Proceedings of the Madras Government, Revenue Department,
24th January 1873.

No. 177. Read the following petition from JAMES OUCHTERLONY, Esq, of Ouchterlony Valley, Numbalacode Umshom, Wynaad Taluq, to the Right Honourable the Governor in Council, Fort St. George, dated London, 20th November 1872:—

SHEWETH,

THAT your petitioner has had communicated to him the order of Government of 18th October 1872, No. 1,446, embracing copy of a memorial by Captain T. H. Godfrey. That the said memorial is full of misrepresentations, with an exposure of which your petitioner would not deem it necessary to trouble the Government, were it not that they are placed on record, through an active Government order being based upon them; and that he, therefore, feels it necessary to place his contradiction equally on record, while praying for such redress as the Government may consider him entitled to under the circumstances.

2. That the assertions of Captain Godfrey may be enumerated as follows:—

First, that your petitioner, by his first grant from the Rajah of Nellumboor, did not obtain any legal title to land extending up to Nilgiri Peak; second, that your petitioner instituted a suit, No. 183 of 1862, "to oust" Captain Godfrey "from off this land," which suit was dismissed on appeal; third, that Mr. Assistant Magistrate Tod's report (of 15th January 1856) did not deserve consideration, because of his being a stranger to the country, and that he was "completely deceived by false representations;" and, fourth, that Captain Godfrey has been "in true and lawful possession of the land within his boundaries" for "27 years."

3. That on the *first* point your petitioner apprehends that it will hardly be deemed necessary that he should enter upon any serious refutation. The Government has before it the plan attached to your petitioner's first grant from the Nellumboor Tirupad. It is unmistakable as to the boundary point of the Nilgiri Peak. The deed and plan both fix it under that name and with its aliases of Yellamullay and Mookooritchy Mullay. These aliases were purposely given, because it was found that different natives knew the mountain by one and the other name; and the Government can conclusively satisfy itself of this by a reference to the Triangulation Sheet, No. 1, of the survey of the Nilgiri Mountains, of which your petitioner has a copy, certified under the signature of Lieutenant-Colonel Thullier, Surveyor-General of India. The name of Nilgiri Peak (or Mullay) was inserted, because of its being the name by which the mountain was best known to *Europeans*; and it was desired that there should be no misunderstanding about what was intended.

4. That your petitioner, referring to the *second* point, has not by him the record of the suit, No. 183 of 1862, to refer to, and so cannot quote exact language; but that it will be better treated of in explaining the *third* point, your petitioner meanwhile remarking, that it was *not* a suit "to oust" Captain Godfrey from possession, but a suit against him for penal damages for trespass.

5. That the occasion of Mr. Assistant Magistrate Tod's inquiry on the spot was this same trespass, or rather character of trespass, occurring in 1855, and a reference to the Collector and Magistrate of Malabar (then T. Clarke, Esq.,) arising out of it. Mr. Tod was deputed by the latter to the duty of this inquiry. That any "false representations" were made on the occasion to "deceive"

Mr. Tod, your petitioner must be allowed to denounce as a wicked and malicious fabrication; and equally to deny, and this in justice to the memory of that gentleman, that he was so incompetent to the task assigned to him, that mere unacquaintance with the country rendered him incapable of understanding what was before his eyes. Mr. Tod's report is before the Government, and your petitioner appeals to it to show that his inquiry was alike painstaking, intelligent, and impartial.

6. That in his investigation on the spot Mr. Tod was, amongst others, accompanied by the Nellumboor Tirupad's Agents who had been concerned in giving or pointing out the land under the respective Deeds of 1845 and 1848, and by Captain Godfrey himself and Permaul Chetty. That the examination was openly conducted before all parties; and that it concluded by the following letter being voluntarily addressed to Mr. Tod by Captain Godfrey:—"I have seen the Munsif this morning with the Rajah's Agent, and I shall now leave the disputed land in Mr. Ouchterlony's possession till legally decided to whom it belongs."

That your petitioner submits how utterly unlikely it is that any person would pen such a letter, when he thought the inquiring officer was both ignorant of the merits of the case, and the weak dupe of false representations about it; and that he should take no steps thereafter to vindicate legally what he assumed to be his rights.

7. That the above agreement by Captain Godfrey had the effect of staying all proceedings before the Magistrate of Malabar, as will be found on reference to the records of the Cutcherry of that date; and your petitioner was left to conceive, both in the legal import and the moral obligation of such a pledge, that he was safe from the risk of any further intrusion on his land by Captain Godfrey, until, of course, a decision might be given by a Court of Law adverse to your petitioner's title.

8. That, nevertheless, Captain Godfrey committed acts of trespass in 1861 upon the land he had pledged himself to leave in your petitioner's possession, and the consequence was the Suit No. 183 of 1862 (originally filed in the Court at Tellicherry as No. 377 of 1861, but, on the change of jurisdiction, transferred to the Principal Sadr Ameen's Court of Calicut) for the trespass. This suit was dismissed in appeal on purely technical grounds, as will be seen by a reference to the decree.

9. That at the time of the above suit your petitioner had not had access to Captain Godfrey's letter to Mr. Tod, quoted in paragraph 6 from the Collector of Malabar, having furnished him, on his application, with a certified copy of Mr. Tod's report alone; but that the original letter came forward on the hearing of the Suit, O. S. No. 4 of 1862, when the Court sent for the record from the Magistrate's Office. On the letter being put into Captain Godfrey's hands during his evidence in the suit he acknowledged it, but excused a previous declaration that he had not the slightest recollection of ever having agreed to leave the land in my possession, by saying that his memory had entirely failed him in the matter.

10. That Captain Godfrey had thus at all events his memory refreshed in 1862 as to his real (conditional) relinquishment of the land in dispute, and therefore his own act will suffice to carry the refutation of his *fourth* point that he has

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had "*true* and *lawful*" possession of it for 27 years; and your petitioner will ever pray.

No. 178. ORDER THEREON, 24th January 1873, No. 89.

Forest No. 15.

THE Governor in Council understands that, as regards the land included in Mr. Ouchterlony's first grant from the Nellumboor Tirupad, Captain Godfrey is absolutely concluded by the appeal decision of the High Court that Captain Godfrey can only base his claim on his title derived from the Tirupad which is of later date than that held by Mr. Ouchterlony.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To J. Ouchterlony, Esq.,
Care of Mr. H. Wapshare.
,, the Board of Revenue.

Exd. F. R. Bantleman.

To the Right Honorable the Governor
& Council of Fort St. George

The humble petition
of James Cruickshank
of Cricketstown Valley
Cumbalacode Cumshaw
Coyanad Talook

Sheweth,

That your petitioner has had communicated to him the Order of Government of 18th Octr 1872, No 1446, embracing Copy of a Memorial by Capt Godfrey. That the said Memorial is full of misrepresentations, with an exposure of which your petitioner would not deem it necessary to trouble the Government, were it not that they are placed on record, through an active Government order being based upon them; and that he therefore feels it necessary to place his contradictions equally on record, while praying for such reliefs as the Government may consider him entitled to under the circumstances.

2. That the assertions of Capt Godfrey may be enumerated as follows - (1) that your petitioner, by his first Grant from the Raja of Cumbum, did not obtain any legal title to land extending up to Sulgherry Peak: - (2) that your petitioner instituted a Suit, No 183 of 1862

1862, "to oust" Capt Godfrey "from off the land", which Suit was dismissed on appeal: (3) that Mr Assistant Magistrate Tod's report (of 15 Jany 1856) did not deserve consideration, because of his being a stranger to the country & that he was "completely deceived by false representations": and (4) that Capt Godfrey has been "in true & lawful possession of the land within his boundaries" for "27 years".

3. That on the First point your petitioner apprehends that it will hardly be deemed necessary that he should enter upon any serious refutation: the Government has before it the plan attached to your petitioner's first Grant from the Nellumboor Tirocpat: it is unnecessary to dwell as to the boundary point of the Neilgherry Peak. The deed & plan both fix it, under that name & with its aliases of Yellamullay & Snowdon also Doddabetty Snullay. These aliases were purposely given, because it was found that different natives knew the mountain by one and the other name. And the Government can conclusively satisfy itself of this, by a reference to the Triangulation Sheet, No 1, of the Survey of the Neilgherry mountains, of which your petitioner has a copy, certified under the signature of Lt Col Thuillier, Surveyor General of India. The name of Neilgherry Peak (or Snullay) was inserted, because of its being the name by which the mountain was

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4. That your petitioner, referring to the Second point, has not by him the record of the Suit No 183 of 1862 to refer to and so cannot quote exact language: but that it will be better treated of in explaining the Third point, your petitioner meanwhile remarking, that it was not a Suit "to oust" Capt Godfrey from possession, but a Suit against him for penal damages for trespass.

5. That the occasion of Mr Assistant Magistrate Tod's enquiry on the spot, was this same trespass or rather character of trespass, occurring in 1855 - and a reference to the Collector and Magistrate of Malabar (then J. Clarke Esq) arising out of it. Mr Tod was deputed by the latter to the duty of this enquiry. That any "false representations" were made on the occasion to "deceive" Mr Tod, your petitioner must be allowed to denounce as a wicked and to deny malicious fabrication. And equally - and this in justice to the memory of that gentleman - that he was so incompetent to the task assigned to him, that mere unacquaintance with the country rendered him incapable of understanding what was before his eyes. Mr Tod's report is before the Government and

and your petitioner appeals to it to shew that his enquiry was a able painstaking, intelligent, & impartial.

6. That in his investigation the spot Mr Todd was, amongst others, accompanied by the Puthumboor Tiroopadi's agents who had been concerned in fixing, or pointing out, the land under the respective deeds of 1845 & 1848, and by Capt Godfrey himself & Vennard Chetty. That the examination was openly conducted before all parties; and that it concluded by the following letter being voluntarily addressed to Mr Todd by Capt Godfrey -

"I have seen the Ironside this morning with the Rajah's Agent and I shall now leave the disputed land in Mr Crichtons's possession till legally decided to whom it belongs."

That your petitioner submits how utterly unlikely it is, that any person would pen such a letter, when he thought the enquiring officer was both ignorant of the merits of the case, & the weak dupe of false representations about it; and that he should take no steps thereafter to vindicate legally what he esteemed to be his rights.

7. That the above agreement by Capt Godfrey, had the effect of staying all proceedings before the Magistrate of Malabar, as will be found on reference to

to the records of the Collectory of that date; and your petitioner was left to conceive, both in the legal import and the moral obligation of such a pledge, that he was safe from the risk of any further intrusion on his land by Capt Godfrey, until of course a decision might be given by a Court of Law adverse to your petitioner's title.

8. That nevertheless Capt Godfrey committed acts of trespass in 1861 upon the land he had pledged himself to leave in your petitioner's protection, and the consequence was the Suit No 183 of 1862 (originally filed in the Court at Tellicherry as No 377 of 1861, but, on the change of jurisdiction, transferred to the H. S. Ameen's Court of Calicut) for the trespass. This Suit was dismissed in appeal on purely technical grounds, as will be seen by a reference to the decree.

9. That at the time of the above Suit your petitioner had not had access to Capt Godfrey's letter to Mr Todd, quoted in para 6, from the Collector of Malabar having furnished him, on his application, with a certified Copy of Mr Todd's report above; but that the original letter came forward

on the hearing of the Suit of S.
W. 4 of 1862, when the Court sent
for the record from the Registrar's
Office. On the letter being put
into Capt Godfrey's hands during
his evidence in the Suit, he
acknowledged it, but expressed
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10. That Capt Godfrey had thus
at all events his memory refreshed
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relinquishment of the land in
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petition of his Fourth point that
he has had "bona & lawful" possession
of it for 27 years.

And your petitioner
will ever pray
James Cuchterlony

London, Nov. 20th 1872
Care of Messrs Shepherd &
Adlercammond

Revenue 1872 Dept
No. 4095.

Petition
From
James Cuchterlony Esq.
London

Dated 20 Nov. 1872
Read 26 Dec.

Contradicting Capt
Godfrey's misrepresentations
in his Memorial with
reference to his claim to
certain lands on the
Pilgrim's

27-178

1/73 R 21st Jany No 89-24 Jany 73 With Order.

Grant

1859

The Surveyor understand that as regards the Land included in Wm Ackerstone's first grant from the Indians over Timpahute Castle Valley is absolutely excluded by the appeal decision of the High Court that Capt. Stracey has no claim on his title derived from the Timpahute Wm is of later date than that held by Wm Ackerstone.

To J. Ackerstone Esq
Care of Messrs H. Wapshare & Co
14 The Board of Revenue

Dec 27 1859 Jany 73

24 Jany 73