

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Burra Lall Opendronath Sahee Deo v. The Court of Wards, from the High Court of Judicature, Bengal; delivered 19th March 1879.

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

UPON the hearing of this appeal some time ago their Lordships thought it right to frame issues to be tried by the High Court, and remanded the case to India for that purpose. These issues were directed to ascertain, principally, whether certain entries appearing in books of the late Maharajah which had been given in evidence in support of the Appellant's case were original and genuine entries, or were false and fabricated.

The findings of the High Court on the issues relating to the books are as follows :—

First. That the leaf containing the entries of the 26th Cheyt is not the original but an interpolated leaf; and although there is no direct evidence to show by whom or when the interpolation was made, it is quite clear it was done by some one who by the false entry wished to support the Plaintiff's case.

Secondly. That the words "Agoond Konwari," and the figure "one" which changed the sum

from 12 to 112, were not in the original entry, but have been added to it afterwards.

Thirdly. That the pages of the original roze-namcha containing the entries of the 16th to 20th Bysack have been designedly abstracted by some one who wished thereby to assist the Plaintiff's case.

Fourthly. That the other entries material to the issues of the cause appearing in the extract from the book set out in pages 22 to 44 have (wherever the names of these female attendants appear) been, one and all, altered and added to, and that no such names appeared in the original entries.

Fifthly. That, apparently, there are no other entries in the books which are material to the issues in the cause.

The reasons which led the Judges to these conclusions are stated at length in their report; and the evidence given on the remand having been fully brought to their Lordships' attention by the learned Counsel, they are of opinion that it warrants the finding which the High Court has returned.

The important influence which these entries had upon both the Courts in India in determining the weight due to the evidence of the respective parties was commented upon in the judgment remanding the case.

It was then pointed out that the subordinate Judge, in the belief that the entries were genuine, regarded them not only as corroborating the witnesses of the Appellant, but as discrediting the principal witnesses of the Respondents; whilst, on the other hand, the High Court believing the books to have been fraudulently tampered with, came to the conclusion that the fraud was of such a nature as to throw discredit on the whole case of the Appellant. And now that the assumption of the High Court as to the falsification

of the books has been, upon full inquiry, established, the fraud thus disclosed and reported to their Lordships cannot but fail to have an important effect on their own decision.

The history of the suit, and the general cases of both parties, so far as they depended upon undisputed facts, will be found in their Lordships' judgment directing the remand. They refrained from commenting on the conflicting evidence, until the important questions arising on the books had been cleared up.

They now propose to advert to it. It will be convenient to consider, in the first place, the evidence relating to the Maharajah's bodily and mental condition.

On the part of the Appellant, it was said that his health was not good, and that his intellect was impaired. The Respondents denied that this was so. That the Maharajah had largely indulged his sexual inclination appears both upon the evidence, and his own admissions when examined in the lunacy proceedings. He appears to have had about him a large number of Khakee women, and he was the reputed father of numerous children by them. In his examination by Mr. Oliphant he acknowledged the paternity of about 50 children. But there is certainly no evidence that he was incompetent to beget children at the time he left Palkote, and any inference to be drawn from his age and dissolute habits is much too weak to justify a Court in presuming impotency. That he had full opportunity of access to his two wives after he left Palkote is abundantly clear. And it is probable that the Khakee women who were about him at Palkote did not accompany him on his journey to Bhowro.

With respect to the state of the Maharajah's mind, the evidence is very full. In the lunacy proceedings which were prosecuted by Burra

Lall in 1867 he was twice examined, once by Mr. Oliphant in January, and again by Mr. Craster, the Judge of the Gya Court, in December of that year. In his examination by Mr. Oliphant, some of his answers were somewhat incoherent, and his manner was excited, leading Mr. Oliphant to the conclusion, which he afterwards stated (when examined as a witness), that he was a person of weak intellect. But it is obvious to their Lordships that the examination to which the Maharajah was subjected by Mr. Oliphant, and the manner in which it was conducted, were calculated to excite and irritate a person of his rank, and this, they think, may account for a good deal of what appears to be strange in his demeanour and answers. Some of the reasons, too, given by Mr. Oliphant for his opinion are not altogether satisfactory, and diminish the value of it. In the examination by Mr. Craster, which was conducted with due consideration for the Maharajah's position, his answers were of a different kind, and certainly seem to be sensible and to the point of the questions put to him.

Much evidence appears in the Lunacy proceedings which it is unnecessary to consider in detail, as the result of it appears in the judgment of the Judge of the Court of Gya (Mr. Craster) dismissing Burra Lall's petition, which was affirmed on Appeal by the High Court, Sir Barnes Peacock presiding. The following passages of it are cited with approval by the High Court :—

“The utmost that the evidence offered in support of the application appears to establish is this, that the Maharajah is habitually careless of his own affairs; that he wastes his property by raising money upon portions of it under conditions highly unfavourable to his own interests; that he lavishes the money so raised upon unworthy objects, and at times conducts himself in a manner unbecoming his rank.”

Again—

“My own observation of the Maharajah's demeanour was of itself sufficient to raise in my mind very strong doubts of insanity. Beyond a certain wildness, or, I should rather say,

quickness of manner, I saw nothing at all calculated to raise a suspicion of his sanity. He answered the questions put to him readily and coherently; occasionally he manifested considerable quickness of apprehension, and when before me he did not evince any inclination to wander away from the subject proposed to him and to enter upon other topics."

Again—

"In the face of this evidence" (referring to medical and other evidence) "it would be difficult for me to arrive at any conclusion favouring the view contended for by the Petitioner. But when its tenour is perfectly consistent with the result of my own observation, and with the general conclusions from the evidence of the other witnesses examined, I must pronounce it conclusive, and declare that the Petitioner has failed to establish the position for which he contends."

It is to be observed that the Maharajah, in his examination by Mr. Craster, gave an account in some detail of his large property, liabilities, and expenditure, and seems to have understood the state of his affairs. It also appears from the evidence in the Record that he attended to the management of his property, and his expenditure. Bhopal Rai, a witness for the Appellant, an officer in a high position in the Maharajah's service (whose testimony will be hereafter commented on) says:—"After preparing pottahs, I used to present them for signature to the Maharajah. I used to read them out, and then he signed them. The Maharajah was rational, and used to attend to his own business; none of the zemindary business or anything of importance was done without the Maharajah's order."

Their Lordships, upon consideration of this part of the case, cannot think that it is established that the Maharajah's mind, although not of a high order, was so weak that two spurious children could have been passed off upon him as his own. It is difficult to believe, if the transactions alleged to have happened really took place, that they could have occurred without his connivance.

Apart from improbabilities arising upon the

evidence, calculated to throw doubt on the truth of particular incidents, there are certain general improbabilities which affect the whole case on each side.

Taking first that which affects the Respondents' case. There was undoubtedly considerable improbability, arising from the age and manner of life of the Maharajah, that after he left Palkote he would become the father of children by the Ranees, the elder of whom, Luchun, had had but one child, born ten years before she left Palkote, and the younger, Komul, although she had been married for ten years, had never given birth to a living child. And the improbability was of course greater that he would have sons by both Ranees born, one about nine, and the other ten months, after the departure from Palkote. This improbability would be in some degree lessened if the miscarriages which are said to have happened at Palkote really occurred; but of which the evidence is not altogether satisfactory.

The leading improbability on the other side is that the Maharajah should have acknowledged and treated spurious children as his own. It was strongly urged for the Respondents that it was not possible that such children could have been palmed upon him in the manner described, and equally impossible to suppose that he would knowingly have connived at such a fraud, and especially at the introduction into his family of a boy of low or unknown caste to be the successor to the Raj. Such a successor would have been revolting to his pride as a Prince of an ancient family, and to his religious feeling as a Hindoo. His conduct in acknowledging the children was relied on as cogent, if not conclusive, evidence of their legitimacy.

The motives for leaving Palkote are variously stated. The Maharajah, upon his examination by Mr. Craster, said that it was in consequence of his disputes with Burra Lall. The Ranees and

other witnesses, whilst mentioning this reason, give as the principal motive that the house at Palkote was unlucky, two children having died, and miscarriages having happened there, and it was thought that a change of residence might lead to happier results. Indernath Sahee says the Maharajah himself told him "the reason for his leaving was that the Burra Lall had no regard for his welfare; that the Janjhil Ranee had a daughter, but she died; that the said Ranee was in the family way for three or four months, and had a miscarriage. Owing to these afflictions he removed to Bhowro." Panrey Juggernath Roy also says that the Maharajah mentioned to him his desire to have an heir as his reason for removal. It seems to be agreed that this was one at least of the reasons for the change of residence.

In adverting to the direct evidence relating to the births of the children, it will be proper to consider, first, that which is adduced to support their legitimacy.

The pregnancy of the Ranees is proved by themselves and their female servants, but is directly corroborated only by the evidence of two other witnesses, Gopal Sahee and Pritheenath, though many others speak to the reputation of their condition. Ranee Luchun gives the names of eleven servants who came with her from Palkote, besides Puddum, who, it is said, was a midwife. Four of these servants have been examined, viz., Moorli Brahmini, Moongeab, Bimli, and Radhamani, and also Puddum. Ranee Komul mentions the names of six servants she brought with her to Bhowro, and two of them, Chumni and Bundhani, have been examined. All these women say that both the Ranees were pregnant.

The Ranees acknowledged that they did not tell their relatives of their pregnancy, explaining

the omission by saying that none of them came to see them. In consequence they got none of the usual presents given to ladies on such occasions, except one from Thakoor Indernath Sahee.

Gopal Sahee says: Two or three months after our arrival at Bhowro we came to know that the "Ranees were pregnant;" and again, "I knew "Ranee Luchun was pregnant two or three "months after coming to Bhowro; as I had been "told so by the Maharajah and the Ranee's "servants, and also observed it in her coun- "tenance. I knew of Ranee Komel being *enceinte* "after that." Gopal Sahee's testimony cannot, however, be regarded as the corroboration of an independent witness.

The other witness who speaks to the pregnancy is Pritheenath. He says he is a relative, and on the occasion of a visit to the Ranees he saw both, and Luchun told him she was five months gone with child, and Komul four. He says the Ranees had no chuddars over them when he saw them. The witness gives, no doubt, positive testimony, but their Lordships feel some difficulty in giving credit to it, having regard to the statement that the Ranees appeared before him without their chuddars.

Gobind Ram, the poorohit, who was a witness for the Respondents, proves that he performed all the ceremonies usually observed during pregnancy. He states that he received information of the pregnancy, when the Maharajah told him to fix the days for the *punchumrit* (ceremony of the fifth month) of the Ranees. He officiated as poorohit at this ceremony, and also at the *ugunasnan*, or ceremony of the ninth month, for each of the Ranees, on which last occasion they were in his presence for an hour and a half. It is part of this ceremony that the clothes of the Maharajah and Ranee should be knotted together

by the hands of the poorohit. He says the Ranees wore chuddars on these occasions. His words are, "They had one cloth on, and were covered with another cloth. Their bodies were entirely covered, and I then did not see in what condition they were."

Guessaram, the Gooroo, who says he saw the Ranees several times at Bhowro, is not asked any question as to their pregnancy. He says they put on their chuddars when they appeared before him; and it may be that these garments prevented the Poorohit and Gooroo from seeing the condition of the ladies.

Their Lordships cannot but feel that the corroborative evidence on this important part of the case is not so strong as it might be expected to be. Considering that the rumoured pregnancy of the Ranees had been denounced by Burra Lall as fictitious, at least three months before the first birth, it is remarkable that means should not have been taken to place the fact beyond dispute. Allowance must no doubt be made for the secluded manner in which Hindu ladies live; but it shows, at the least, great want of foresight not to have taken care that some impartial persons should be placed in a condition to verify the fact.

Some women of Bhowro who say they were in the service of the Ranees deny that they were pregnant. Chota Lall, Deonath, Sahee Lall, Pudman Anund Sahee, and other witnesses, who saw the Ranees at Bhowro, give similar evidence.

There were present, according to the Respondents' case, when Ranee Luchun gave birth to Pertab Oodey, four of her servants, Moongeah, Bechun, Radhamani, and Bimli, and also Puddum the midwife. Moorli Brahmini was in an adjoining verandah. All these women, except Bechun, have been examined, and the four who were in the room say they saw the Ranee give

birth to a son, and that no other persons were there except themselves and Bechun. Ranee Komul was not present.

When Ranee Komul is said to have given birth to Juggut Mohun, there were with her Ranee Luchun, four of Komul's servants, Chumni, Bundhuni, Itwari, and Ukhuj, Puddum being again the midwife; and, besides the Ranees themselves, Chumni, Bundhuni, and Puddum are the witnesses to prove the actual birth.

Puddum, a woman of the age of 50, had been in the Maharajah's service for 20 years. She says she had acted as midwife from the time she was young, and that her maternal grandmother was midwife in the Maharajah's house at Palkote. She had been brought from Palkote with the other servants, and was principally employed at Bhowro in sewing leaves together and collecting the flowers offered to the idols.

The evidence of the Ranees (the effect of which has been shortly stated) was given in some detail, and although they appear to have been closely cross-examined, their testimony was not materially shaken. But the Judicial Commissioner, finding that their evidence on material facts was contradicted by entries in the books, which he assumed to be genuine, came to the conclusion that it was wholly unworthy of credit; and undoubtedly, upon his assumption of the genuineness of the entries, his conclusion would seem to be justified. It was part of the Appellant's case that the women of Bhowro called as witnesses to prove that the children were not the sons of the Ranees, were in their service. It appears that some months after the Ranees had been examined on behalf of the Respondents, when they stated generally that they had no female servants from Bhowro, they were again examined on the part of the Appellant, and the names of these alleged servants were put to them. The Ranees denied that they had ever been in

their service. Among these women are Nunki, Mungri, Umrit, and Besun. These names appear in the Bhowro book on a leaf purporting to contain the entries of the 26th Cheyt, which has now been found by the High Court to have been fraudulently interpolated, where they are described as "the servants of Ranee Komul." The names Dulgera, Reori, and Lungri, whom the Ranees denied to be their servants, also appear on this leaf. The High Court states in its Report that, except on this leaf and in the other entries which they have found to be tampered with, the Appellant's witnesses were unable to point to any entry in the books where the names of these servants appear. Comparing the evidence of the Ranees with these entries, the Judicial Commissioner came to the conclusion that their denials that these women were their servants "were wholly false, and must have been made so wilfully," and he consequently wholly disbelieved them. It is true he pointed to some other parts of their evidence as affecting his mind adversely to their testimony, but some of his inferences bear a little hardly on the witnesses, and it is impossible to say how far his judgment was influenced by the contradictions afforded by the entries. It is to be observed that the servants of the Ranees who were called on behalf of the Respondents, and who denied that the Bhowro women were in the service of the Ranees, were equally discredited in the mind of the Judicial Commissioner by these entries. The testimony of the Ranees and their servants is now relieved from the discredit which attached to it on this ground, and is entitled to fair consideration. It is confirmed by the conduct of the Maharajah during their pregnancy and at the times of the births of the children, and by his recognition of them, in every way in which recognition could be shown, as his own.

It is also to be observed that there is an improbability that the Ranees as Hindu women (presumably as sensitive as men on the subject of caste) would, notwithstanding it might be for their interest to do so, consent to the production of infants of low or unknown caste as the offspring of their own bodies.

It will be convenient to postpone the consideration of the incidents which occurred subsequently to the time of the births until the case on the other side up to that time has been discussed.

The case of the Appellant may be said to open with the evidence of conversations which, if believed, disclose the designs which, it is alleged, were afterwards carried into effect.

Burra Lall himself says he had a conversation with Ranees Luchan and Komul before they left Palkote, in which they told him that Gopal Sahee and Mahal Sahee would take them to Bhowro, "for this reason, that in such a time we had no children, and there was no hope of our having any, and that they intended to take us with the Maharajah to Bhowro, and to cause the Maharajah to marry a fifth wife on the way; and they said that if there was no issue by this marriage, too, then they would bring in a child of another caste, and spread a report that the Maharajah had a child." When asked in cross-examination "whether the Ranees gave any reason why Gopal and Mahal Sahee should reveal to them such a nefarious design," his answer is, "the Ranees told me at the time that they show this reason, that by there being children [it was said] you would be the mothers of children, the son would be Rajah, and you also would thereby benefit, for you could do as you pleased." He says the Burra Ranee, the second Ranee, his two brothers, Manjhill and Chota Lall, and two or three other relatives were present during this conversation.

Neither the Burra Ranee nor the second Ranee has been called to support this statement. Manjhill died before the inquiry. Chota Lall was examined, but all he says of the conversation is, that the Ranees told Burra Lall that Gopal Sahee and Mahal Sahee were enticing the Maharajah away.

Chota Lall went with the Maharajah and the two Ranees to Bhowro, where he remained until the end of Bhadoon. He again went to Bhowro in the beginning of Kartick and stayed to the end of Pous. He speaks of another conversation with the Ranees. He says that when leaving Bhowro "the Ranees asked him to stay, saying it would be better for me to remain. I said I could not as I had heard my child was ill. The Ranees told me these persons, that is, Gopal Sahee and Mahal Sahee, will make arrangements for searching for children, and that if I remained it could not be done." He continues, "I told the Ranees this was not proper; but they said 'what can we do, we are residents in the inner apartments.'" He adds, "I never saw either of them in the family-way as long as I remained." On cross-examination he says he did not speak to the Maharajah about this conversation, but he told Gopal and Mahal Sahee they ought not to do so, who said it was false, and that nothing of the kind would be done. He also states that he and his brother, Manjhill, went to Bhowro after the birth of the children, and told Ranee Luchun "Such an act was disgraceful. Why have you done this? She replied, 'You know all about it; why do you ask me?'"

It is difficult to give credit to what Burra Lall states the Ranees said to him before leaving Palkote; and the account of the conversation given by Chota Lall is very different. Chota Lall, indeed, says that Burra Lall was on good terms with the Ranees until they left Palkote, and that the dif-

ferences commenced afterwards ; but the evidence shows that this was not so, especially with regard to Komul, who is said to have had a superstitious dread of Burra Lall. The Judicial Commissioner was of opinion that although some conversation may have taken place, the nature of it was not satisfactorily proved, and their Lordships agree with him.

The conversations which Chota Lall says he had with the Ranees stand on different grounds. He was apparently on good terms with them both at Palkote and Bhowro, and if they felt they were going to be drawn into a scheme they disapproved, he was a person to whom they might have confided their apprehensions. These conversations, however, are wholly denied by the Ranees, and the probability of their having taken place must depend, as many other incidents in the story must depend, on the general credit to be given to the one side or the other. It certainly, however, seems to be highly improbable that if, as the Appellant's case assumes, the conspiracy was hatched before leaving Palkote, Chota Lall should have been invited or permitted to go with the party to Bhowro.

Gopal Deo proves consultations more directly connected with the supposed plot. He describes himself as the nephew of Nuttobur Deo, who was one of the managers of the Maharajah's affairs, and who died before the trial. The witness says the affairs of the Maharajah were managed by Gopal Sahee and Mahal Sahee under the advice of Nuttobur Deo and Raney Kopilnath Roy. These four men are among those who are alleged by Burra Lall in his petition to be the Maharajah's advisers. This witness is also connected with Mahal Sahee, his brother having married Mahal's daughter. Judging only from his position, therefore, he would not appear to be a partisan of the Appellant. He says he was with

the Maharajah's party at Nagpheni, and that when there his uncle, Gopal Sahee, Mahal Sahee, and Kopilnath, consulted together, saying, "we ought to get a child for the Maharajah," and they decided on getting him married there to a fifth wife. If this be true, it would indicate the belief of these men that the Maharajah was not incompetent to beget children. Passing on to what took place at Bhowro, the witness said he lived there with his uncle, and was present when the above-mentioned four persons determined that arrangements should be made for five or six pregnant women, so that a child might be obtained, "otherwise the Maharajah would get impatient and go away somewhere else." He also says they proposed to him to let them have the child to which his own wife expected to give birth, saying to him "you will get land," but he refused. He says they wanted a child of the Maharajah's caste. After he had refused they spoke to Gunguath Sahee, who expected a child and consented to give it.

The witness then introduces the origin of the alleged mission of Moorli Brahmini and Sowayah Bhundaree to Sumbulpore, which resulted, it is said, in the introduction of Gudaee and Oormilla's son into Ranee Luchun's apartments. He says Moorli proposed that if they would supply her with funds she would go and procure a child "from some other country, either of the Brahmin or the Maharajah's caste." He says this was decided upon, and that funds being supplied to her she started for Sumbulpore with Sowayah Bhundaree. The mission, if it was entrusted to these persons, certainly did not result in procuring a child of the specified caste.

From the order in which the facts are stated to have occurred by this witness, it would seem that the proposal was made to Gungnath to give up his expected child before the suggestion to send

Moorli Brahmini to Sumbulpore was discussed, but on cross-examination he says it was at the end of Magh that Gungnath was first asked to give up his child.

To follow the mission of Moorli Brahmini and Sowayah to Sumbulpore, it is said that they there found Gudaee and his mistress, Oormilla, who was then pregnant. Both these persons are witnesses for the Appellant. They state that Moorli Brahmini had formerly lived in Sumbulpore, and had then been their neighbour. No distinct arrangement was come to about the child at Sumbulpore, but Moorli induced Oormilla and her husband to accompany her to Umberah, holding out the prospect of the child being taken, and promises of lands and villages to the parents.

After their arrival at Umberah, Gopal Suhee came to Gudaee and Oormilla, and, they say, made an arrangement for the child. He told them that if they would give the child, he would provide for them; and upon Gudaee's asking him why, having children of his own, he wanted it, he said he wanted it for some one else, "what does it matter to you as long as you are provided for." After further parleying, Gopal Sahee promised to give Gudaee 1,000 rupees and two villages, and he then consented to part with the child.

After staying for some time at Umberah, Gudaee and his mistress were taken to Gurrurpo, a village near Bhowro, and lodged in the house of Munga Bhuggut. Oormilla, it is said, gave birth to a son there, about ten o'clock at night, Phoolloo being the midwife, and a woman called Radha Dursahee being also present. It is said that Oormilla had been in the pains of labour from seven o'clock, that Munga Bhuggut went to Bhowro and returned with Golap Sahee, Moorli, and Sowayah, that when they came, the child, two or three hours after the birth, was placed in

a basket by Dursahee and taken away, Golap Sahee, Moorli, Sowayah, and two or three Dhungarins going with it. Gudaee says that on the sixth day after the birth of the child Gopal Sahee, Moorli being with him, came to Gurrurpo, and gave him leave to go away; giving him at the same time 300 rupees, some pieces of cloth, and a gold ring, and telling him "you will receive all which has been promised when you come afterwards." He says that Moorli gave him in addition 10 rupees for travelling. Gudaee admits that he did not apply to Gopal Sahee for the balance of what had been promised to him for two years, and says that when he did demand it, Gopal Sahee told him that he owed him nothing, and would give him nothing. He says that he then went and complained to Gopal Deo, who took him to Palkote, and introduced him to Burra Lall, to whom he told his story.

In cross-examination he says that he told Burra Lall because Gopal Sahee would not give him what he had promised, and in answer to further questions says, that if he had received the money and villages, he should not have told Burra Lall or anybody else, or even the Court, and in that case, if called as a witness, would have sworn that the child was not his.

It is obvious that credit could not be given to the witnesses Gudaee and Oormilla, who confess their participation in a great fraud, unless their testimony was corroborated. Some parts of it too are most improbable. It is incredible, if Gudaee, who was a poor man, had really the 700 rupees owing to him and the promise of two villages, that he should have waited two years before he made any demand respecting them.

Again, the credit of this witness is directly shaken by his acknowledgment that if he had received what he had been promised, he would have sworn the child was not his.

Two chowkeedars and another man say they met the party carrying a child in a basket. One of the chowkeedars says that when he inquired about the child, Gopal Sahee told him to go away, it was no business of his, but he says Sowayah's wives told him "they were taking the child to the Mehal," and in cross-examination he adds, "to be made a Doobraj." If this be true, the fraud was openly proclaimed to those who casually met the party in the road.

Sowayah is dead, but his two wives were examined.

Reori says that she and her co-wife, Lungri, with Sowayah, were in Ranee Luchun's service at Palkote, removed with her to Bhowro, and remained there until they went with her, after the Maharajah's death, to Bussargurh. She says she took supplies of food to Gudae and Oormilla whilst they were at Umberah. She describes the bringing of the new-born child from Gurrurpo to Bhowro, and the meeting with the chowkeedars on the road. This witness says many women servants came from Palkote with Ranee Luchun, and that her co-wife's and her own occupation was to clean pots and pans and wash the floors.

The other wife, Lungri, gives evidence to the same effect.

Another witness is Dulgeriah, who says she was hired by Ranee Luchun on her arrival at Bhowro, and stayed with her until she left it. She says, "I was always present in her service day and night, and assisted her when she bathed." The Ranee was never pregnant, and never gave birth to a child. She describes the new-born child being brought. She says the child was brought at midnight, and she was told by the Ranee to sit up and await its arrival; and that four or five women servants from Palkote also sat up.

This witness added that some of the women

who came from Palkote remained with the Ranees. Many of the Appellant's other witnesses asserted that none of the Palkote women remained.

Two palkee-bearers, Judha and Dele, who say they came with the Maharajah from Palkote, and remained in his service until his death, state that they saw the party with the child in a basket when they came into the courtyard of the house, and that the child was taken into the inner apartments. But these men have destroyed their own credit by professing to have seen in the inner apartments what it is impossible to believe they would have been permitted to see.

The above witnesses are all who give direct evidence of the alleged fraud in Ranee Luchun's case.

Gopal Sahee and Moorli Brahmini have denied any participation in it.

Moorli says she had been constantly in the service of Ranee Luchun for fourteen years. She admits that at one time she lived at Sumbulpore, but denies all knowledge of Gudaee and Oormilla, and of the supposed plot.

A woman of Gurrurpo, called Pholloo, the name of the midwife who is said to have attended Oormilla, was also examined. She says she is not a midwife, and never acted as one.

In this conflict of evidence the entry in the rozinamcha, on the leaf now found to be interpolated, containing the entries of the 26th Cheyt, appeared at the trial before the Judicial Commissioner to give decisive confirmation of the story put forward by the Appellant. The entry was as follows :—

“Hookumnamah and receipt, dated this day, through Baboo Gopal Sahee and Sowayah Bhundaree, for payment to Mussumat Oormilla and Guddye of Sumbulpore Rs. 310.”

This sum corresponds with Rs. 300 and travelling expenses Rs. 10, which Gudaee says he received on this day. Upon the remand the

hukumnamahs (orders) which were presented to and signed by the Maharajah for the payments of this day have been proved. None contain anything to the effect of this entry; but one of the hukumnamas contains entries of presents to musicians, dancing girls, &c., which added together make up exactly this sum of Rs. 310. The book of the khazanchi, Bhunjun Lal, containing the entries of the 26th Cheyt, corresponds with the hukumnama. The High Court came to the clear conclusion that this very important entry was written on an interpolated leaf, and was in fact a forged entry.

The entry of the 20th Magh is not so conclusively impeached. That entry is, "Paid to Moorli Brahmini and Sowayah Bhundaree for going to Sumbulpore for urgent business, Rs. 30." The hukumnama of that date was produced on the remand, in which is the following entry:—"Sent to Palkote for the expenses of the Hussoar Rs. 30." This figure tallies with that in the Bhowro book, and is the only one in the hukumnama which does. This raises a strong inference that the entry in the books has been tampered with, and the High Court has found that it is one of the entries which have been altered and added to.

The direct evidence in the case of the other minor, Juggut Mohun, who is said to be the son of Gungnath and his wife Ugundh, may be introduced by again referring to the testimony of Gopal Deo. These persons lived at Munho, and are of the Nagbunsee caste. Gopal Deo says Ugundh is related to him, and that he saw her on two successive days at the Maharajah's house at Bhowro just before her confinement. According to his statement she then felt some misgiving of the imposture to which she was to be a party, and asked him, if Burra Lal became heir, and there should be confusion at a future time, "what will be

our fate," and he told her "that Gopal and Mahal " Sahee were the principals, and that if anything " happened they would be affected, not her.' If this be true, this witness attempted to quiet her scruples, and was then abetting the fraud.

Three witnesses from Munho, whose names are Goinyha, Rama, and Jherroon, say they were tenants of Gungnath, and that four or five years ago they carried Ugundh in a dooly from Munho to the Maharajah's house at Bhowro, that she was then pregnant, and that twenty or twenty-five days afterwards they carried her back to Munho.

Three Munho women say they went with Ugundh to Bhowro, and stayed with her there, and were present when she was delivered in Ranee Komul's apartments. Their names are Luchmee, Chumni Mai, and Kurmi. It is somewhat remarkable that if a fraud was about to be practised, these women, who were in no way connected with the Maharajah's household, should have been allowed to be present, and no precautions taken to ensure their silence. They agree, however, in the main incidents of their story, and speak to Ugundh's giving birth to a son in Ranee Komul's apartments. They say that, besides themselves, only four Bhowro women servants, and Ranee Luchun, and a midwife whom they did not know, were present; that as soon as the child was born it was announced to those outside the female apartments, and the cry was raised, "a Koonwur is born." They say Ugundh was carried back to Munho in a palkee on the next night, and that trinkets were given to her and some money, how much they cannot say, but they do not profess to have got any present themselves.

The four women of Bhowro, viz., Mungri, Besun, Nunki, and Umrit, already mentioned,

say they became the servants of Ranee Luchun soon after she arrived at Bhowro, and remained with her until she went to Bussargurh. All these women speak to the coming of Gungnath's wife in a palkee, to her remaining fifteen or twenty days in Ranee Komul's apartments, to her giving birth to a son there, and to her leaving the house the next night. They say no one was present at her confinement except themselves, Ranee Luchun, the three women from Munho, and the midwife. They say the midwife and wet nurse were brought by Mahal Sahee. Mungri denies that any servants were brought by the Ranees from Palkote, the others say several came from Palkote but returned there. It is plain that these witnesses are not speaking the truth on this point, for it is abundantly proved that some Palkote servants not only came to Bhowro, but remained there.

The direct proof of the child being Ugundh's is sought to be confirmed by the evidence of witnesses whose testimony, from their relationship to Gungnath, is strongly relied on. Mussu-mut Hurinath Kowur, the widow of his eldest brother, Oodeynath, says she had for a long time and still lived in the same homestead with Gungnath at Munho, receiving maintenance from him. She says she constantly saw Ugundh, and was present at the birth of all her children, except the eighth. She says, when Ugundh was with her eighth child and expecting its birth, Mahal Sahee took her to Bhowro, and that two Munho women went with her, viz., Chumni Mai and another, whose name she did not know. She further says that after the child's birth Gungnath got a village called Kurango, and the pottah of Mouzah Kimbo, which she says was an ancestral property, and continued to receive money and clothes.

Radhanath Kowur, the wife of Sreenath Sahee, the half-brother of Gungnath, gives evidence to much the same effect.

Anund Kowur, the widow of Byjnath, a cousin of Gungnath, gives evidence of Ugundh's pregnancy, and of the child being born whilst she was absent. This witness says the village of Kunbo, which was an ancestral property, was attached on her husband's death by Burra Lull, and that Gungnath and Sreenath are her heirs.

Sreenath Sahee, Gungnath's half-brother, says he was at Bhowro whilst Ugundh was there, and that he saw her at the Maharajah's house. He states facts which, if true, undoubtedly corroborate the case; but on cross-examination he relates, for the first time, conversations with the Maharajah himself of a most remarkable kind. The witness says he told him he was doing wrong in taking his brother's child, and that the Maharajah on that occasion promised to give him and Gungnath 2,000 or 4,000 rupees to let him have the child, so that Burra Lull should not succeed to the Raj. The Judicial Commissioner has made a note upon this part of the witness's evidence—"Truth of this very doubtful." Further on he says, "the Maharajah asked my brother "before me to give him his son. He asked for "the child to make his son." It is not possible to give credit to these conversations. It is not suggested by the general case of the Appellants that the Maharajah personally interfered in the supposed frauds, and these conversations, if true, would entirely destroy the Appellant's theory that the Maharajah was a mere dupe in the affair. If these statements had not been made this witness, from his position, might have passed as a witness of credit, but he is plainly a partisan.

Gungnath has been called as a witness for the

Respondents. He denies that his wife was ever in the Maharajah's house at Bhowro, and that he is the father of Juggut Mohun. He says his wife gave birth to a daughter in Magh 1922, Sumbut (1st January 1866), who died when 12 days old. He denies that the women Luchmee, Chumni Mai, and Kurmi ever served in his house, as these witnesses had stated. He says he is at enmity with Hurinath and Sreenath and his wife. He also says that he went to Bhowro with other Zemindars to make his salaam to the Maharajah, and again went there about a pottah in the beginning of Bhadoon 1923, which would be four or five months after Juggut Mohun's birth. From the account he gives it seems there was a village in the family (apparently the same as that referred to in the evidence of Hurinath and Anund as ancestral); that it had stood in the name of Byjnath, Anund's husband, and that the witness, wishing to sell a mouzah, wanted a mutation of names, by striking off Byjnath's and inserting his own and his brother Sreenath's. He says he paid 1,000 rupees nuzzurana to the Maharajah, which he got by selling a mouzah. There is no doubt the Maharajah made a re-grant of the ancestral village at this time, for the document appears amongst the Appellant's exhibits. It is dated 13th Bhadoon 1923 (6th September 1866), and is a sunnud of release from the Maharajah of certain villages which were possessed by the ancestors of Byjnath deceased, to Gungnath and Sreenath, his full brothers, to be held by them as heretofore on a fixed rent of 157 rupees, on receipt of 1,000 rupees, the two brothers finding maintenance for Byjnath's widow Anund. It appears that this sunnud was registered on the 5th October 1866. Unless the value of these villages greatly exceeded the premium and rent.

of which there is no proof, or the premium of 1,000 rupees was not paid, no inference unfavourable to Gungnath arises from this grant, and it is to be observed that Sreenath shared whatever interest is derived from it.

Ugundh has not been examined. No explanation of her absence was apparently asked for or given.

Panday Bhopal Rai (Appellant's witness) says he saw Gungnath and his brother Sreenath at Bhowro ten or twelve days before Juggut Mohun's birth, and that they "put up" at Mahal Sahee's, but he saw no women from Munho. This witness was employed as a writer in the Maharajah's service, and says he refused to remain in it when Burra Lall was manager. He returned to it afterwards. He speaks of the Maharajah as being sane, and of his attention to business. This witness does not prove any specific facts relating to the birth of Oormilla's child; but he says he "suspected the child," because "he had ascertained" at the time of the ceremonies performed during pregnancy that Ranee Luchun was not pregnant, having, as he says, heard from the women and the Maharajah himself that she was not pregnant. It is obvious that, if this evidence is true, the Maharajah, who had directed the ceremonies to be performed, and was present at them, must have been a party to the fraud. This witness also says that after the child's birth the Maharajah on one occasion said to him, "My line is destroyed, my "dhurum (virtue or religion) is destroyed." And when asked what that meant, he answered, "I understand him to mean he had doubts as to "the Doobraj." If the former statement be true he must have had more than doubts. The witness admits that he did not on that or any other occasion tell the Maharajah of his own doubts. He was directed by the Maharajah to

insert the Doobraj's name in the pottahs, and this was always done. There is apparent fairness in the evidence of this witness, but he could not have given it in a satisfactory manner, for the Judicial Commissioner says he was one of those who he thinks knew what was being attempted, which, he thinks, accounts for "a good deal of the reticence and prevarication in their evidence." This man was an important witness on the inquiry into the state of the books, and the Judges say "his evidence was certainly very unsatisfactory and unreliable."

Again, an entry was falsified and used to support the alleged case as to Ugundh's child. Ugundh is said to have left Bhowro on the 20th Bysack. An entry in the Gya book of that date is, "Present on leaving to Ugundh Kowri, Rs. 112."

The High Court has found that the original entry was, "Present on leaving, 12," and that the words "Ugundh Kowri" and the figure 1 have been fraudulently added to it. In order that the figures might still agree with the total expenditure of that day, the price of a horse was altered from Rs. 300 to Rs. 200. It has been found by the High Court that leaves of the rozenamcha kept at Bhowro, containing the entries of the 20th Bysack, have been designedly abstracted; but the hukumnamas and the khazanchi's book, and also the terij of the Gya book, were produced on the remand, and found to tally with the original entries as above stated.

Their Lordships will now proceed to the evidence of what happened subsequently to the births of the children.

It appears that the Maharajah was sitting up in his cutcherry on the night Pertab Oodey was born, expecting the birth; that Gopal Sahee, Mahal Sahee, Nuttobur Deo, Indernath Lall, and many others were with him, and that on the birth

being announced the Maharajah ordered drums to be beaten and guns fired. There is no doubt that this order was given, but the evidence differs as to the time the Maharajah was waiting for the birth, and as to the persons who were with him. The Respondents' witnesses say that Gopal Sahee was in the cutcherry, and could not, therefore, have gone to Gurrurpo.

It is clearly proved that a boy was brought from Luchun's apartments with the navel string just cut, and other appearances of its having been recently born, and that the nundeemook shraud, and the weighing of the child, were performed in the Maharajah's presence by Purmessuranund Pundit.

These and other incidents are proved by an important class of the Respondents' witnesses, viz., the poorohit and the gooroos.

Gobind Ram says he was the poorohit both of the Maharajah and Burra Lall. His evidence as to the pregnancy has already been commented on. He says information was sent to him of Pertab Oodey's birth, and that on the previous afternoon he had been told to be in attendance, that the moment of the child's birth might be ascertained. He did not, however, get to the Maharajah's house until 5.30 a.m., after the child was born, and did not then see it. He says he performed poojah at the chuttee and burrhee, but was not at the ekaisi, because there was no work for him there. He did not eat at the ceremonies, and says that he had not eaten at the Maharajah's since he left Palkote, because he had many fasts to keep.

Perrmessaranund Pundit, who was in the Maharajah's service, his duty being to ascertain auspicious days, says the Maharajah told him Luchun was about to be confined, and that he was to be present to note the moment of the birth; he then went to his lodgings, was sent for

in an hour, and was told on his coming back by the Maharajah that the Ranee was in labour, and to remain, as there was no certainty when the birth would happen. He says he remained the whole night, and about 4 a.m. the birth was announced. He says the Maharajah sent for the poorohit, but he delayed in coming, and therefore the witness officiated at the weighing.

Baboo Gunessaram, the Maharajah's gooroo, says he received a letter informing him of Pertab Oodey's birth, and went to Bhowro seven days afterwards. He performed the burrhee ceremony by the Maharajah's directions. There was a feast. The Brahmins eat, but he says he was ill, so did not eat.

Another gooroo, Suda Soonath Deo, who says he is gooroo of all the Nagbunsees, states that at Benares he received a letter from the Maharajah expressing joy at the births of two sons, he went to Bhowro, and the Maharajah brought out the Doobraj and Koonwur and showed them to him. He then, according to custom, made up the pugree for both, and he again placed the pugree their heads after the Maharajah's death.

Sham Chund, who holds the office of Adhuraki, or head of all the priests in the Maharajah's house, says he was present in the cutcherry with the Maharajah and others from two to four in the morning, and that at the latter hour Pertab Oodey was born, and he saw the child. He says he attended the chuttee, burrhee, and ekaisi, and eat when they took place. There is a conflict in this evidence and that of the poorohit on one point. He says the poorohit also eat on all three occasions. The poorohit himself says he was not at the ekaisi, and did not eat at the other ceremonies.

It seems to be customary to celebrate the ekaisi by a great feast, to which all relatives and other guests are invited. This custom appears

to have been followed at the ekaisi of each of the minors. The Respondents' witness, Juggernath Rai (the nephew of Bhopal Rai), says,—“Two
“ or three thousand letters to officials, Rajahs,
“ and relations were despatched. About three
“ or four hundred relations and thakoors attended
“ on the occasion.”

Bhopal Rai and Seetul Pershad, witnesses of the Appellant, confirm the fact that invitations for the ceremonies were issued, and say they were sent out by the Maharajah's orders. There is no doubt that a large party of relatives and friends attended the ekaisi on the twenty-first day.

Kopilnath Sahee, a witness for the Respondents, says forty or fifty relatives and connections were present, but the feast was put off until the following day, when it took place. This postponement is said to have been caused by the doubt entertained by many of the relatives as to the legitimacy of the child, and their apprehension that it would be an acknowledgment of his being the Maharajah's son if they partook of the feast on the twenty-first day.

There is much general evidence on each side as to the relatives eating at the feasts, and there is apparent exaggeration on both sides.

The refusal of the relatives to eat with the children themselves has been made a prominent point in the Appellant's case, and, no doubt, it is one which, to the mind of Hindoos, is of great importance.

It is alleged in the plaint that no kinsman ever took his meal at the same table with Pertab Oodey, and a great deal of evidence was given on the issue thus raised. It appears to result from it that no relative, who has been called as a witness on either side, says he has eaten with the children, except one, Indernath Sahee.

Many of those called by the Respondents account for it by saying they have had no opportunity of doing so, and that they would eat with them if the occasion arose. Mr. Justice Kemp says that he attached no importance to the fact of relatives not having eaten with the children, as on account of their age it was not likely they would have been present at feasts, but the impression left by the evidence certainly is that reluctance was felt by many of the relatives to eat with the children; but this circumstance cannot be pressed further than as showing that a doubt existed as to their legitimacy.

The evidence with regard to the ceremonies in Juggut Mohun's case is much the same as that in the case of the elder boy, and need not be particularly referred to. The witnesses are for the most part the same, and the credit to be given to their testimony on the one side and the other depends on the same considerations.

It was mentioned in the judgment ordering the remand that the birth of the first boy was notified by the Maharajah, in several petitions, to the officers of Government on the day following the birth, in which the child is styled "Doobraj," the usual title of a Maharajah's eldest son. Similar notifications were made on the birth of the other boy.

It also appears that a petition of the Maharajah, recommending his sons to the protection of the Government, was presented two days before he died. The Judicial Commissioner has found that the Maharajah was not sensible of what he was doing when he signed it. But as some reliance has been placed by the Judges of the High Court on this petition, it is necessary shortly to refer to the evidence relating to it.

The Gooroo Gunessaram, who was present when it was signed, says, "The Maharajah was

“ in his senses, but not fully so, he was very ill. “ The petition was read to him, he signed it, and “ said it was good.” The poorohit says that he was very weak for two or three days before his death, and was “ sometimes sensible and some- “ times not.” The Native Doctor, Nujeeb Ali, says he was in his senses, “ for I asked the Maha- “ rajah, Do you make the petition and do you sign “ it ?” Upon which he said the word “ Yes,” and lowered his head. It appears the Maharajah’s illness was jungle fever, in the latter stage of which the doctor says that insensibility comes on. Chota Lall says the Maharajah was speechless three or four days before he died.

Unquestionably if it had been proved that the Maharajah fully comprehended the purport of the petition, the acknowledgment made when death was near would be entitled to great weight. But their Lordships cannot think that this is satisfactorily established. The evidence at the best shows that he was at this time conscious only at intervals, and was approaching, if he had not reached, the state of insensibility which, it is admitted, attended the last stage of his illness.

The failure, however, to establish the Maharajah’s perfect comprehension of the purport of this petition does not diminish the force due to his previous acknowledgment of the children.

Immediately after the Maharajah’s death Per- tab Oodey was invested with the tilluk by the poorohit and gooroo.

On reviewing the affirmative case of the Ap- pellant, one cannot fail to be struck by the number of the Maharajah’s officers who are said to have been engaged in the conspiracy, and the still greater number of subordinate agents and persons employed in carrying it into effect ; as an instance of the latter class may be mentioned the four women of Bhowro, and the three of Munho, who say that they all, and a midwife, were pre-

sent when Ugundh gave birth to a son in Ranee Komul's apartments. The absence, too, of any precautions to conceal the occurrences or to prevent the disclosure of them, is certainly remarkable. These improbabilities were present to the mind of the Judicial Commissioner, who thought they might be accounted for by its being supposed that concealment was not possible. But still some amount of caution, and some efforts to preserve secrecy, might have been expected from the principal actors in such a plot. The Judicial Commissioner came to the conclusion that "all those in the Maharajah's service, whether great or small, were more or less in league together, and aided and abetted the conspiracy," and that Gopal Sabeer never calculated on "a split." This is certainly a very sweeping condemnation, but it is difficult to understand how the principal actors could have supposed that secrecy would be observed by the large number of inferior servants, and by the numerous persons of low degree, outside the household, who are alleged to have taken part in the conspiracy.

It was suggested on behalf of the Respondents that the object of the Maharajah might have been safely effected, without resorting to the supposed frauds, by adopting a son, and this consideration was one of the reasons relied on by the Judges of the High Court. It was stated at their Lordships' bar on the first argument on behalf of the Appellant, that it had not been customary in the Maharajah's family to adopt sons. No evidence had been given on the point, but the Judges seemed to have satisfied themselves that there was nothing to exclude the general rule of the Hindoo law. And in answer to the question on this subject, sent to the High Court on the remand, its report is,—“That whilst, on the one hand, no

“instance of any adoption ever having taken
“place in the Maharajah’s family could be
“pointed out; on the other hand, it was not
“shown that there ever had been any necessity
“for the exercise of such power of adoption, or
“that there was any koolacher or family custom,
“which would have neutralized this power and
“prevented there being an adoption, had any
“necessity for adoption arisen.”

The High Court has also reported that the Secretary of the Government of Bengal had stated that no trace could be found of a petition having been presented in 1862 by the Maharajah, praying that he might be allowed to adopt a son as alleged in the Appellant’s Petition of Review, nor of any reply to such petition. It is, however, unnecessary to discuss these findings, their Lordships having come to a decision independently of considerations arising from the power of adoption, if it existed.

Upon the whole case, therefore, considering the improbabilities which affect the affirmative case set up by the Appellant as to the births of the children, and the untrustworthy character of the evidence adduced in support of it, their Lordships are of opinion that that case has not been satisfactorily established. It has been strongly urged that though the Appellant’s case may be false, it does not follow that that of the Respondents is true, and undoubtedly this is so. But, eliminating the Appellant’s affirmative case, and rejecting as untrustworthy the testimony of those of his witnesses who were concerned in supporting it, the remaining evidence is insufficient to overthrow the *prima facie* case of the Respondents, which rests upon the presumptions arising from marriage, cohabitation, and the acknowledgment of the children by the Maharajah, and upon positive evidence of their births. It is impossible not to feel that the discovery of the fraudulent entries in the books has thrown

a cloud upon the truth of the whole case of the Appellant, which there is not enough of clear and independent evidence to dispel.

Their Lordships recognize the great difficulty which surrounds the decision of this appeal. They have not been unmindful of the improbability and the weakness in important respects of the Respondents' case ; but, in the face of the presumptions referred to, they would not be justified, unless upon clear and conclusive evidence, which they do not find, in reversing the unanimous judgment of the High Court, and declaring that these children, whom the late Maharajah always acknowledged to be his sons, are not his. They will therefore humbly advise Her Majesty to affirm the decree of the High Court. The Appellant must pay the costs in India occasioned by the remand, and the costs of this appeal.