

No. 177. Read the following petition from JAMES OUCHTERLONY, Esq., of Ouchterlony Valley, Numbalacode Unshom, 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"

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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 Catcherry 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.

50

The Right Honorable the Governor  
Council of Fort St. George

The humble petitions  
of James Ouchterlony  
of Ouchterlony Battery  
Cumbalacode Munshy  
Vyasaiah Talook

and

That your petitioner has  
had communicated to him the  
order of Government of 18<sup>th</sup> Oct  
1872, No 11146, embracing copy of a  
memorial by Capt. H. Godfrey. That  
the said memorial is full of misre-  
presentations, with an exposure of  
which your petitioner would not deem  
it necessary to hand to 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 redress as the  
Government may consider him entitled  
to under the circumstances.

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

1862, to one Capt. Godfrey from off the land, which Suit was dismissed on appeal: - (3) That Mr. Assistant Magistrate Tod's report of 15 Jan. 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 petitioners apprehend 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 petitioners' first grant from the Kullumbour District. It is unmistakable as to the boundary point of the Peitzberry Peak. The deed & plan both fix it, under that name & with its aliases of Yellamulay & Koothoritchy, Brumlay. These aliases were purposely given, because it was found that different natives knew <sup>mountain</sup> them 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 Peitzberry mountains, of which your petitioners has a copy, certified under the signature of Mr. Col. Shullier, Surveyor General of India. The name of Peitzberry Peak (or Brumlay) was inserted, because of its being the name by which the mountain was

was best known to Europeans; and it was desired that there should be no misunderstanding about what was intended.

4. That your petitioners, referring to the Second point, has not by him the report of the Suit No 183 of 1862 to report, and so cannot quote exact language: but that it will be better treated of in explaining the Third point, your petitioners meanwhile remarking, that it was not a Suit to inst. 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 T. Clarke) 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 petitioners must be allowed to denounce as a wicked and 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 show that his enquiry was alike fair-minded, intelligent, & impartial.

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

"I have seen this morning this morning with the Raja's Agent and I shall now leave the disputed land in Mr. Brechtstein's jurisdiction till legally decided... to whom it belongs."

7. That your petitioner submits how utterly untrue 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, & thus would dupe of false representations about it; and that he should take no steps thereafter to vindicate legally what he assumed to be his rights.

8. 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

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to the records of the Anticherry of that date; and your petitioner was left to conceive, both in the legal 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.

9. 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 on No 377 of 1861, but, on the change of jurisdiction, transferred to the S. S. Amman's Court at Calicut) for the trespass. This Suit was dismissed in appeal on purely technical grounds, as will be seen by a reference to the Decree.

10. That at the time of the above Suit your petitioner had not had access to Capt. Godfrey's letter to Mr. Tod, quoted in para 6, from the Collection 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 Oct.  
24<sup>th</sup> 1862, when the Court sent  
for the record from the Magistrate's  
office. On the latter being put  
into Capt. 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 Capt. Godfrey had thus  
at all events his memory represented  
in 1862 as to his oral (conditional)  
relinquishment of the land in  
dispute, and therefore his own  
act with sufficient to carry the re-  
futation of his former point that  
he had had "peace & lawful possession"  
of it for 27 years.

And your petitioner  
will ever be

James Cuckleston

London, Nov. 20<sup>th</sup> 1872  
Care of Messrs. P. &  
Colman & Co.

17  
Revenue 1872 Sept  
N. 4095.

Petition

From

James Cuckleston Esq.  
London

Dated 20<sup>th</sup> Nov. 1872  
Recd. 26<sup>th</sup> Dec.

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

73 R 21<sup>st</sup> Jan. No 29-26 Jan. with Order.

St. John

7895

W. B. Oakes

The inf. understands  
that as regards the land included  
in W. B. Oakes' first grant  
from the Indian for Timpan.  
Capt. Oakes is absolutely correct  
by the appeal decision of the  
High Court that Capt. Oakes  
only have his claim on his  
title derived from the Timpan  
B. is of later date than that  
held by W. B. Oakes.

To J. Oakes Esq  
Care of Mr. H. Wapsham  
The Board of Revenue  
Des 27 Jan 73  
24 Jan 73