Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal and Cross-Appeal of Nana Nurain Rao v. *Hurree Punth Bhao and another, from the Sudder Dewanny Adawlut for the North-Western Provinces of Bengal: delivered the* 16*th July*, 1862.

Present:

LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

THE question in the original appeal in this case is as to the genuineness of an instrument alleged by the Appellant to be the will of Ram Chunder Punth, deceased, the father of the Appellant and Respondents, the Appellant being the eldest, and the Respondents the two younger sons of the alleged testator. The Zillah Court of Cawnpore decided in favour of the will. The Sudder Adawlut of the North-Western Provinces reversed that decision, but held that certain property which the Respondents alleged to be a part of their father's estate belonged to the Appellant.

Against the decision on this point, and against a determination of the Court with respect to the amount of the alleged testator's property, with which the Appellant is to be charged, there is a cross-appeal by the Respondents.

Ram Chunder Punth in his lifetime was Soobadar, an officer of rank and distinction in the service of the Maharajah, the ex-Peishwa. He had accumulated a large property, and had invested some part of it, not very considerable in proportion to the whole, in the purchase of land.

He had two wives and three sons, and at least one

daughter. He had a residence at Bithoor, where he seems to have kept a large establishment of servants, and he had a smaller house—a bungalow, as it was termed by one of the Respondents' counsel, at Cawnpore—at the distance of about ten miles from Bithoor.

He appears to have lived on terms of great intimacy with many Europeans resident in his neighbourhood, and especially with Mr. Morland, an English gentleman who held some official situation at Cawnpore. It is in evidence in the case, that the eldest son, the Appellant, had the general management of his father's affairs, and that differences had prevailed in the family between the sons, the eldest, as it is said, acting with harshness towards his younger brothers.

The Soobadar died on the 22nd July, 1853, and on the 10th August, 1853, the Appellant presented a petition to the Judge of the Zillah of Cawnpore, in which he described himself as eldest son, heir, and executor of Ram Chunder Punth, Soobadar. The petition stated the death of the Soobadar, and that when in his perfect senses he constituted the petitioner his executor and proprietor of his effects, under a will signed and sealed by the deceased, and bearing date the 24th January, 1852; that during the lifetime, and to the day of the death of the deceased, the petitioner held possession of all the real and personal estate and effects, in subordination to the deceased, and regulated and managed all his affairs, as people generally were well aware of, and of which the Court was equally well informed. He then stated that he found that he could not realize the assets of the testator without obtaining a certificate of administration under Act 20 of 1841, and he prayed a certificate accordingly.

He appended to his petition the alleged will, with translations in English and Persian, and added the names of the four attesting witnesses and two persons by whom the translations were alleged to have been made under the testator's directions, one an European named Pownes, and the other a Hindoo named Moheeooddeen.

On the 12th August the Respondents presented their petition, alleging that the will was a fabrication of the Appellant, and that they were joint heirs with him.

Witnesses were examined for and against the will, though it is said that the Judge improperly declined to examine some persons who were tendered by the Respondents for examination; and on the 8th of September, 1853, he ordered certificate of administration to be granted to the Appellant.

On the following day—the 9th September—the Respondents filed their plaint in the Zillah Court of Cawnpore against the present Appellant, claiming two-thirds of the property, real and personal, of their deceased father, from the Defendant.

Evidence was gone into on both sides, and of course it was for the Appellant to establish the will.

It purported to bear date the 24th of January, 1852.

The effect of it, according to the English translation, as made in the Zillah Court, was to declare that the testator was seventy-five years of age; that his eldest son had two sons and one daughter; that his younger sons were childless. It then proceeded to express his hopes that his wives and his sons would all live amicably together, and that all would look upon and consider his eldest son as the head of his family after his death.

He then bequeathed the whole of his property, real and personal, to his eldest son, directing him to provide for both his wives, and to pay them proper respect, and to provide also for his younger brothers, and for the testator's dependents; and he declared that he had made these provisions with a view to prevent dissensions in the family, and to enable them to live in peace and harmony after his decease.

If, however, the younger sons should not feel disposed to abide by these directions, and should insist on a separation from the family, then the eldest son was to receive the rents of two villages mentioned in the will, and pay over the proceeds to his younger brothers, as such proceeds were from time to time received; and he was further to pay to each the sum of 25,000 rupees.

The testator gave 13,000 rupees for the benefit of his granddaughter, the daughter of the Appellant, on her marriage, and allotted 40,000 rupees for what he calls the customary outlay in the first year after his death, including religious pilgrimages.

In the event of a pension which he enjoyed from the British Government being continued to his

family there is some question as to the effect of the bequest, the first English translation provides that in whatever proportions the British Government might allot it, the sons should enjoy it.

The testator's property has been estimated by the Sudder Court as of the value, in the whole, of 5 lacs of rupees, or in English money of 50,000*l.*

The value of the two villages given to the younger sons is estimated at 5,000*l.*; the two legacies of 25,000 rupees would amount to as much more. They would take, therefore, 10,000*l.*; the granddaughter 1,300*l.*; the funeral and other expenses 4,000*l.*; and there would remain a sum of 35,000*l.* for the eldest son charged with the maintenance of the wives and dependents of the testator.

There seems nothing in this will which to English notions would appear unreasonable. The eldest son was to maintain the rank and position of the family; he had issue which the younger sons (who had arrived at the age of manhood, and appear by the will to have wives) had not, and the provision seems to be such as a prudent testator might be supposed very likely to make who was inclined to found a family.

The evidence in support of the will is singularly strong.

We have first the evidence of Apa Lagoo, who wrote the will in the Mahratta character. He says, "it is all in my handwriting down to the words indicating the Arabic month, at the end which were inserted by the Soobadar himself. The date is 2nd Rubee-ool-Akhir, and underneath it is written, Magh Soodee Teej, in my handwriting. Under that again is the Soobadar's signature. This will was written under the Soobadar's orders. It was planned two days before, and it was reduced to writing on the 24th of the month."

He then proceeds to depose to the signature of the will, and its sealing by the testator, and signature by the four attesting witnesses. He says that a draft of the will had been previously made by him, the witness, and the draft, as well as the will, was handed over by the testator to the Appellant. He says that the two translations were made four days afterwards.

It was remarked upon as singular that Apa Lagoo

was not an attesting witness to the will; but we agree with the observation of the counsel for the Appellant in his reply, that, if the will was not genuine, the person who had written it would most probably have been made a witness in order to make it more difficult for him to betray his employer.

This witness was in the service of the Soobadar sixteen or seventeen years, employed in writing letters for him. He seems to give his testimony very fairly. He says that the will was made in favour of the Appellant only because he was the eldest son, for the Soobadar was not displeased with the younger sons. He does not know whether the younger sons were informed of the will or not; but they were not informed of it in his presence.

Three of the attesting witnesses to the will, Byjaba, Sookharam, and Dinkur Punth, all give the same account of the transaction, not as we too often find in these cases all in the same words, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance and that variation in unimportant details which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story.

Now who are the witnesses, and are they of a character to attach credit or discredit to their testimony.

The first witness is Byjaba. He says he was a companion of the Maharajah in his lifetime; that he had been in his service from the age of 10 years; that he was in the habit of receiving presents of 500, 400, or 1,000 rupees from the Maharajah, and as a permanency the Maharajah allowed him 2 rupees a-day. He says there was an intimate bond of brotherhood between the Soobadar and himself, and that the Soobadar sent a messenger in a carriage to Bithoor to fetch him to Cawnpore, in order that he might witness his will.

This witness, therefore, appears to be a person in a very respectable position in life—a person likely to be called upon by the Soobadar to take the part which he did in the completion of this instrument. The only objection suggested to him is that he appears to be indebted to the Appellant in a bond for 500 rupees, payable by instalments, a circumstance which cannot weigh much, if anything against his evidence.

The next witness is Sookharam, who was in the service of the Soobadar, and received what we imagine is rather a considerable salary, 300 rupees a-year, and held a confidential situation as keeper of the jewels. No objection was made to him except that he was now in the service of the Appellant.

The next witness is Dinkur Punth, who also appears to be in a respectable position. He was a Resaldar in the Maharajah's employ, and received a salary of 300 rupees per annum. After the Maharajah's death this salary was reduced by the Soobadar to 200 rupees, which he continues to receive from the Appellant.

The remaining attesting witness, Kesho Rao, had given evidence, like the others, in support of the will on the application for the certificate of administration, and he was produced on the present occasion, by the Appellant, and came from Bithoor, to give evidence, riding, as he says, a horse supplied by the Nana Sahib.

Instead, however, of confirming his former testimony, he says that the whole of it was false; that the will was written by the Appellant himself, and that he, the witness, signed it fifteen days after the death of the Soobadar, and that when he gave his former evidence, he was brought into Court in a state of intoxication, having been drugged.

This latter statement is manifestly false. He was examined and cross-examined on the former occasion in the presence of the Judge, and there are no signs at all of confusion in his testimony.

The reason of this man's thus contradicting his former evidence may be conjectured with great probability. He is a Brahmin, and it appears to be contrary to the tenets of the Brahmins that a person in the situation of the Soobadar, having several sons, should dispose of his property by a testamentary instrument in favour of one; they hold it to be contrary to the Shasturs, as appears by the evidence given in this case by the Respondents. The witness says, "Since the month of Katik last (he was examined on 28th March, 1854), all the Brahmins of my brotherhood combined, and put me out of caste for giving such false evidence." He is asked by the Court, "How did the Brahmins learn that you had given false evidence?" He answers, "All the Brahmins are well aware that the will is a fabrica-

tion, nor, indeed, is it the custom or usage of the country that three sons should be masters of the property, and a will be made in favour of only one son without giving notice to the others."

All the circumstances lead to the conclusion that this witness is not coming forward to correct false evidence previously given, but that he has been tampered with, and, under the pressure of his brotherhood, is attempting to destroy an instrument which he knows and had originally declared to be genuine.

The Zillah Judge who saw the witness, and observed his demeanour during his examination, remarks, "I am bound to record the very unfavourable impression given by the manner and appearance of this witness, which was, it seemed to me, shared by all present." After referring to a description of the symptoms of a false witness contained in the Mitakshara, he says, "All these features of uneasiness were very visible, and it seemed to me that he was in fear of some persons in the body of the room who had been sent to watch his evidence;" and he intimates "a strong suspicion that the venal perjury of this witness was mainly relied on to support the present suit."

There remain of the witnesses who have been previously examined, the two translators as they are called, though that expression does not quite accurately express what they did, Moheeooddeen and Pownes.

The former is examined, and confirms in every particular his previous evidence.

He says that two days before the end of January what he calls the translation was made. The translation was made in this manner. The Soobadar held the Mahratee will in his hands, and dictated the terms of it in the Oordoo language, which the witness wrote down after him in the Persian character, and when this was done, the Soobadar signed it; that the Soobadar's object in making this will was solely to perpetuate his name and dignity and rank, and that the Nana might be enabled to protect and support other persons, for the Soobadar always spoke to that effect."

Mr. Pownes is not examined again, but his former deposition is put in, and what took place with respect to him is so extraordinary with reference to

the proceedings of both the Zillah and the Sudder Courts, that their Lordships think it necessary to call it to the attention of the Judges there.

The witness had been examined and cross-examined in the former proceedings, and had given a similar account of the transaction to that given by Moheeooddeen, viz., that the Mahrattee will was held by the Testator, who read it and went on rendering it in Oordoo, while the witness wrote it out in English ; that the witness did not take the original will into his hand to inspect it, but it was on the table, and he should recognize it if he saw it. He does recognize it, and he says "he first made a draft, which he afterwards fair copied, and the Soobadar wrote something at the bottom which must have been his signature, but the witness is not acquainted with that character."

On the 28th of October, 1853, the Appellant presented a petition to the Court containing the following statement :—

"That Mr. Pownes, a Clerk of the Judge's Office, and employed as English translator, had previously deposed on oath to the Will ; that on the 22nd of the present month, six days ago, he had called at the Petitioner's house and proposed terms to the Petitioner connected with a pecuniary reward, which Petitioner declined ; that two days afterwards he sent word to the Petitioner by a trustworthy man to say that he would now give evidence of a different purport, and thus throw obstacles in the suit, if the Petitioner did not consent to his proposal. That on receiving this message the Petitioner was astounded, but that he had done his duty by reporting the circumstances to the Court."

When a charge of this most grave character was brought against an Officer of the Court placed in a situation of great importance to the due administration of justice, which if the charge were true he ought not to have been permitted for a single hour longer to retain, it would naturally be expected that a most strict inquiry would be immediately made by the Court into the truth or falsehood of this charge.

Yet as far as we can discover, not the slightest notice appears to have been taken of it.

On the 17th November, 1853, the petition containing it was ordered to be filed, and on the 27th

January, 1854, on the petition of the Appellant the deposition of Pownes to which we have already referred was ordered to be filed.

How it happened that if the Court did not think it necessary to investigate such a charge against one of its officers, that officer himself did not immediately insist on having his character cleared, it is difficult to understand ; something may have been done, and some explanation may have been given of which no trace is to be found on the record, but if this were so it is to be regretted that nothing of the sort appears.

The Zillah Judge does not seem to have adverted at all to the deposition of Pownes. The Sudder Court do observe upon it, but in terms not very accurate, according to the record as it appears before us: and they object to it only on a ground which is quite untenable, viz:—That the witness did not appear to have been sworn before he was examined, though the contrary appears upon the jurat signed by the Judge himself. They complain that he was not examined in the suit, but they do not take any steps for the purpose of remedying the defect, nor allude to any proceeding as having been taken or as being fit to be taken for the purpose of investigating a matter of so great importance to the due administration of justice as the charge of gross corruption brought against one of the officers of the Court of Cawnpore.

In addition to the witnesses to whom we have referred, speaking to the factum of the will, there is other very important testimony in support of it. There is one person, Baboo Pararkur, whose evidence on this subject is of the greatest weight. If he is to be believed he proves the whole case; he says that he was not present when the will was made; that he was detained at Bithoor by the death of his mother; that the Soobadar informed him of the will soon after it was made on the 6th or 7th of February; that the will was shown by the Soobadar to his younger sons the Respondents, who took it up and read it and then laid it down near the Soobadar, who handed it to the Appellant. He says that those who live in the Bara (which we understand to be the mansion of the Soobadar) must all have been aware of the will; that he has heard from Nurain Rao Apa, a grandson of the

testator, that Dr. Cheek and Mr. Vincent were aware of it; and he states as of his own knowledge that Mr. Kirk, of the Bank of Cawnpore, was also informed of it; and he refers to the letter of which we shall have something to say presently. He says that he was always with the Soobadar, and acted in some respects as his deputy.

Now not only is there no impeachment at all of this witness, but there is strong testimony in his favour. Mr. Morland, on whose evidence against the will the greatest reliance is placed by the Respondents, refers to this person as the confidential agent and constant attendant of the Soobadar, and as one who would have been asked to attest the will if any will had really been made by the Soobadar.

A sufficient reason why he was not asked to attest it appears, incidentally, on his examination, viz., that he was detained at Bithoor by the death of his mother.

This witness Pararkur refers to Mr. Vincent, Dr. Cheek, and Mr. Kirk as Europeans acquainted with the will.

Now with respect to Mr. Vincent, a letter of that gentleman, written to the Appellant in Cawnpore during the examination of the witnesses in the case, is found on the Record. In the petition tendering the letter the Appellant says that Mr. Vincent, who is now in Cawnpore, is ready to attest the contents of it. It amounts, however, to very little, even if the contents were regularly proved, which they were not.

Dr. Cheek, a physician, says that in February, 1852, when he attended the Soobadar professionally he had the following conversation with him:—

One day he was very ill, and I said to him, "The state of your health is such that you should arrange your affairs, though I hope you will recover from your present illness." To this he replied, "I have arranged my affairs," or words to that effect. He never made use of the term "I have made my will," though I was led to suppose he meant this from the above expression he made use of.

This was very soon after the date of the alleged will, and appears to their Lordships important confirmation of the truth of the Appellant's case.

The third European referred to by Baboo Pararkur is Mr. Kirk of the Bank. The communication to

him is alleged to have been made by a letter signed by the testator, which if it be genuine is admitted to be conclusive of the case.

This letter purports to have been written on the 9th of January, 1853, to Mr. John Kirk, at that time Superintendent of the Cawnpore Bank.

It appears that the Soobadar had at some antecedent period taken ten shares in the Cawnpore Bank, and had had those shares entered in the name of his youngest son the Respondent, Hurree Punth Bhao. The Bank, in 1852, was winding up its affairs, and was about to return by instalments their capital, or a dividend upon such capital, to the shareholders. The Appellant had applied, as the manager of his father's affairs, to the Bank for payment of 250 rupees, the dividend then payable. Mr. Kirk, the Superintendent, refused to act upon his statement without the authority of the Soobadar, and thereupon the following letter is alleged to have been signed by the Soobadar, and sent to Mr. Kirk :—

"Dear Sir,

"You have made an objection that the shares was held in the Cawnpore Bank by the name of my youngest son, Hurree Punth Bhao. Consequently you cannot pay the sum of Company's rupees (250) two hundred and fifty to my elder son, Nurain Rao Nana, being the amount of refund capital at the rate of 25 rupees per share on the ten shares in the Cawnpore Bank which it is now going to discharge. In reply, I beg to inform you that in those days when the shares was taken, my elder son, Nurain Rao Nana, was in preparation to proceed to England for some business on the part of the Maharaja ex-Peishwa Bajee Rao. Consequently for namesake the shares in question was taken by the name of my youngest son, Hurree Punth Bhao, otherwise the shares were taken by the name of my elder son. Nurain Rao Nana has full authority over all my property at present and also in future. Moreover, I have already written down my last will and bequeathed to him. Therefore I solicit your favour to remit the said amount to my elder son, Nurain Rao Nana, and also in future, whatever more shares will be liquidated on account of the said shares kindly remit to my elder son, Nurain Rao Nana, and oblige,

"Yours sincerely,

(Signed) "RAM CHUNDER PUNTH,

"Soobadar.

"Cawnpore, the 9th January, 1853."

On the 19th of January, 1853, Mr. Stacy, who was then a clerk in the Bank, informed the Appellant that Mr. Kirk had recognized his title, and had sent him a hoondee for the 250 rupees.

Mr. Stacy's letter is produced and is proved by himself, and is in these words:—

"My dear Sir,

"I am sorry Mr. Kirk will not agree to pay cash. He showed me your father's note, and he says he has now no further objection to recognize you as fully empowered to negotiate this business; but a hoondee is all he can give, and this for 250 rupees. I have accordingly the pleasure to inclose the same.

"Yours truly,

"W. Stacy."

Now Mr. Stacy is examined, and his evidence is very important. He says that the Soobadar called upon him in company with the Appellant; and after giving a history of the shares, told him that though the shares were in the name of his youngest son, yet his eldest son was proprietor and manager of all his affairs, and the proper person to receive the money (dividends), and he requested the witness to call on Mr. Kirk and get the money paid to the Appellant. He says that he had an interview with Kirk accordingly, who told him that he had received a letter from the Soobadar, and had no longer any objection to pay the dividends as requested, but could not pay cash; all he could do was to give a "hoondee" for the amount. Mr. Kirk read to him the Soobadar's letter, and he saw it too, but did not know the Soobadar's signature. He then verifies the letter which he had written, and looking at the other English letter addressed to the Bank, witness stated that the contents of this letter were identical with those of the letter shown to him by Mr. Kirk.

It is clear, therefore, beyond all question, that some letter to the general effect of that stated by the Appellant was written by the testator; that such letter had been sufficient to remove the difficulties felt by Mr. Kirk; and Mr. Stacy, on seeing the letter produced to him, declares the contents to be identical with that shown to him by Mr. Kirk.

It is said, however, that there is a passage in this letter which it is so improbable that the Soobadar should have written that it is in itself evidence of forgery. The passage is this:—"Nurain Rao Nana has full authority over all my property at present, and also in future. Moreover, I have already written down my last will, and bequeathed to him."

But on full consideration of all the circumstances

their Lordships are not able to agree in that view. As to the first sentence it amounts to little, if at all, more than what Mr. Stacy says that the Soobadar stated to him, and when it is recollected that the Soobadar's object was to settle the matter then in dispute, not only with respect to the dividends then payable, but as to future payments; that he was then seventy-six years old, and could not expect to continue much longer in life; and that he could only perpetuate the authority of his son by making a will, and, according to the hypothesis, had done so, there does not seem any great improbability in his stating this fact. It was not one which he was desirous of keeping secret from indifferent persons, and there was a motive on this occasion for communicating it. The letter was written in January 1853, and Mr. Stacy speaks to its contents in March 1854.

It is said, however, that the circumstances under which it is brought forward throw great suspicion upon it. To their Lordships, on the contrary, it appears that those circumstances almost exclude the possibility of forgery.

The account of the Appellant is this:—

He had originally found a copy of this letter in his father's letter-book, and he took the book containing it to Mr. Morland in October 1853. Morland says "he remembers forwarding a letter to the Secretary of the Bank regarding payment of instalments which were due in the name of the Soobadar." Again, "When I came to Cawnpore, in October 1853, the Defendant brought me a book containing a copy of a certain letter which Defendant told me had been addressed to Mr. Kirk, regarding refund of the instalments."

It may safely be assumed that the letter, a copy of which he thus showed, or offered to show, to Mr. Morland, was to the same effect with that now produced. It was said that the letter-book was not produced by the Appellant, but he had, in his pleadings tendered the production of it, and the Respondents might, if they had desired it, have called for its production. The original letter itself was referred to in the hands of Major Riddell.

Mr. Kirk was dead: his widow seems to have set up some business for herself, in which she employed a person named Read as her clerk. Major Riddell, a Magistrate at Cawnpore, had undertaken to wind

up the affairs of the bank, and, of course, would have the papers of the bank in his possession. The Appellant alleges that he applied to Major Riddell for the original of this letter; that Major Riddell searched for, but could not find it, and suggested that it might be amongst the private papers of Mr. Kirk in the hands of his widow, and promised to write to her on the subject. It appears that he must have done so, for on the 17th November, Mrs. Kirk, having found the letter, sent it to Major Riddell by the hands of her clerk Read, and Major Riddell indorsed on it, "Received from Mr. Read, this 17th November, 1853." The Appellant put in his answer on the 19th November, 1853, in ignorance, as far as appears, of the fact of this letter having been found; and on the 14th December he wrote to Mrs. Kirk, to inquire about this letter. On the 15th she sent him this answer:—

"Sir, "*Cawnpore, December* 15, 1853.

"In reply to your letter of yesterday's date, I beg to inform you that the letter I found from your father to my late husband has been duly forwarded by me to Captain Riddell, some time back, in order that the same might be made over to you."

The Appellant hereupon procured from Major Riddell a copy of this letter under his official seal, and on the 26th December, 1853, he put in his rejoinder to the Respondent's replication, in which he referred to this letter as then in the possession of Major Riddell, and to the letters of Mr. Stacy and Mrs. Kirk, as establishing its genuineness.

The persons here referred to, Major Riddell and Mrs. Kirk, were both resident in Cawnpore. Mr. Morland, who was a strong friend of the the Respondents, was probably also there; every opportunity was afforded to them of inquiring into the truth of the facts alleged, and of disputing the genuineness of the document, if any reasonable grounds existed for doing so.

On the 27th January, 1854, the Appellant by his petition tendered in evidence a copy of the letter of 9th January, 1853, referring to the original as in the hands of Major Riddell, and the two original letters of Mr. Stacy and Mrs. Kirk.

These documents were accordingly filed.

On the 28th March, Baboo Pararkur was examined

and stated the circumstances relating to these Cawnpore Bank shares, and the effect of the letter written by the Subadar on the occasion, which he says was that the real proprietor of these shares was Nuram Rao, and that he, the Soobadar had made a will in his favour; he says that the letter was written by one William, who was occasionally employed as clerk in the house at Cawnpore, in English, at the Soobadar's dictation in his Pararkur's presence.

The Respondent, as it appears from the judgment of the Sudder Court, called for the production of the original letter in the hands of Major Riddell, and it was produced accordingly (p. 185, l. 22). An order for the production was made on the 29th March, and though there is some confusion in the documents printed for the purpose of transmission to this country, and some orders are referred to in the index which are not printed, we think that it is sufficiently clear, independently of the statement by the Judges of the Sudder, that the original letter was produced in consequence of the order of the Court, and shown to Mr. Stacy, and on a subsequent occasion to Mr. Morland. No evidence whatever was given by the Respondents to impeach this document, nor were any questions put to any of the witnesses with a view to show any improper dealing with it by the Appellant.

If the statement thus given be true, and no attempt has been made to impeach it by any evidence, it is difficult to see how any opportunity of forgery was afforded to the Appellant. The objections made by the Sudder Judges to it are of no weight; one is that the Appellant, in setting out the copy of the letter, had not stated the indorsement made by Major Riddell of the day on which he had received it; the other, that Read, the messenger who carried the letter to Major Riddell, had, fifteen years before, been convicted of fraud, and sentenced to imprisonment.

In addition to all this evidence, there was proof by a grandson of the Soobadar that the will was known in the family, and had been the subject of conversation in the Soobadar's house in his lifetime, and this was confirmed by the testimony of several other witnesses.

Against this mass of evidence there was really no

testimony entitled to any weight. The strongest evidence against the will is that of Mr. Morland, a gentleman of position and respectability: he says that he often suggested to the Soobadar the propriety of making a will, observing that his late master the Ex-Peishwa had made one; but the Soobadar always (as he terms it) scouted the idea, saying, "Why should I make a will, there are my sons to inherit my property?" This witness says that he was on terms of such close intimacy and confidence with the Soobadar, that he is firmly persuaded that if the Soobadar had made a will he would not only have consulted him about it, but asked him to be a witness.

But there appears upon this gentleman's own depositions quite sufficient reason why the Soobadar, whatever might be his general confidence in him, should neither consult him about his will nor ask him to be witness to it, nor inform him that he had made it. Mr. Morland, it is clear, in the differences which prevailed in this family, supported the cause of the younger brothers, and was anxious to protect their interests against the elder, towards whom, whether with or without reason, he entertained feelings of dislike. He not only says that he advised the Soobadar to make a will, because he thought the Appellant was likely to claim much more than his share of his father's property after his death, and would do much to the prejudice of his younger brothers, but he admits that he had, on one occasion, at the instance of the second son, represented to the Soobadar the alleged tyrannical conduct of the Appellant. The Soobadar, on that occasion, said he had an equal regard for all his sons, but did not admit the tyranny imputed to the eldest.

Now if the testator was determined to leave to his eldest son the bulk of his estate, it was very likely that he would not communicate to Mr. Morland a determination so little in accordance with his advice or his wishes, or ask him to authenticate the instrument.

The other evidence is hardly deserving of notice; it is disbelieved by the Zillah Judge, and is not adverted to by the Sudder. It consists of that sort of testimony with which, in these Indian cases, we are unfortunately too familiar—of witnesses who swear

positively to matters of which they can have no knowledge; of witnesses who swear that they have heard the alleged testator, after the date of his will, declare that he had never made one; that they had heard the persons who had been parties to the instrument gratuitously declare to them that it was a forgery; of witnesses who declare that they had been solicited by the party in the cause or his agents to attest instruments, which they were told at the same time were fabricated. Witnesses of this description may be had, unhappily for India, in any number in that country.

The two wives of the Soobadar are examined as witnesses against the will, but they really say nothing, nor, indeed, are asked anything that is important; each says in general terms that the Soobadar never wrote anything in favour of any of his sons, and made no one proprietor; and that he regarded all his sons as equal, and each says the whole property of the Soobadar belongs to her. They are examined as to the property, with respect to which they may be able to speak. Other witnesses give their opinion as to the handwriting of the testator, a species of evidence seldom of much value in contradiction to positive testimony, and in this case rendered of still less value, as to some of the witnesses, by the circumstance that they deny the handwriting of the testator to documents admitted to be genuine. The rest of the evidence consists of the testimony of Pundits, who say that the Soobadar was always obedient to the Shasters, and that the Shasters forbid a father who has several sons to appropriate by will to one the property which by law ought to be equally divided amongst all. It is clear that in this district a strong feeling prevails amongst the Brahmins upon the subject of testamentary disposition, which, though at length established by law as to self-acquired property, is opposed to the ancient usages and feelings of the country.

On the whole it appears to their Lordships that the Appellant has sufficiently established his case. A course was taken in the Sudder Court, which is certainly unusual. The Judges ordered a translation to be made into English of the Oordoo Will, and they found that such translation did not, in form or in the order of the sentences, correspond in all

respects with the translation made by Pownes, and from this, if we understand the meaning of the Judge who adverts to the fact, they drew an inference unfavourable to the will. It may be observed that Mr. Morland, on being shown the English translation alleged to have been made by Pownes, says he has no doubt it is Pownes's writing. If any inference against the validity of the will were to be drawn from the discrepancy between the two English translations, that discrepancy should have been called to the attention of the Appellant, and Pownes should have been further examined on the matter. The circumstance would have deserved attention if Pownes's translation had been made from a written copy of the Oordoo Will, but it was not. It was translated, as we have already said, into English, from sentences read in Oordoo by the testator from the Mahrattee Will, and the discrepancies, such as they are, appear to us to be fully accounted for by this circumstance.

We think the circumstances of the case are strongly in favour of the will. It contains such a disposition of his property as it was extremely probable that the testator should make, and extremely unlikely that the Appellant should introduce into a forged instrument. The testator was of great age. He had placed his eldest son in his place with respect to the management of all his affairs in his lifetime. He might, very naturally, desire to keep together in his family the wealth which he had acquired by his own exertions, and to prevent its dispersion by division amongst his sons. His eldest son had issue, his other sons had none; and he had the example of his master the Peishwa to follow, who had adopted a son and made a will in his favour. The witnesses in favour of the will are in general less open to exception than is usual in Indian cases, and some of them entirely unexceptionable. The Zillah Judge who has seen them has come to an opinion in favour of the will, and appears to doubt whether the opposition to it is really the spontaneous act of the Respondents.

Their Lordships are of opinion that the reasons assigned by the Sudder Court for its opinion are quite unsatisfactory. The view which they take of the original Appeal makes any consideration of the Cross-Appeal unnecessary. It must of course be dismissed.

They must humbly advise Her Majesty to reverse the Judgment of the Sudder on the original Appeal, and to restore that of the Zillah Court; and considering that the Respondents' case is founded on an allegation of fraud, perjury, and forgery, which, in their Lordships' opinion, fails, they think they cannot do justice without advising that the Respondents should be ordered to pay all the costs of the suit in both Courts below, and of both the Appeals to Her Majesty.