrote officially to the Commissioners that he would pay the fine, IF he should think proper to sell his land, stating that he was not before aware that he was liable to it.

That Colonel Arthur must have well known that the lands of military officers were no less liable to all the restrictions (with that of seven years' residence in the

colony in *addition*.) than those of other settlers, cannot be doubted, for he had been expressly, and in an especial manner, informed of the fact by Lord Bathurst in his Despatch, No. 74, of the 1st of October, 1826; and his Excellency was probably one of the very last persons to overlook such an order of his Majesty's Government. Nevertheless, six or seven grants were issued to military officers without the fine, although their lands were altogether unimproved, and Captain Forster's was among the number, the requisite bond not having been taken. For the fact that Colonel Arthur was at *least* as well informed of every circumstance relating to his connexion Captain Forster's land, as he was of mine, I would beg leave respectfully to refer Sir John Franklin to Mr. Gregory, the Colonial Treasurer, and for some other very extraordinary circumstances that attended the ultimate payment of the fine upon this grant, I would refer to Mr. Moore, Collector of Internal Revenue, who in November last was ordered by the Colonial Secretary to receive it, without the knowledge or concurrence of the officer administering the government.

I have said that Captain Forster's case was similar to my own, but it was not exactly so, for upon my land the improvements were officially reported to the Surveyor-General to be very nearly completed, whereas nothing whatever had been done upon Captain Forster's; so that my grant, under any circumstances, whether it had been alienated or not, was, in fact, justly liable to no fine, as can be proved by the Commissioners, Messrs. Hone and Nicholson; and yet, immediately subsequent to these transactions, Captain Forster was appointed a Member both of the Legislative and Executive Councils on the recommendation of Lieutenant-Governor Arthur, and afterwards a Commissioner for the Examination of Titles to Land; and I was removed from my office by his Excellency's highly coloured, and in some respects erroneous, representations to the Secretary of State.

I have taken my passage for England, in a ship which will sail upon the 14th of next month, previously to which I shall be happy to afford Sir J. Franklin every information in my power, should he desire it, with respect to every one of the circumstances which I have now detailed.

I have the honour to be,

Dear Sir,

Yours very faithfully,

(Signed)

J. BURNETT.

Captain Maconochie, R. N.,
Private Secretary.

(Copy.)

No. XVII.

GENTLEMEN,

Hobart Town, January 30th, 1837.

I HAVE the honour of submitting through you, to the consideration of the Local Government, the circumstances under which the late Commissioners of the Caveat Board imposed a fine of sixpence per acre upon my grant of land, situated on the South Este River, and as my stay in this Colony will not exceed fourteen days, I have most earnestly to entreat that you will be pleased to transmit, at your earliest convenience, this communication to the Lieutenant-Governor, together with such report thereon as in your judgment the case may require, so that I may be favoured with his Excellency's decision prior to my embarkation.

I most respectfully submit, that under the circumstances connected with my case, the grant ought to have been issued without a fine; and in now representing the bearings of the case for your judgment, and asking for a return of that fine, it will not, and I trust cannot, be assumed for one moment that the money is the object in view, but it is to establish the fact, that under any circumstances of the case I was not liable to the fine.

In order to present the matter fully to his Excellency's consideration, it is necessary that I should refer to documents.

In the month of January, 1832, a proclamation was issued by the late Lieutenant-Governor relative to the settlement of the land question, and paragraph 15 is the one which peculiarly relates to alienation, non-improvement, and non-occupancy. The paragraph is as follows:—

“ In all cases in which lands have been located or granted, subject to the grantee or locatee personally making a given expenditure on the land, if the grantee or locatee shall have in fact parted with the actual occupation of the land to any other

person before he shall have personally made such expenditure thereon, no grants will be made but upon payment of a similar fine as in case of breach of the *conditions* of non-alienation."

The conditions referred to in this paragraph were generally considered too severe, and the principle of improvement of land, without regard to the person by whom such improvement was made, was thus lost sight of; so that even although the land had been brought into the highest state of improvement by any other than the *original locatee*, yet the fine was equally imposed as in the case where the land had been left in a state of nature.

To obviate this bad policy, the matter was brought under the consideration of the Executive Council, and in the month of August, 1832, this 15th section was in effect abrogated; and by the 9th section of the Instructions, approved of by the Lieutenant-Governor in Council, and transmitted to the Commissioners for their official guidance, more liberal and extensive powers were given.

I take the liberty of transcribing the 9th paragraph, as it forms a portion of the public and official documents in your office.

"In such cases, if *the occupation* of the land shall have been parted with, to the intent that such other person, upon making the requisite expenditure thereon, shall acquire a title to the fee-simple thereof, and such other person or his assigns shall have made such expenditure, then the grant of the land shall be made to him or them, free from any such condition; but if he or they shall not have completed such expenditure, the grant will be made to him or them on condition of completing the same."

My claim for a grant was laid before the Commissioners on the 31st of May, 1834. Amongst the evidence adduced was a certificate by the District Surveyor, that improvements had actually been made upon the land to the extent of £63, and that 15,000 posts and rails had been laid upon the land for the purpose of being erected, and the fencing was in the course of execution at the time.

The Commissioners valued such fencing when completed at £375, making a total of improvements made, and on the point of being completed, of £438.

I gave a pledge to the Commissioners to complete the improvements within a specified time, and therefore the Commissioners were of opinion that I had "effectually redeemed the terms of the grant," and they recommended that the grant should issue. This evidence will be found in Report, No. 45, and it is also contained in book I., page 196, in your office.

In consequence of some hesitation on the part of Colonel Arthur to sign the grant after it had passed the Executive Council, because I had stated the land to be in my possession, it being in fact in the occupation of Mr. O'Connor, *words which I do not understand to be synonymous*, the case was again referred to the Commissioners, and on the 25th of June the Commissioners made a Supplementary Report, and in that Report the Commissioners state that they passed the grant without a fine, under the impression that the land was in the possession of the grantee; but it appearing by my letter that it was in the occupation of Mr. O'Connor, the Commissioners reported that, "*under the 15th section of the Order*," it is subject to a fine of sixpence per acre, and upon payment of that fine I ultimately obtained the grant.

It is perfectly clear, upon perusing the Report, that the Commissioners wholly lost sight of the 9th section contained in their Instructions, which had in effect annulled the 15th section of the Order of January, under which the fine would most undoubtedly have been payable.

It is, I submit, equally clear, that this 9th section was in fact framed to meet a case like mine, where occupation had been parted with to the intent that some other person might ultimately acquire a title to the fee.

The land had been occupied, the conditions had been fulfilled, and the estate improved; it is, under the 9th section, immaterial by whom. I was entitled to the grant, and ultimately I should (as I have since done,) have conveyed the fee to Mr. O'Connor.

I may be permitted to observe, finally, that the fine was imposed *solely* because the land was occupied by Mr. O'Connor. It was certified there had been "the requisite expenditure, and that the conditions had been redeemed." No other person than myself claimed the land, and for the best of all reasons, no other person had any title to the grant of it.

I therefore most confidently submit these points to your judgment, and that in

justice (leaving all legal considerations out of view,) I am entitled to your decision that the fine has been imposed in error, and, consequently, that it ought to be returned.

I may perhaps be permitted to mention, that ill health and extreme distress of mind caused me until very recently to overlook, or rather to forget, the bearings of these Instructions, otherwise I should not have so long delayed bringing the matter under the consideration of the Government, more especially as this part of the question has been productive of such painful circumstances to myself.

I have the honour to be,

Gentlemen,

Your obedient, humble servant,

(Signed)

J. BURNETT.

To the Commissioners for Titles.

(Copy.)

No. XVIII.

[Private and Confidential.]

MY DEAR SIR,

New Norfolk, 2nd March, 1837.

I AM not quite certain whether it is your desire to retain the *private* narrative of my case, which you some time since were so good as to say you would peruse, but should such be the case, I have not the smallest objection, with the understanding that you have received it from me *confidentially* in the strictest sense of the term, for I am still very desirous *not* to make its contents public, if I can by any other means obtain redress and justice. I am, however, very desirous that the accompanying memorandum (which I intend to have printed if my pamphlet is hereafter circulated,) should be pasted into the copy you have got, for Mr. Gregory has lately proved himself to be one of my best and most sincere friends; and I am now quite satisfied that he was himself deceived, and that he never would have intentionally lent himself to any of the manœuvres which were resorted to to deprive me of my office.

As I embark for England upon Tuesday next in the "Auriga," from Hobart Town, I am now, as you will readily believe, extremely anxious to receive an official answer to my application to have the fine upon my grant of land refunded, because I have received the highest legal opinion and advice in this Colony, that the fine has been improperly exacted and paid; if, therefore, the decision of the Local Government should not be favourable to my claim, it is my intention to appeal against it to the Secretary of State, in which case I shall have to apply to Sir J. Franklin to furnish Lord Glenelg, either through myself or otherwise, with a copy of the Commissioners' Instructions.

I should however mention that, in saying I have received the best legal advice in this Colony, I do not mean that of either of the law-officers of the Crown, to whom I did not think it proper to apply, as it appeared to me probable that they might be called upon officially to advise the Government in this matter.

As I have heard nothing with regard to the circumstances connected with Captain Forster's grant of land, I presume that it is not the intention of the Local Government to communicate with me upon the subject. I have, however, done my duty by apprizing Sir J. F. of my intention to bring it under the notice of the Secretary of State.

I beg to remain, my dear Sir,

Very faithfully yours,

(Signed)

J. BURNETT.

Captain Maconochie, R. N.,
&c. &c. &c.

N. B. I find that Captain Maconochie handed over this letter to *Captain Montague*, the Colonial Secretary; therefore, although it was marked "private and confidential," I can no longer consider it such.

J. B.

(Copy.)

No. XIX.

SIR,

Hobart Town, 9th March, 1837.

BEING on the point of departure for England, and having been informed that the Commissioners of the Caveat Board have made their Report upon my application for the restitution of the fine imposed upon the issue of my title-deeds in 1834, I do myself the honour of requesting that your Excellency will be pleased to give directions that I may be furnished with a copy of the Report in question, as it is of great consequence that I should be in possession of it upon my arrival in England, or as shortly after as possible.

I have the honour to be, Sir,
Your most obedient, humble servant,

J. BURNETT.

His Excellency Sir J. Franklin,
&c. &c. &c.

(Copy.)

No. XX.

THE Private Secretary presents his compliments to Mr. Burnett, and is desired by the Lieutenant-Governor to acquaint him, in reference to the application through his son, to be made acquainted with the decision of the Government upon the claim preferred by him to have the amount of the fine, paid for the alienation of his grant, refunded to him, that His Excellency regrets it is not in his power to comply in this respect with Mr. Burnett's wishes.

Upon inquiry it appears that the papers relating to the question were forwarded, on the 1st instant, for the opinion of the Chief Justice; and that, although the Colonial Secretary has, by His Excellency's desire, reminded, on more than one occasion, his Honour of their detention, and requested his immediate reply, it has, however, been impracticable either to get back the documents or to obtain from His Honour any opinion upon the point submitted to him.

Government-House, Thursday, Five o' Clock.

To J. Burnett, Esq., Freemasons' Hotel.

No. XXI.

MEMORANDUM.

HAVING in vain repeatedly applied, both to the Private and Colonial Secretary for a decision on my claim, to have the fine upon my land (which had been exacted in error) refunded;—having stated that I had taken my passage for England, and that it was of extreme importance to me to obtain it before I sailed;—and having been informed, by a member of the Executive Council, that the Commissioners' Report, which had been long before the Government, was decidedly in favour of my claim—upon the 9th March, the day of my embarkation, I sent the letter (No. XIX.) by my son, to Sir John Franklin, and received a reply (No. XX.) from the Private Secretary, after I was on board ship.

With regard to the Chief Justice's detention of the papers, under such circumstances,—and he was well aware of them,—I shall make no comment; but it is, perhaps, proper I should state, that his Honour is the most intimate friend and partisan of Lieutenant-Colonel Arthur, and that he has evinced the most decided hostility to me.

J. BURNETT.

No. XXII.

TO THE KING'S MOST EXCELLENT MAJESTY.

THE HUMBLE PETITION *of the undersigned Members of Council, Clergy, Magistrates, Merchants, Colonists, and other free Inhabitants of Van Diemen's Land.*

SHOWETH,

THAT Your Majesty's humble Petitioners have learned with deep concern that Mr. Burnett, their late Colonial Secretary, has not only been removed from his Office, but has been refused other employment under the Crown, in consequence of circumstances relating to his Grant of Land.

That Mr. Burnett for the period of eight years executed the arduous duties of his high office, with (as we believe) fidelity to the Government, and (as we know) to the entire satisfaction of this community, exerting himself with such unremitting zeal and assiduity, as in the end seriously to impair his health.

That Your Majesty's Petitioners cannot but think that, on a more minute investigation, the circumstances that caused his removal from Office will be viewed in a light very different from that in which they appear to have been hitherto regarded by Your Majesty's Government, inasmuch as in this Colony the knowledge of those circumstances has not injured Mr. Burnett in public estimation, and his character for integrity and honour still remains unsullied.

That Your Majesty's Petitioners therefore venture humbly to approach the Throne with the fervent *prayer that Your Majesty will take Mr. Burnett's case into your Royal consideration, and if a restoration to his former office should now be deemed unjust to others, or impracticable, that Your Majesty will be graciously pleased to grant him other employment of equal importance and emolument, or such other compensation as to Your Majesty shall seem meet.*

And Your humble Petitioners, as in duty bound, shall ever pray.

This petition, which was prepared and circulated by my friends, is signed by very nearly two thousand of the most respectable individuals in Van Diemen's Land; and amongst the number, by seven Members of Council, nine Clergymen, seventy-one Magistrates, and many Public Officers of the Colony.

J. BURNETT.



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