

IN THE COURT OF THE SPECIAL MAGISTRATE,
FIRST CLASS, POONA,

EMPEROR Vs B. G. TILAK

THE DEFENCE OF BAL GANGADHAR TILAK

27TH JULY - 1ST AUG 1903.

[By Raghunath Pandurang Karandikar.]

V2wM56
D3
064189

Dhananjayrao Gadgil Library



GIPE-PUNE-064189

In the Court of the Special Magistrate, First Class, Poona.

~~~~~  
EMPEROR *Vs.* B. G. TILAK.

THE DEFENCE OF BAL GANGADHAR TILAK.

*27th July — 1st August 1903.*

On Monday, the 27th of July 1903, after the examination of Mr. Brewin, Mr. Raghunath Pandurang Karandikar rose at about 1 p. m. to address the Court on behalf of the Defence, and concluded his address on Saturday the 1st of August 1903 at about 3-30 p. m. The following report substantially represents what he said during these days:—

YOUR WORSHIP,

This is one of those cases which were sent on the 4th of April 1901 by the Honourable Mr. Aston, the then District Judge of Poona to the City Magistrate under Sec. 476 Cr. P. Code, but which, on the subsequently disclosed *oral* representation of the latter were transferred to this Court, as it was specially constituted to try the charges against Mr. B. G. Tilak (Exs. 2 and 4). The first of these charges related to the alleged false complaint made by Mr. Tilak against Mr. Nagpurkar before the City Magistrate Poona. But the case was struck off the file on 15th July 1903, because it was held by the High Court that the sanction of the Magistrate before whom the complaint was made was necessary for the institution of the criminal proceedings; and such sanction, though subsequently granted by the Magistrate, was revoked in appeal by Mr. Beauman, whose decision was upheld in revision by the High Court in May last. The present case is the third of the set of charges originally formed by Mr. Aston and relates to the alleged giving of false evidence by Mr. Tilak in his 14 days' examination as a witness before Mr. Aston in the application for the revocation of Probate *re* the estate of the late Baba Maharaj, a First Class Sardar in the city. It was the desire of the Defence and the Court was moved accordingly to take the counts, regarding the forgery of Exhibits 63 and 66 first, but this motion was unsuccessful. That would have enabled the Court to form an opinion as regards the substantive charge of forgery, which, by a far-fetched reasoning and mutilated transformation, has been absorbed into this perjury so imperceptibly that even the Court sometimes was led into receiving the evidence regarding those matters when the prosecution evidence was led in chief, but when the Defence touched those points, the Court ruled the evidence as irrelevant. After this, the charge was taken up by this Court on 2nd October 1902, and since then 60 witnesses have been examined—28 for the prosecution and 32 for the Defence, some at Poona and others on commission at Amraoti and Aurangabad. The depositions of these witnesses cover about 3000 foolscap pages in manuscript, and when I add to them the number of about 108 Exhibits filed in the case, it will be seen how difficult it is to master all the details of the case and place them before Your Worship within the short time at my disposal. And I do not know if I can do justice to all the points involved in it. I shall, however, try to

do my best, and crave Your Worship's indulgence for a few preliminary observations which will throw light on the origin and history of the prosecution previous to the coming of the case before this Court.

#### HISTORY OF THE MAHARAJ FAMILY.

For a proper understanding of the case it would be necessary to go first into the history of the Baba Maharaj family. This family is descended from one Shri Rambhatji Dev, a Yajurvedi Deshastha Bramhana who lived in the latter half of the eighteenth century at Babre in the Aurangabad District in the Nizam's dominion, and was the hereditary Joshi of Babre and nine other surrounding villages (Ex. 11). Rambhatji had two sons, Shri Harabhatji the elder and Shri Siddheshwar the younger. This younger son (1743-1811 A. D.) soon became distinguished for his spiritual greatness and was eventually elected as the spiritual preceptor and adviser by Shivaji II, the then reigning prince at Kolhapur. This led Siddheshwar to establish himself at Kolhapur; while his elder brother Harabhatji remained at Babre. Shri Siddheshwar, alias Boa Maharaj as he was called, died in about 1811 A. D. leaving behind him three sons named Baba, Nana, and Bhau. Nana had no issue, and the present Kolhapur branch of this family is therefore descended from the two remaining brothers. Of these, Baba lived at Kolhapur and Bhau exchanging religion for politics, came up to Poona, as a Vakil of the Kolhapur Raja, and is said to have assisted the Honorable Mountstuart Elphinstone in establishing peaceful relations between the British Government and the Raja of Kolhapur, even before the termination of the Peshwa's rule at Poona. A reference to Aitchison's Treaties Vol. VI will show that the interests of Baba and Bhau were specially protected in the Treaties made by the British Government with the Kolhapur Durbar, the latter agreeing never to molest the possessions or lands or rights of Baba Maharaj and Bhau Maharaj during their life-time and to continue the same unmolested to their descendants. These facts are also narrated in the old Bakhar (Ex. 76) of the family written by the grandson of Baba and the grand-father of Pandit Maharaj, and so far as the line of descent from Siddheshwar is concerned, its correctness was admitted by Pandit Maharaj himself in his examination (Ex. 51), while the line of descent from Harabhatji is proved by the testimony of Bhausahab Dev of Nidhone. Pandit Maharaj is the representative of the eldest branch (4th in descent) of Baba and holds at present the post of the religious preceptor (Guru Maharaj) to the Raja of Kolhapur. Bhau Maharaj who settled at Poona died in about 1837 A. D. leaving behind him two sons Tatyā and Dada, who divided the estate consisting of Inams ancestral and self-acquired, Tatyā continuing to live at Poona; while Dada and his descendants went to live at Kolhapur. The late Wasudeo Harihar alias Baba Maharaj, with whose estate we are concerned in this case, was the adopted son of Tatyā. He was a child when the adoption took place, and the estate was managed during his minority by his adoptive mother the late Umabai Saheb. When Baba Maharaj attained majority and claimed the estate, he found that his claims were opposed by his adoptive mother; while his cousin Nana Maharaj went so far as to challenge the adoption itself. This involved the estate in a heavy litigation; and when Baba Maharaj was declared the rightful owner thereof, it was heavily burdened with debts. Baba Maharaj did not live long to manage this estate. It came into his possession in 1895 and he died of cholera, somewhat suddenly, on 7th August 1897 leaving behind him Sakwar Bai alias Tai Maharaj his second wife who was then only about 16 years old, her young daughter, and two other daughters by his first wife both of whom had been married at the time, the elder to the first son of Mr. Ganesh Shrikrishna Khaparde and the younger to the son of Bhau Saheb Kale a rich banker at Benares. At the time of his death Baba Ma-

haraj made a will (Ex. 8) appointing Mr. G. S. Khaparde, Mr. B. G. Tilak, Mr. Kirtikar the Huzur Chitnis to the Raja of Kolhapur and two of his Karkuns, Mr. Kumbhojkar and Mr. Nagpurkar, as trustees to hold and to manage after him all his movable and immovable estate in the same way as he himself would have done until his posthumous son, if any ( for he expected that his wife who was then *enceinte* would give birth to a son ), or failing him, a son, to be adopted with the consent of the aforesaid gentlemen as trustees, attained the age of majority.

#### THE POSITION OF THE TRUSTEES.

The will was duly proved in the District Court, Poona, and a probate was granted to Messrs Khaparde, Tilak, Kumbhojkar and Nagpurkar, Mr. Kirtikar having renounced the trust on the 15th of February 1898, the estate being then roundly valued at two lakhs of rupees ( Exs. D. 2 and D. 56 ). Of these four, Mr. Tilak was not on the spot until 6th of September 1898 and Messrs Kumbhojkar and Nagpurkar who were mere Karkuns under the testator naturally looked for advice and guidance in every matter to Mr. Khaparde who had ever since been regarded as the chief trustee both on account of his social position and his relationship with the deceased's family. It was he who directed the affairs of the estate, the taking of the probate, the arrangements made with the creditors of the deceased, and almost every other thing connected with the management and welfare of the estate. It is true, that Messrs Kumbhojkar and Nagpurkar were amongst the trustees appointed by the will of the deceased, but as stated by Mr. Khaparde in his evidence, the object of the arrangement was well understood, and though Messrs Kumbhojkar and Nagpurkar were nominally and theoretically trustees with equal powers with Messrs Khaparde and Tilak, yet as a matter of fact they, i. e. Messrs Kumbhojkar and Nagpurkar, always followed the lead of the latter and openly professed to do so. The letters written by Mr. Nagpurkar to Mr. Khaparde at this time ( Exs. D. 4, D. 5, D. 6 &c. ) fully bear out Mr. Khaparde in his statement. It is necessary to carefully bear in mind this distinction between the positions of the different trustees especially as Mr. Nagpurkar has now endeavoured to set up his right of equality. Messrs Nagpurkar and Kumbhojkar were as a matter of fact paid servants of the estate at the time of the testator's death and were continued in the same post by the trustees all of whom gave to each of them a general power of attorney ( Ex. 60 ) for the management of the estate. The position of Mr. Khaparde and Mr. Tilak was quite different. It is admitted by Tai Maharaj herself that both of these did not accept the trust or carry on its affairs for any personal gain to themselves ( Ex. 59 ); and Mr. Khaparde has stated that it was only as a matter of duty to his deceased friend and relative that he accepted the trust. It is also in evidence that Messrs Khaparde and Tilak did not even charge the estate with their expenses incurred in travelling on trust purposes; and my learned friend Mr. Strangman plainly admitted at Amraoti that the prosecution never meant to charge Mr. Tilak with any desire to make a material profit out of the management of the trust. It was, however, contended that the management of the trust placed certain patronage and power in the hands of the trustees and that it might have made Mr. Tilak urge the adoption of a minor boy. Mr. Khaparde has given a flat denial to this suggestion asserting that neither he nor Mr. Tilak wanted a long minority even for the pleasure of power. I shall have to discuss the point later on. Suffice it to say for the present that out of the four trustees, Messrs Kumbhojkar and Nagpurkar were the paid servants of the estate and as such occupied a subordinate position, while Messrs Khaparde and Tilak naturally took the lead in every affair, on account of their social position and disinterestedness.

It is not quite necessary to state here how the trust estate was managed by the trustees. A reference to Ex. 61 will, if necessary, give some idea re-

garding the different subjects which came before the trustees' general meeting for sanction and disposal. What is important for our purpose to state is that it is they who framed the budget, regulated the expenditure, made arrangements regarding the liquidation of debts and the management of the property both movable and immovable including the Wada at Poona. On 15th January 1898 Tai Maharaj gave birth to a son at Kolhapur; but unfortunately he died soon after, viz., on 9th of March 1898. This event caused some stir amongst a clique in Poona, which was hostile to the management of the estate by the trustees. Some of these attempted to upset the trust on the ground that the will of the deceased became inoperative after the death of the posthumous son. Mr. Nagpurkar, however, remained firm in his support of the trust and in asking the advice of Mr. Khaparde expressly stated his own opinion that he would remain as faithful to the trustees and work as their servant as zealously as he had done under the testator ( Ex. D. 5 and D. 6). He also warned Mr. Khaparde that it was quite likely that the adverse and mischievous clique might endeavour to bring obstacles in the way of adoption and the recovery of the money due on the life-policy of the testator. ( Ex. D. 6 ). The opposition did not, however, assume a serious form and the matter was settled by turning out of the Wada the mother of Tai Maharaj and dismissing one or two servants who were believed to be in sympathy with the opposition. It is *now* alleged by Tai Maharaj that ever since the death of her posthumous son she has been acting on the belief that the trustees, especially Messrs Khaparde and Tilak, are nobodies and that the whole estate of which she became the sole owner, was managed on her behalf by Mr. Nagpurkar. This is, however, a myth, an after-invention, fabricated for the purpose of the litigation that is now being carried on in Court. The proceedings of the trustees after the death of the son up to the present time filed in this Court, give a direct lie to the assertion of Tai Maharaj which is also contradicted by Mr. Khaparde and Mr. Nagpurkar's reports and letters to the trustees even so late as May, June and July 1901 (Exs. D. 3, D. 10, D. 18, D. 20, 21; Exs. 22-26, Ex. 71 &c. ). The acceptance of trust by Messrs Khaparde and Tilak was a matter of duty and not of honour or profit; and it is idle to suppose that they could have requested Tai Maharaj to keep them, or either of them, as her gratuitous advisers or that after their legal position was questioned they would have consented to act in that capacity even if requested by Tai Maharaj to do so. It is, however, needless to dwell further on this point since the right of the trustees under the will has been confirmed by the High Court, which reversed the decision to the contrary passed by the Hon. Mr. Aston upon a miscellaneous application ( dated 29th July 1901 ) made to him for the purpose of revoking the probate granted to the trustees by the District Court of Poona ( Ex. 44). The case is reported in I. L. R. 26 Bombay 792. I refer to this matter here simply to show that from the death of her son upto the time of the attempted adoption of Bala Maharaj in July 1901 Tai Maharaj never showed, as alleged by her, any desire to upset the trust, but on the contrary fully accepted and acquiesced in the management of the estate by the trustees appointed by her husband. Mr. Nagpurkar has admitted as much in his deposition when he says that " there was no disagreement between Tai Maharaj on the one hand and Messrs Khaparde and Tilak on the other upto the 18th of June 1898 and that things went on smoothly upto that time.

#### THE ADOPTION.

The premature death of the posthumous son of Baba Maharaj naturally raised the question of adoption, and as the adoption, according to the terms of the will, was to be made with the consent of the trustees, it became necessary to make inquiries about the boys available and suitable for adoption by Tai Maharaj. What these inquiries were and how full opportunity was given to each and every trustee and also to Tai Maharaj, from

9th March 1898 to 18th June 1901 to form their independent opinion on the point is fully proved by the evidence adduced in the case: The matter was under consideration for full 3 years, and when the resolution of 18th June 1901 was passed in Poona each party had more than sufficient time allowed to him to form his opinion on the point. I shall revert to the details of this matter later on. It is enough to state here that all the trustees in a meeting assembled, and at which meeting Tai Maharaj herself was present, eventually decided ( Ex. 13 ) on the 18th June 1901 to make an adoption of a suitable boy, if such could be found, from the Babre branch of the Maharaja family, and in pursuance of this resolution, Messrs. Khaparde and Tilak with Tai Maharaj went to Aurangabad and after making enquiries at the place, a boy named Jagannath was eventually adopted by Tai Maharaj at Aurangabad, openly in the presence of a number of people. This took place on the 27th and 28th June 1901. Tai Maharaj was then accompanied by three of her personal attendants, two cooks, a peon and a karkun, all of whom had been chosen by Mr. Nagpurkar, and the whole party returned to Poona on 29th June 1901. On her return to Poona Tai Maharaj was however successfully approached, especially through Mr. Nagpurkar's influence, by Pandit Maharaj, whose brother Bala Maharaj was disapproved by the trustees for adoption by Tai Maharaj ever since he was first proposed for adoption, viz., within a few days after the death of the posthumous son of the testator. This led to a repudiation of the adoption by Tai Maharaj at Aurangabad, and the adoption of Bala Maharaj was actually fixed to take place on the 13th of July 1901. Upon the intervention of Mr. Tilak, it was, however, agreed to postpone the same for a week, pending the arrival of Messrs. Khaparde and Kumbhojkar in Poona ( Ex. 20 ) to whom the news was communicated by telegram. Mr. Khaparde arrived in Poona on the 15th of July in the afternoon and as usual put up in the Wada, where late at night, he learnt that the adoption of Bala Maharaj was to take place the next morning. He immediately called Mr. Tilak and both of them remonstrated with Pandit Maharaj and Tai Maharaj to give up the idea of the second adoption as it was illegal and would involve the estate in expensive litigation. But the Pandit would not listen and thereupon it became necessary to give him notice to quit the Wada at once with his brother Bala and their mother Radhabai who had come into the Wada to carry out the adoption of Bala ( Ex. 21 ) or else take the consequences of remaining on the premises without the consent of the trustees who were the legal owners thereof. Pandit Maharaj and party thereupon left the Wada before sunrise on the 16th of July 1901 and the front door of the Wada was closed, except for a few hours in the morning and evening, after them to prevent the possibility of a forcible re-entry. Mr. Kumbhojkar arrived the next day, and after three or four days' continued discussion, Tai Maharaj herself appeared to give up for the time being the idea of Bala Maharaj's adoption; while Mr. Nagpurkar shewed his willingness to desist from working against the trustees and to be obedient to them as before and was retained in the service of the estate, and a complaint of criminal breach of trust that was filed against him was dropped. This happened on 20th July 1901, but the arrangement did not prove successful; and, as stated by Mr. Khaparde, designing persons again obtained ascendancy over Tai Maharaj who eventually adopted Bala the brother of Pandit Maharaj at Kolhapur on the 19th of August 1901. It may be stated that Bala's adoption was made on the condition that Tai Maharaj was to remain in the possession of the estate till her death ( Ex. D. 17 )— an inducement which seems to have led her into repudiating the first and making the second adoption.

#### THE LITIGATION.

Naturally enough this led to an open breach between Tai Maharaj and Mr. Nagpurkar on the one hand and the three trustees on the other, and

acting upon the advice of persons who were interested for their own sake in bringing about the second adoption, Tai Maharaj some time before Bala's adoption, filed an application No. 112 of 1901, dated 29th July 1901, in the District Court of Poona, praying for the revocation of the probate granted to the trustees under her husband's will. The three trustees on the other hand were thus obliged to file a suit No. 358 of 1901 dated 23rd September 1901, asking for a declaration of the validity of the first adoption at Aurangabad and the invalidity of the second ( Ex. 43 ) in the First Class Sub-Judge's Court at Poona. But the District Judge ordered all the papers in the adoption suit to be sent up to him for use in the hearing of the Miscellaneous application for the revocation of the probate before him; and the proceedings in the adoption suit had therefore to be adjourned *sine die*. It was during the hearing of this probate application that Mr. Tilak was examined for 14 days ( Ex. 1 ) mainly upon the details of Aurangabad adoption though it was contended that the matter was not relevant for the decision of the application. Tai Maharaj was also examined on the occasion, and naturally enough her story about the Aurangabad adoption differed from that deposed to by Mr. Tilak in his examination. But Mr. Aston who, in his capacity as Agent to Government for Sardars, seemed to have had some interviews with Tai Maharaj ( Ex. D. 22 ) believed her story in preference to that of Mr. Tilak and held that there was sufficient ground to charge Mr. Tilak with ( 1 ) perjury, ( 2 ) forgery in connection with the adoption deed and accounts, and ( 3 ) making a false complaint against Mr. Nagpurkar ( Ex. 2 ). Mr. Aston's decision regarding the probate application was reversed by the High Court in appeal ( I. L. R. 26 Bom. 792 ), but the latter declined to interfere with the criminal proceedings initiated by Mr. Aston against Mr. Tilak ( I. L. R. 26 Bom. 785 ) and hence the present case.

#### THE POLICE INVESTIGATION.

I have already stated at the outset how the enquiry into Mr. Aston's charges against Mr. Tilak was transferred to this Court. But before we come to the discussion of the proceedings in this Court, I must refer here to the preliminary enquiry conducted by the Police into the same charges. When Mr. Aston sent Mr. Tilak to the City Magistrate for inquiry into the charges framed by him against Mr. Tilak, there was hardly any evidence before Mr. Aston to show that Mr. Tilak had perjured himself in the witness-box or had fabricated the adoption deed or the adoption accounts, except the contradictory statement of Tai Maharaj. Mr. Aston could not and did not base his charge upon any two naturally contradictory statements made by Mr. Tilak in his examination, but it was founded mainly on the fact that Mr. Tilak's story differed essentially from that of Tai Maharaj, and the Judge did not apparently care to notice the fact that Tai Maharaj was interested in denying the first adoption and that as a suit for the declaration of the validity or invalidity of either of the two adoptions was already pending in the First Class Sub-Judge's Court at Poona, a suit in which Mr. Tilak and Tai Maharaj were arrayed on different sides as Plaintiff and Defendant respectively, it was natural that their stories should differ; and that it was to say the least improper to turn the civil case into a criminal inquiry by charging Mr. Tilak with perjury in the same matter. But when the step, howsoever hasty, was taken by the District Judge it became necessary to make a preliminary enquiry into the matter and the case was sent to the Police for investigation as a non-cognisable offence under Chapter XIV of the Criminal Procedure Code. Mr. Brewin, the Assistant Inspector of Police, was entrusted with the enquiry and he has examined either himself or through his subordinate officers most of the persons connected with the transaction. The details of this investigation would have been fully disclosed if the Defence



had been allowed a copy of the report made by the investigating officer to the District Magistrate. But this has been refused and the Defence can only ask Your Worship to draw the natural inference from this refusal, for it is difficult to understand how the report of a Police inquiry could be treated as confidential and why it should be withheld from the accused, the person most interested in knowing the result of inquiry. It is however in evidence that in this inquiry not only Tai Maharaj, but Godu, Parvati, Shankar, and the Karkun Bele who accompanied Tai Maharaj to Aurangabad were examined by the investigating Police officers and that Mr. Page was sent to Aurangabad to make inquiries on the spot. Some of the Aurangabad witnesses have also stated that they had made to Mr. Page statements similar to those they made in this case. The Police had thus complete material before them to judge which of the two stories about the Aurangabad adoption, Mr. Tilak's or Tai Maharaj's, was correct and the investigating officer must have submitted the whole of this material, with his opinion thereon, to the District Magistrate Poona. All these papers were available to the prosecution and it is admitted that they were in its possession when the Defence first called for these papers. It therefore becomes important to see how far the case now put forward by the prosecution tallies with the case disclosed by the Police investigation. It has been ruled over and over again that "The only legitimate object of a prosecution is to secure not a conviction but that justice be done. The prosecutor is not therefore free to choose how much evidence he will bring before the Court. It is *prima facie* his duty accordingly to call those witnesses who prove their connection with the transaction in question and *also must be able to give important information*. The only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that if called they will not speak the truth." I. L. R. 8, Cal. 125, L. L. R. 10, Cal. 1070. These cases have been recently reviewed by the Full Bench of Allahabad in L. L. R. 16 All. 84, where it is laid down that "It is the duty of a public prosecutor to conduct the case for the Crown fairly. His object should be not to obtain an unrighteous conviction, but as representing the Crown to see that justice is vindicated and in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion a Public prosecutor should not refuse to call or put in the witness-box for cross-examination a truthful witness returned in the calendar as a witness for the Crown merely because the evidence of such witness, might in some respect be favourable to the defence." This is said of an ordinary prosecution, and it is superfluous to add that the observations apply with greater force to a prosecution undertaken by Government, for Government cannot be supposed to be actuated by any motive except that of vindicating justice in a particular case. But if we compare the Police investigation with the case now put forward by the prosecution we are, I am sorry to say, forced to the conclusion that the advisers of Government have failed to show to the Defence that fairness to which it is entitled at the hands of Government. The Public prosecutor in this case had before him all the papers in this Police inquiry, yet he decided to put before this Court a case based only upon the statement of Tai Maharaj. Thus for instance neither Bele nor Shankar nor any of the Aurangabad witnesses have been called by the prosecution though it must have been aware of the fact that these persons, if called, would contradict Tai Maharaj and establish the truth of the story told by Mr. Tilak. I say this because some of the Aurangabad witnesses have said that they told to Mr. Page the same story that they deposed to in Court, and they would certainly have been confronted with their previous statements in their cross-examination, if these were different from the statements now made by them. In short the whole of the Police investigation carefully conducted by so able and experienced an officer as Mr. Brewin seems to have been lost upon the

prosecution and this explains why the prosecution is now conducting the case with the assistance of Tai Maharaj and Mr. Nagpurkar instead of that of the Police as is usual in warrant cases. The fact that the prosecution strenuously opposed the production of a copy of the report of the Police inquiry and the examination of Mr. Brewin by the Defence only goes to strengthen the same view. I might even go further and say that the prosecution has lowered itself down to the level of an agent fighting the battles of Tai Maharaj and Mr. Nagpurkar both of whom are deeply interested in the perversion of the true facts relating to the Aurangabad adoption; and all this is done not in ignorance of the true state of things but with a full knowledge of the true facts and in defiance of the Police investigation, made by one of the most experienced officers of Government. I know it might be urged that the prosecution is not bound by the result of the Police investigation and that it is at liberty to choose for itself such facts as it likes from amongst the material in its hands and base its case solely upon the facts so selected. I do not mean to deny that the prosecution *can* do this if it likes; what I urge is that it is *not fair* to do so even in the case of a private prosecution and much less therefore in a prosecution instituted by Government; for when Government undertakes a prosecution, it becomes far more difficult for the Defence to meet it than when the prosecution is instituted by a private person. I would, therefore, respectfully urge upon the attention of Your Worship, the necessity of comparing the framework of the present prosecution with that disclosed by the Police investigation. There is practically no explanation why certain witnesses whose connection with the case is obvious and who were examined by the Police, were not called for the prosecution and why Tai Maharaj has been allowed to put forward a story which has been altered in important particulars, so far as her alleged confinement in her Wada at Poona is concerned. The comparison, I ask for, is not unusual. It has been ruled by the Bombay High Court so far back as 16th August 1881 that "In all important cases, the Police officer making the investigation should be examined as a witness regarding the circumstances of the investigation; and it was ordered by Melville and Kemball JJ. who decided the case, that the observation should be communicated through the Sessions Judge to the committing Magistrate and the Superintendent of Police (*Vide Queen vs. Rampuri Ratanlal's* unreported Cases, page 173.) There is also a High Court Criminal Circular issued in the terms of the judgment in 1881 for the guidance of Criminal Courts. (*Vide High Court Circular Orders Criminal, 1902, p. 31, Circular No. 57*). We have examined the Police officer in this Court, but the non-production of his report has hampered the Defence to a great extent. The Defence wanted the report to show, how the present case for the prosecution was prepared, what information was in its possession when it put forward the present case and how it ignored all important facts favourable to the accused brought to its knowledge by the Police inquiry. After this it will not be too much to say that the aim of the prosecution is not so much to vindicate the cause of justice as to harass the accused and help Tai Maharaj, as much as possible in upsetting the trust and the work done by the trustees. It is perfectly consonant with the fact that Tai Maharaj, as stated by her in her evidence, should be asked by the prosecution to supply information and evidence for the present prosecution, and that the Public prosecutor should pay visits to her at her residence for the alleged purpose of obtaining the information required for the conduct of the case. In short, it is a misnomer to call this a Government prosecution but for the active and material support now lent by Government to Tai Maharaj, and it is doubtful if in any other case Government would have done the same.

#### THE PRESENT PROSECUTION CASE.

The Police inquiry being thus entirely ignored, the prosecution had to put the case before Your Worship in what may be called a *new way*. Mr.

Aston's charge for perjury (Ex. 2) comprised four items, (1) that Jagannath was placed on the lap of Tai Maharaj at Aurangabad, (2) that Tai Maharaj was confined in the Maharaja Wada at Poona between 15th and 20th July 1901, (3) that Nagpurkar was similarly confined, and (4) that Bala Maharaj was pulled out of Tai Maharaj's room. The prosecution has examined 28 witnesses on these four points, but at the close of its case and even before the prosecution witnesses were cross-examined it found that the evidence it led on the last two items of the charge was conflicting and uncertain, though Tai Maharaj in her evidence had deposed against the accused on both these items. The prosecution, therefore, decided to give up these items in Mr. Aston's charge, thereby practically the evidence of 5 out of 28 witnesses and also some Exhibits in the case. How far the giving up of the last item tells upon the credibility of Tai Maharaja's story is a question to which I may fairly call Your Worship's attention at this place. Both she and Bala Maharaj, her second adopted son, are as certain as any one could be about the fact of Bala Maharaj being pulled out of the room and yet on the evidence of Ashtekar, Shivram Narhar, Ganesh Balkrishna, Sadashiv Raghunnath, and partly that of Parvati (Exs. 38, 40, 46, 54, 52) the prosecution deemed it prudent not to press the last item in the charge against the accused. I wish the prosecution had shown the same prudence regarding the two first items in Mr. Aston's charge which have formed the subject of this trial. In fact Your Worship had given the prosecution an opportunity to withdraw the charge of adoption at any rate by putting it to Mr. Strangman whether he wished to press the charge of perjury regarding adoption; and the prosecution knew that there was little direct evidence to substantiate its case at least so far as the Aurangabad adoption was concerned. If the evidence of five of the prosecution witnesses contradicting Tai Maharaj on the point of Bala Maharaja's being pulled out of the room was sufficient, in the opinion of the prosecution and of the Court, to give up the item in the charge relating to the same, the knowledge derived from the Police inquiry that Tai Maharaja's story about the Aurangabad adoption was directly contradicted by several independent witnesses was, in common decency, a sufficient reason for the prosecution to withdraw at least that portion of the charge which related to the corporeal giving and taking of Jagannath at Aurangabad. There was again the Civil case about the same matter between Mr. Tilak and Tai Maharaj pending in the First Class Sub-judge's Court, Poona, and if I am right, Your Worship even suggested that the item of perjury relating to the adoption might be given up at least on that ground. But my learned friend Mr. Strangman would not yield and the result was that the charge as it is now framed (Ex. 78) includes two items—one relating to the corporeal giving and taking of Jagannath and the other to the confinement of Tai Maharaj at Poona. I shall for convenience first take up the first portion of the charge, *viz.*, that relating to the corporeal giving and taking of Jagannath. It runs as follows :—

#### THE CHARGE.

“ E. Clements, Esqr. Magistrate of the First Class of Poona District, do hereby charge you Bal Gangadhar Tilak that you on or about the 21st day of November 1901 at Poona, being a witness in Miscellaneous application No. 112 of 1901 in the District Court of Poona aforesaid, being a judicial proceeding, then pending before the Hon. Mr. H. F. Aston, the District Judge of Poona, aforesaid, and being bound on solemn affirmation to state the truth, did intentionally give false evidence, first by knowingly and falsely stating as follows :—

“ The boy was formally placed by his father on the lap of Tai Maharaj ” meaning thereby that one Jagannath was so placed on the morning of the 28th day of June 1901 at Aurangabad ( Deccan ) “ and Tai Maharaj

gave him sweetmeats and then the father said to Tai Maharaj, now you should protect the boy—the boy has now become your son ; whether fool or wise, he is yours. ”

Whereas in truth and in fact as you the said Bal Gangadhar Tilak well knew when you gave such false evidence as aforesaid, the said Jagannath was not placed by his father on the lap of the said Tai Maharaj, nor did the said Tai Maharaj give sweetmeats to the said Jagannath, nor was there any conversation as aforesaid between the said Tai Maharaj and the said father of the said Jagannath either on the said 28th day of June 1901 or on any other day at Aurangabad aforesaid. ”

It is necessary to analyse the charge and see what it exactly means. At the outset I have to point out that Mr. Aston's sanction does not cover that part of this count of perjury which relates to the conversation between Tai Maharaj and Bhansaheb Dev. It has been already stated that Tai Maharaja's story about the events that took place at Aurangabad is entirely different from Mr. Tilak's version of the same incident. Tai Maharaj asserts that she did not take any boy in adoption at Aurangabad, that the documents of adoption which were signed by her, were never read to her, that she was kept in confinement at Aurangabad and that she signed the papers only as a means of obtaining her release from that confinement. On the other hand, the story as narrated by Mr. Tilak states that Tai Maharaj was never kept in confinement at Aurangabad and that she of her own free will and accord, not only signed the adoption deed and other papers, which were read by her, but actually took Jagannath on her lap in the presence of a number of people assembled in the open hall of the Sikh Mandir at Aurangabad, where the party had put up. The two stories are so unlike each other that there is no chance of both being true and so there ought to be no difficulty in deciding which of them is or is not supported by evidence. Neither Mr. Aston nor the prosecution has, however, charged Mr. Tilak with perjury on all the counts included in the story told by him. For whatever Tai Maharaj may say regarding her alleged confinement at Aurangabad, she did not deny her signature to the document of adoption, and it was a fact that she went to Aurangabad of her own accord, driving to the Railway Station from her place of residence under the direct supervision of Mr. Nagpurkar. It was probably for this reason that the charge of perjury against Mr. Tilak in the matter of adoption was confined to the *mere fact* of corporeal giving and taking of Jagannath at Aurangabad by Tai Maharaj. The charge says nothing about the validity of the adoption or the non-performance of *Hom* or other ceremonies connected therewith. I wish to urge this point specially upon Your Worship's attention; for the whole evidence for the Defence will have to be weighed and examined from this point of view. Mr. Tilak is not called upon to prove that the adoption of Jagannath which took place at Aurangabad is valid in law. That is a point for the Civil Court to decide and will justly be in issue in the adoption suit now pending in the First Class Sub-Judge's Court, Poona. The point before this Court exclusively relates to the *fact* of corporeal giving and taking and to that *fact* alone, apart from the circumstance whether it makes the adoption irrevocable or otherwise. If the *fact* is proved, Mr. Tilak must be acquitted so far as this item of the charge is concerned, even if there may appear other grounds for holding that the adoption at Aurangabad was imperfect or invalid in law. I am aware that a number of other *facts* and incidents are put forth in evidence in this case, but they are so adduced not independently but to enhance the probability or improbability of the main fact included in the charge, *viz.*, the corporeal giving and taking of Jagannath at Aurangabad. The offence of perjury so far as this item is concerned therefore consists only in the fact that Mr. Tilak asserted on

oath that Jagannath was placed on the lap of Tai Maharaj at Aurangabad, and that she gave him sweetmeats and his father said to Tai Maharaj " Now you should protect the boy &c. " Tai Maharaj has denied all this in her evidence before Mr. Aston and also before this Court, and if it can be shown by evidence that the boy Jagannath was placed by his father on the lap of Tai Maharaj, the case for the prosecution before this Court falls through entirely for the giving of the sweetmeats and the father's remarks to Tai Maharaj are matters, which naturally accompany the corporeal giving and taking of the boy. I do not mean to imply that we have no evidence to adduce on these two minor points. I simply want to draw Your Worship's attention to what may be said to form the kernel of the charge on this head ; and I shall now proceed to examine how the prosecution has tried to substantiate its case in this particular. As regards the second part of the charge *viz.* that regarding the alleged confinement of Tai Maharaj at Poona, I propose to deal with it separately afterwards.

#### HOW THIS CHARGE IS PROVED OR DISPROVED.

Now the fact that the boy Jagannath was placed by his father on the lap of Tai Maharaj at Aurangabad, which forms the gravamen of the first item of the charge, is one which can be witnessed or actually seen with the eyes, and according to the ordinary rules of evidence when direct evidence of this fact is available, it is not only a mistake, but absolutely unjudicial to rely upon circumstantial evidence for proving or disproving the same. It is not more than two years since the date of the occurrence of this fact; and in spite of plague at Aurangabad, the persons who actually witnessed the fact are still available for giving evidence. Again according to the story of the Defence, Jagannath's adoption by Tai Maharaj at Aurangabad took place openly and in the presence of a number of people. If this is true, there ought to be no difficulty in getting direct evidence of corporeal giving and taking of Jagannath by Tai Maharaj, and there are strong grounds for believing that the prosecution was fully aware of the same. In the first place Tai Maharaj when she went to Aurangabad was accompanied by no less than seven servants, three of whom Parvati, Godu and Shankar were her personal attendants, one Bala was the estate peon, one Bele was a karkun given by Mr. Nagpurkar, and two, Vaman and Laxman, were her cooks. All these persons are expected to know directly the details of Jagannath's adoption, and as most of them were in the service of Tai Maharaj while the prosecution evidence was being recorded in this Court, their non-production by the prosecution is not only suspicious, but damaging to the case of the prosecution. Of these seven servants, only Godu and Parvati have been called as witnesses, and we shall presently see what kind of evidence they have given. Of the remaining, Shankar was named in the list of witnesses and was even in Court in attendance on Tai Maharaj but was not examined as a witness. Mr. Nagpurkar has admitted in his cross-examination that Laxman, the cook, Shankar the *kuzrya*, and Godu were in Tai Maharaja's service on the day of his examination. The names of Shankar and Laxman have also appeared in the evidence in other connection, but still neither of them was examined by the prosecution; nay, Mr. Nagpurkar, in his examination-in-chief, was expressly asked why the servants in the Wada, other than those already examined, were not called as witnesses, and in reply he has stated that they were not called because they are favourable to Mr. Tilak. This admission settles the point that the servants not called by the prosecution were actually adverse and would have deposed against the prosecution, if put into the witness-box. The details of the Police investigation further strengthen the same view; for, Bala the peon, Bele the karkun, and Shankar the attendant, were actually examined by the Police and there can be no doubt that the prosecution had in its possession

the statements made by these witnesses to the investigating Police officer. The Defence is, therefore, entitled to rely upon the non-production of these witnesses in support of its story. I would ask Your Worship to refer to the above named Calcutta case in support of my contention. In that case ( I. L. R. 8 Cal. 125 ) it is expressly laid down that " If such witnesses are not called ( by the prosecution ) without sufficient reason being shown ( and the mere fact of their being summoned by the Defence seems to us by no means a sufficient reason ) the Court may properly draw an inference adverse to the prosecution. There is no corresponding inference against the accused. He is merely on the defensive and owes no duty but to himself. He is at liberty, as to the whole or any part of the case against him, to rely on the witnesses of the case for the prosecution or to call witnesses or to meet the charge in any other way he chooses; and no inference unfavourable to him can properly be drawn, because he takes one course rather than the other." The principle here laid down is as clear as anything could be, and applies with peculiar force in the present case. This is a case for perjury and as in every criminal case, the *onus* of substantiating the charge rests entirely on the prosecution. It is the prosecution that has to prove negatively that Jagannath was not placed on the lap of Tai Maharaj at Aurangabad. The rule that a person denying a fact is not called upon to prove it but the *onus* rests on the person who asserts, is not applicable in the present instance. Here the prosecution must prove the charge like any other positive fact, and if it does not discharge this duty satisfactorily, the benefit of the doubt must be given to the accused. The principle is clearly laid down in *Reg. v. Ahmed Ally* W. R. Criminal p. 27 where Norman J., in delivering judgment says, " It appears to us that the true rule is that no man can be convicted of giving false evidence except upon proof of facts, which if accepted as true, show not merely that it is *incredible*, but that it is *impossible* that the statement of the party accused made upon oath can be true. If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand; because, assuming all that is proved to be true, it is still possible that no crime was committed." Judging by this standard, the prosecution cannot be said to have established its case in the present instance. Tai Maharaj was admittedly accompanied by seven servants to Aurangabad, three of whom were her personal attendants. All these must have known of the adoption if it took place at Aurangabad and the prosecution was aware that they had such knowledge. They also knew from the Police inquiry that several persons at Aurangabad had witnessed the corporeal giving and taking of Jagannath; and yet they have deliberately elected to rest their case, so far as direct evidence is concerned, only on the testimony of Tai Maharaj and Parvati. What is the inference? Evidently the persons not called as witnesses—and their number is very large, if we include the Aurangabad witnesses in them—would have deposed to the fact of corporeal giving and taking of Jagannath in their presence, and the prosecution did not wish to place this evidence before the Court. It is not alleged, much less proved, that these witnesses would not have told the truth, if placed in the witness-box, and under these circumstances, Your Worship can, I think, come to no other conclusion, but that the prosecution has failed to substantiate its charge, and has unfairly endeavoured to keep back from the Court a large mass of direct evidence, without showing any reasonable ground why it was not produced by it, except that if produced it would go against it. A case like this deserves to be dismissed even without calling upon the Defence to produce its evidence.

I have stated that the direct evidence in favour of the prosecution consists only of the testimony of Tai Maharaj and Parvati. Of these Tai Maharaj who has been practically the real prosecutrix in the case is posi-

tive in her assertion that she did not take Jagannath on her lap at Aurangabad. Nay, she has embellished her story by incidents and facts, which existed only in her imagination, and which were easily *swallowed* by the prosecution that discarded the whole Police inquiry conducted by an able officer, simply because it did not afford sufficient evidence against Mr. Tilak. I shall have to revert later on to the falsity of Tai Maharaja's story regarding incidents other than the corporeal giving and taking of Jagannath. Here we are concerned only with the latter; and it is true that she does assert that no giving and taking of Jagannath took place at Aurangabad. But this assertion is met by another equally clear assertion of Mr. Tilak on oath that the boy Jagannath was, as a matter of fact, placed on the lap of Tai Maharaj at Aurangabad. The two statements contradict each other, and the present item of perjury is based solely upon the contradiction. We cannot therefore attach any weight to the statement of Tai Maharaj unless the same is substantiated by reliable independent evidence. This evidence, so far as direct testimony is concerned, consists, in the present instance, only of the evidence of Godu and Parvati. Both of these witnesses are the personal attendants of Tai Maharaj. Godu, however, asserts that she is a friend and not a servant of Tai Maharaj, though in her cross-examination she has admitted that she is the widowed daughter of Appa Shastri, a late servant of the estate and as she had no means of livelihood after her father's death she was taken into service by Tai Maharaj with no remuneration except meals in the Wada. A woman of this kind, not supported by her husband's or father's relations and entirely dependent upon Tai Maharaj for her bare maintenance, can hardly be expected to give any evidence against Tai Maharaj and it is no wonder if she proved only an *alter ego* of the latter. Most of her evidence in the examination-in-chief is taken up in narrating what Tai Maharaj said to her about certain incidents alleged to have taken place at Aurangabad, and it can hardly be looked upon as an independent corroboration. Her evidence is practically another edition of that of Tai Maharaj, and any statement of her regarding adoption cannot be considered reliable. Her manner of giving evidence is also remarkable. She remembers that there was no adoption by Tai Maharaj at Aurangabad; but when questioned in the cross-examination whether a number of people had not assembled on the 28th of June in the marble hall of the Sikh *Mandir*, she feigned ignorance and said that she did not know if any people had so assembled in the marble hall on that day, but that she was sure that they were not seen by her in her way as she passed from one room to another. There are many other inconsistencies and contradictions in her evidence which will be noticed later on, when I come to discuss the question of the alleged confinement of Tai Maharaj at Aurangabad. So far as the present question is concerned it is enough to say that Godu like Tai Maharaj denies the fact of adoption but is unwilling to state the circumstances or incidents which she must have witnessed on the 27th or 28th June. As for Parvati, her evidence is utterly useless for the purposes of the prosecution. The story of the prosecution as stated by Tai Maharaj makes the latter sign the adoption paper in her room when Parvati and Mr. Tilak were alone present therein. But Parvati gives a flat denial to this story and says that Tai Maharaj never signed any paper in her presence in the room assigned to her on the upper floor of the *Mandir*, nor was she ever told to see if a carriage was ready at the door at the time of the signing of the document on the 28th June 1901. As regards the corporeal giving and taking of Jagannath she has stated in her examination-in-chief that she did not personally see any boy being adopted but in her cross-examination she has admitted that on the morning of the 28th of June 1901, a number of people had assembled in the marble hall of the Sikh *Mandir* at Aurangabad and Tai Maharaj and Jagannath's father were amongst them, while Jagannath was sitting in Tai Maharaja's front. This substantially supports the story of the Defence, for Parvati

was not expected to be present at the meeting all along, and it is not unlikely that she may have gone out at the time when the boy was actually placed on Tai Maharaja's lap. Another circumstance which deserves to be noticed in connection with this witness is the fact deposed to by her in her re-examination, viz., that Tai Maharaj was willing to adopt a boy at Anrangabad and that a contrary statement made by her in her examination-in-chief was made because on the same day she was told out of Court by some one on behalf of the prosecution to give her evidence in a particular way. But even leaving this fact aside, I do not think that the prosecution itself would care to rely on Parvati's evidence so far as direct evidence is concerned. We have therefore nothing except Tai Maharaja's statement half-heartedly corroborated by such a witness as Godu, to prove the case for the prosecution on this point; while its omission to call a number of witnesses connected with the transaction heavily tells against the probability of Tai Maharaja's story. I have shown above that the Defence is fully entitled to rely on this omission. And when in addition to it, it has the direct evidence of no less than 9 witnesses, who depose from their own knowledge to the fact of corporeal giving and taking of Jagannath at Anrangabad—witnesses whose social position and credibility are unquestionable, I think Your Worship cannot but order the acquittal of the accused on this point. It is a case between Tai Maharaj and Godu on one hand and Mr. Tilak and one dozen respectable gentlemen on the other, and I fail to see how any one can be convicted on a charge of perjury under the circumstances.

#### INDIRECT EVIDENCE FOR THE PROSECUTION.

What I have already said about the direct evidence for the prosecution, will explain why the prosecution has attempted to base its case on indirect or circumstantial evidence. The advisers of Government or Tai Maharaj were morally convinced that the whole of the direct evidence was dead against the case set up on behalf of Tai Maharaj, and as an alternative, they have sought to establish their case by circumstantial facts, which on account of their dubious character they knew could be twisted and perverted to serve their purpose. I hope to convince Your Worship that all these circumstantial facts have as a matter of fact been wrongly construed or understood by the prosecution and that in some cases at least, the wrong construction amounts to their intentional perversion of these facts. But at the outset I wish to draw Your Worship's attention to the general principle of evidence that when a fact is capable of direct proof and such proof is produced, it cannot be shaken by circumstantial evidence unless it be of such a nature as to be *wholly* and *absolutely* inconsistent with the existence of the fact as proved by the direct evidence. It has also to be borne in mind that the offence, with which the accused is charged in this case, is one of perjury, and therefore when a number of witnesses directly depose in favour of the accused, it is, to say the least, unsafe to rely on the indirect evidence adduced on behalf of the prosecution. I would, therefore, ask Your Worship to bear this principle in mind in weighing the indirect evidence for the prosecution against the direct evidence on behalf of the Defence, and to judge of the probability or improbability of the fact in issue accordingly. I now proceed to examine *seriatim* the various facts or incidents put forward by the prosecution as tending to show the improbability of any corporeal giving and taking of Jagannath at Aurangabad. The whole case for the prosecution, if I understand it right, amounts to this :—We care not for the direct testimony, however overwhelming it may be; Tai Maharaj may have willingly gone to Aurangabad; but there are a number of circumstances occurring before her journey to Aurangabad, during her stay at the place and even after her return, which go to make it highly improbable that Tai Maharaj could have taken on her lap any boy in adoption at that place. In short, the prosecution would urge that the probabilities of the case are against the fact of corporeal giving and taking, and that these pro-



bilities ought to be allowed to override the direct testimony, howsoever independent and trustworthy it may be on other grounds. I have already said that this position is perfectly untenable in law, and I hope presently to show that the probabilities on which the prosecution wishes to rely are either imaginary, illusive, and in some cases at least, clumsy inventions and after-thoughts or obvious perversions of truth deliberately made by persons who knew not what evidence documentary or oral might be urged to demolish these inventions. Tai Maharaj is still young and inexperienced and as observed by Mr. Khaparde is likely to be led away by persons who surround her. But surely that does not, in any way, diminish the responsibility of her advisers, nor serve the purpose of investing her statements with a character higher than that of clumsy fabrications made to suit her purpose.

#### TESTAMENTARY WISHES OF THE DECEASED.

The first circumstance put forward by the prosecution to show the improbability of the Aurangabad adoption is that the testator at the time of making his will expressed to Mr. Tilak his desire that in case an adoption was deemed necessary it should be made from amongst the descendants of Siddheshwar at Kolhapur and that he signed the will after Mr. Tilak gave his oral promise to that effect. In other words, it is suggested that it was the express wish of the testator not to adopt from any family other than that descended from Siddheshwar and, therefore, an adoption from the Babre branch could never have been thought of, much less effected. Now in the first place, admitting for the sake of argument that such was the desire of the testator, it cannot be said to make an adoption from the Babre family improbable. For there are numerous cases in which testator's oral wishes are not carried out to their fullest extent. The will as it stands contains no provision as regards the family from which the adoption ought to be made. It leaves the question open, and very strong evidence is required to interpolate in the will, by way of a supplement, condition which could have been easily inserted into it at the time of its execution. Let us see, if the prosecution has produced such evidence. Mr. Tilak's version of the incident will be found in Ex. D. 14, and it is an admitted fact that the very idea of making a will was started by Mr. Tilak and carried out by him after it was consented to by the testator. Mr. Tilak states in this report ( Ex. D. 14 ) that when the draft of the will was read to the deceased, the latter told him to insert in it words to the effect that the adoption should be made from boys in the *family* ( without using any qualifying words ). Upon this Mr. Tilak told the deceased that it was not proper to insert such words in the will; for, perchance, a suitable boy may not be found in that case, or his guardians would impose impossible conditions; and that it was, therefore, desirable to leave the hands of the trustees unfettered to have the adoption made from the family or outside the family, as they might think proper. Whereupon the deceased agreed with Mr. Tilak's view and the words, proposed by him, were not inserted in the will. The prosecution accepts this story in substance, but it is altered at the end by making Mr. Tilak *orally* promise the deceased that the adoption would be made only from the *family of Siddheshwar*. The will as it stands is not ambiguous, and requires no explanation, and the deceased understood it as well as any one else. It is, therefore, against law and common sense to allow any party to prove an oral condition not mentioned in the will, not necessary to make its meaning plain and intelligible. The will distinctly contemplates the contingency of the posthumous or the adopted son dying soon after birth or adoption and the consequent necessity of making as many adoptions as necessary, and it is unreasonable to suppose that if the testator really desired to adopt from the Siddheshwar family, that condition could have been omitted. Besides, it is not explained why Mr. Tilak

should have gone the length of making an oral promise to the testator at this time. He, i. e. Mr. Tilak, knew little at the time about boys from or outside the family eligible for adoption, nor was he interested in any of them. The argument he urged against the insertion of the condition was a general one and if the testator had not accepted it, it would have been a matter of no consequence to Mr. Tilak if the condition was or was not inserted in the will. The story of an oral promise by Mr. Tilak is therefore improbable on its face. Let us, however, analyse the evidence produced by the prosecution to support its story. This is contained in the evidence of Ghotavadekar, Phadke, Tai Maharaj and Nagpurkar. Of these Ghotavadekar says that Mr. Tilak only told the deceased that the trustees would *endeavour* to carry out the wishes of the deceased in the matter, clearly meaning that there was no definite *promise* made to the testator. His evidence therefore does not support the view of the prosecution. Narayan Vasudev Phadke states that when the draft of the will was read to the deceased, the latter told Mr. Tilak to insert in it the words to the effect that a boy from the Siddheshwar family should be adopted, but Mr. Tilak said that it was not necessary to insert that condition and that if an adoption be necessary, a boy from the family of Siddheshwar would be selected. This witness is an old friend of the family being a Karbhari to the late Umabai Sahib, the adoptive mother of Baba Maharaj, and has attested the will in question. He is again in no way favourably disposed towards the trustees, for, as stated by Mr. Khaparde, he was a principal member of the clique hostile to the management of the estate by the trustees in 1898, and had to be shut out of the Wada for some time. He does not explain in his examination-in-chief what he understood by the expression "the family of Siddheshwar Maharaj" used by the deceased in this connection. But in his cross-examination he has admitted that when Mr. Tilak made inquiries about the relations of Maharaj family, it was this witness himself who told Mr. Tilak that some of Baba Maharaja's *bhaubands* were at Babre. It is, therefore, clear that the expression "the family of Siddheshwar" was understood by the witness to include lineal descendants as well as collateral relations of Siddheshwar. His evidence is not therefore favourable to the prosecution, which tries to limit the meaning of the above expression only to the lineal descendants of Siddheshwar. There remains the evidence of Tai Maharaj and Mr. Nagpurkar but both of these assert that the discussion about the alleged condition took place not at the time when the draft of the will was read to the deceased, (Mr. Nagpurkar goes so far as to assert that the draft taken to the deceased did not go beyond the first four lines), but at the time when the final document was signed by the testator, thus contradicting Ghotavadekar and Phadke in an important particular. Tai Maharaja's hesitation to give the details of the incident further shows that she was then hardly in a condition of mind to attend to these details. It may also be noted that the prosecution has not called Dr. Modi who was admittedly present at the time and had attested the document, and whose independent testimony would have been far more valuable than that of Phadke or Nagpurkar. Mr. Ranade, who is an attesting witness to the will and who was examined as a witness in the case on behalf of the prosecution was also not questioned about this incident. But it is unnecessary to search for omissions and inconsistencies of this kind; for the conduct of Tai Maharaj and Nagpurkar, after the death of the testator, furnishes us with the strongest contradiction of the story about the oral promise to the testator now put forward by them. It is an admitted fact that Mr. Tilak was not in Poona till the 6th of September 1898, and the posthumous son of Baba Maharaj died on the 9th of March of the same year. There was thus full seven months' interval between the death of the posthumous son and Mr. Tilak's appearance on the scene, and both Tai Maharaj and Nagpurkar were free during that interval to carry out the wishes of the deceased, as they knew them, in

the matter of adoption. Yet what is the result? We have it in evidence that immediately on the death of the posthumous son, Pandit Maharaj put forward his brother Bala for adoption by Tai Maharaj and requested the Durbar of Kolhapur to intercede on his behalf. This proposal made in indecent haste was indignantly repudiated by Messrs. Khaparde, Kumbhojkar and Nagpurkar, as well as by Tai Maharaj; Kumbhojkar going so far as to inform the Diwan of Kolhapur that there was no boy in the Kolhapur branch of the family eligible for adoption. (Ex. D. 52). After Bala was thus rejected, it was Mr. Nagpurkar himself and later on also Tai Maharaj that proposed to Mr. Khaparde to give his youngest son in adoption to Tai Maharaj. There were again proposals made for the adoption of Tai Maharaja's brother. Now if both Tai Maharaj and Nagpurkar knew, as they now pretend to do, that it was the testator's wish not to adopt any one not lineally descended from Siddheswar Maharaj, it is impossible to understand why on earth should they have made any proposal to Mr. Khaparde; for Mr. Khaparde was the last man to be trifled with in this way, and why should they have entertained, and not silenced *in limine*, any proposal about adopting Tai Maharaja's brother? The evidence on this point consists of autograph letters written by Mr. Nagpurkar and these being written at a time when the events, referred therein, took place, are far more reliable than the statements made by Mr. Nagpurkar in his evidence about the wishes of the testator. I refer first to Ex. D. 16. This is a letter written by Mr. Nagpurkar to Mr. Khaparde, on 12th September 1898, and amongst other matters, he gives therein an account of his first interview with Mr. Tilak in the matter of adoption. He writes to Mr. Khaparde that Mr. Tilak desires to bring a boy from amongst the *bhaubands* and keep him near Tai Maharaj for some time before he is adopted, but he (Mr. Nagpurkar) expressed his disapproval of the idea on the ground that it is not desirable to allow any time to lapse between the approval and the adoption of a boy, and that Mr. Tilak accepted his view. Immediately after he refers to the proposal of adopting Mr. Khaparde's youngest son and promises to carry out the wishes of Mr. Khaparde in the matter, stating that Tai Maharaj has also received the idea favourably. What follows is, however, still more important. Speaking of Mr. Tilak's attitude, he says, "Mr. Tilak says that a boy from *bhaubands* should be adopted and not any one else. *He says* that the wishes of the deceased were to the same effect. This was said incidentally in reference to Sinnarkar's boy." Here we have a clear statement of Mr. Nagpurkar that he learnt of the deceased's wishes first from Mr. Tilak, and that it was Mr. Tilak and not he, who was then against any adoption from outside the *bhaubands*. This letter is written when there were no dissensions between the trustees *inter se* or between them and Tai Maharaj. It is written in the ordinary course of business and almost immediately after the incidents therein mentioned took place. If Mr. Nagpurkar really knew at the time what he now pretends to know about the testator's wishes, it was *the* time when he should have stated them in plain terms and repudiated any proposal as Mr. Tilak did, about the adoption of Mr. Khaparde's youngest son, or of Sinnarkar's boy, i. e. the brother of Tai Maharaj. He does not only fail to do so, but coolly reports what Mr. Tilak told him about the wishes of the deceased. Is it, I ask, consistent with the position he has now taken up? Evidently not. Mr. Nagpurkar in his oral evidence admits that Tai Maharaj asked for Mr. Khaparde's youngest son, but tries to explain it away by adding that this was done to stop the *khafpat* for Nana Maharaja's son,—an explanation which is directly contradicted by Ex. D. 53, which shews that Mr. Khaparde was opposed to any Kolhapur boy and especially Nana's son, and therefore there was no necessity to make such a misrepresentation to Mr. Khaparde. This is not, however, the only occasion where Nagpurkar receives proposals of adoption from outside the Kolhapur family without any protest. In his letter

( Ex. D. 9 ) to Mr. Kumbhojkar dated 18th April 1899, he says that Tai Maharaj intends to go to Sinhagar during the hot season, and that as Mr. Tilak is there, it is natural that the adoption question would be discussed every day. He then quietly states without any comment that " he has received a message ( from Mr. Tilak ) the day before through Shankar Rao to inquire about boys at Babre." This shows that at the time of this letter the proposal did not strike Mr. Nagpurkar as contradictory to the wishes of the deceased. But this is not all. In his letter dated 26th April 1899 ( Ex. D. 8 ), he writes to Mr. Kumbhojkar that " Shri ( Tai Maharaj ) has fully made up her mind not to adopt from the family, nor is it the express desire of Mr. Khaparde, " and the same assertion is repeated in his next letter to Mr. Kumbhojkar dated 5th May 1899. ( Ex. D. 7 ). So from the death of the posthumous son till the 18th of June 1901, Mr. Nagpurkar's conduct was directly opposed to the testator's wishes as now put forward by him. And if his present assertion about the testator's wishes be true, his conduct since the death of the posthumous son becomes inexplicable. We must, therefore, reject his story about the alleged oral promise given by Mr. Tilak in his presence to the deceased. The same observation applies to Tai Maharaj. We have Mr. Khaparde's evidence that she herself proposed to him to give his youngest son in adoption to her. We have also the statement of Mr. Nagpurkar ( Ex. D. 7 and D. 8 ), that Tai Maharaj had fully made up her mind not to adopt from the Kolhapur family, long before April 1899. If Tai Maharaj knew what her husband's last wishes were and was anxious to act accordingly as she now pretends to do, how could she have made up her mind not to adopt from the Kolhapur family, for we cannot but suppose Mr. Nagpurkar to have been in possession of her real views in the matter. But we need not depend on Mr. Nagpurkar's letters to determine the views of Tai Maharaj. It is in evidence that a meeting of all the trustees was held at Sinhagar in May 1901 where the question of adoption was discussed in the presence of Tai Maharaj, and a resolution passed directing Mr. Nagpurkar to send some one to Babre for obtaining information about boys from the Babre family available for adoption ( Ex. 62 ). Some days before this resolution was adopted, Mr. Khaparde had an interview with Tai Maharaj in which the question of adoption was discussed, but no decision was arrived at, as Tai Maharaj wanted time to think over the matter. Two or three days after Mr. Khaparde wrote to Tai Maharaj a short *chit* ( Ex. 80 ) enquiring if she had made up her mind, and if so, requesting her to communicate the same to him. In reply to this note Tai Maharaj wrote to Mr. Khaparde ( Ex. D. 20 ) that her mind is rather confused regarding the question of adoption, but she states that " she thinks there are boys at the village of Babre; after first seeing some, and then all boys, a decision should be come to. " This statement is made in May 1901 and it is admitted by Tai Maharaj in her cross-examination that the letter was written of her own free will and without any the least pressure from outside. The whole of the letter is again in her own handwriting and nothing could be more plain than the fact that at this time she herself was inclined to make an adoption from the Babre branch of the family. If so what becomes of the alleged oral promise made by Mr. Tilak to her deceased husband in her presence? Evidently the story is an after-invention made to give a colour of legality to the second adoption. Mr. Nagpurkar has attempted to get out of the statements in his letters to Mr. Kumbhojkar ( Ex. D. 8, D. 7, D. 9 ) by stating that they were written fraudulently to purposely mislead Mr. Kumbhojkar. But this explanation is absurd on its face, for Tai Maharaj had then but just returned to Poona from Amaraoti, where she had been Mr. Khaparde's guest for six months, and it is quite natural to suppose that she had imbibed or accepted Mr. Khaparde's view in this matter, which was that no boy from Kolhapur is eligible ( Ex. D. 8 and D. 53 ), and that Mr. Nagpurkar was merely giving this information to his co-trustee. It is needless to comment further upon such an explana-

tion; what guarantee is there that a man who at one time attempts to defraud his co-trustee and friend in this way, may not at another time be defrauding the Court and the prosecution? But even this explanation fails in the case of the letter he wrote to Mr. Khaparde on 12th September 1898, and in which he expressly makes the proposal regarding the adoption of Mr. Khaparde's youngest son and the brother of Tai Maharaj. It is nowhere suggested that this letter was written fraudulently to Mr. Khaparde. As regards Tai Maharaj, an attempt has been made to explain away her statement in Ex. D. 20 by twisting and distorting the words therein. The words in the letter are :—“बाबरे गावकडेल मुले आहेत काही पहिली पाहुन नंतर सर्व मुले पाहुन ठरवावे आसे वाटते”. Tai Maharaj has been made to say that by पहिली she means the Kolhapur boys, and by सर्व the Kolhapur and the Babre boys. But this meaning is quite unnatural and it is hardly better than a quibble to get out of the difficulty if possible. Let us take the words as they are—काही पहिली पाहुन नंतर सर्व मुले पाहुन ठरवावे. Here there are two things mentioned as necessary to be done before any decision is arrived at, the first is काही पहिली पाहुन, and the second is नंतर सर्व मुले पाहुन. The word पहिली or (first) in the first sentence corresponds to नंतर (then) in the second sentence and remembering that the letter is written by a lady there was hardly any necessity to resort to hair-splitting over the meaning of the expression and question. There is no mention of Kolhapur in the whole letter nor is it referred to anywhere impliedly. It is therefore absurd to suppose that Tai Maharaj could have ever intended to refer to Kolhapur boys by the words पहिली (first) in this sentence, and is evidently quibbling, more probably at the instance of others than of herself, when she says that पहिली (first) refers to Kolhapur boys. But even accepting her interpretation for the sake of argument, it has yet to be explained why she should refer to the Babre boys at all, if she knew, as she now pretends to do, that it was the positive wish of her deceased husband not to adopt from outside the Kolhapur branch of the family. In short the whole conduct of Mr. Nagpurkar and Tai Maharaj subsequent to the death of the posthumous son of the testator is directly opposed to the story of the alleged *oral* promise given by Mr. Tilak to the testator in the presence and to the knowledge of these persons; and the only conclusion we can draw from these facts is that both of them always considered themselves free to receive, entertain or make proposals of adoption from outside the Kolhapur branch, and it was only when the trustees *decided* to adopt a boy from the Babre branch, that Mr. Nagpurkar first thought of the alleged oral promise for the purpose of opposing the resolution in the interest of Bala Maharaj, a promise of which Mr. Nagpurkar knew nothing on the 12th of September 1898, and also not till he wrote his letter dated 18th June 1901 to Mr. Khaparde (Ex. D. 12), for in that letter Mr. Nagpurkar only speaks of having “*learnt*,” and not personally known, of such a promise. It is quite natural that when Tai Maharaj was won over to this view after her return from Aurangabad that she too should think of adopting the excuse put forward by Mr. Nagpurkar. We can thus easily explain Mr. Nagpurkar's minute of dissent (Ex. 13) on the resolution of the trustees purporting dated 18th June 1901 in which a reference to the alleged *oral* promise appears for the *first time*, and Tai Maharaja's statement before the Agent dated 6th July 1901 (Ex. D. 22), wherein she says that it was her deceased husband's wish to adopt from the family. Unfortunately for both, they did not, however, know that the whole of their previous conduct ever since the death of the posthumous son would give a direct lie to this excuse and that evidence in the shape of their autograph letters was available and would be produced to prove the falsity of their contention. I do not think the prosecution would venture to explain Tai Maharaja's or Mr. Nagpurkar's conduct in the matter of adoption subsequent to the death of the posthumous son by arguing that both of them were not bound to carry out the alleged last wishes of the testator

in the matter. For if Tai Maharaj was free to select a boy from whatever family she liked, the trustees could urge the same on their behalf with greater force.

**THE ALLEGED DETERMINATION OF TAI MAHARAJ TO ADOPT BALA MAHARAJ.**

The second circumstance urged by the prosecution to render the Aurangabad adoption improbable is the alleged determination of Tai Maharaj to adopt Bala Maharaj the younger brother of Pandit Maharaj from the beginning. This theory is put forward in the evidence of Mr. Nagpurkar, who says in his examination-in-chief that "Tai Maharaj thought of adopting Bala Maharaj four or six months after the death of her posthumous son." Tai Maharaj, however, does not accept this story and says in her evidence that she selected Bala Maharaj when she went to Prayag near Kolhapur at the beginning of 1901. Mr. Nagpurkar's statement is further incompatible with his letters to Messrs. Kumbhojkar and Khaparde (Exs. D. 7, D. 8 and D. 54). The last of these is written on 22nd January 1900, and Mr. Nagpurkar expressly refers in it to the proposal of the adoption of Nana Maharaja's son. We have also Mr. Nagpurkar's report to the trustees dated 22nd May 1901 in which he requested the trustees to finally settle something about the adoption at the meeting to be held soon after (Ex. D. 10.) This is, to say the least, inconsistent with the supposition that Tai Maharaj had made up her mind to adopt Bala Maharaj shortly after the death of her posthumous son; for, in that case it would have been useless to discuss the question or to collect information about all the available boys in order to enable the trustees and Tai Maharaj to make a choice therefrom. Tai Maharaja's letter to Mr. Kumbhojkar dated 13th October 1898 (D. 64), asking him to obtain information about the available boys at Kolhapur and bring it with him to Poona, further strengthens the same view. We have again Nagpurkar's own letters to Kumbhojkar written in May 1899 (Exs. D. 8, D. 9) in which he expressly says that Tai Maharaj had made up her mind not to adopt from the Kolhapur family,—a letter that gives a direct lie to the story of the prosecution. It is true that Bala Maharaj was put forward by Pandit Maharaj within a week after the death of her posthumous son, and the Kolhapur Durbar was being induced to bring pressure upon Tai Maharaj to accept the proposal. But it can be easily seen from (Exs. D. 52, D. 23) and Mr. Khaparde's and Mr. Nagpurkar's evidence that the proposal was summarily rejected at the time as too selfish and indecent by all including Tai Maharaj and that nobody ever thought of it seriously afterwards. It is also in evidence that at the meeting of the trustees held at Vithalwadi in June 1899, Mr. Kumbhojkar laid before the meeting a list of Kolhapur boys, (Ex. 76) and that Nana Maharaja's third son was deemed to be the most eligible of all, provided his horoscope was found to be satisfactory. This latter condition was not fulfilled, and Mr. Khaparde who had been from the beginning against the adoption of a boy from the Kolhapur branch (Ex. D. 53), reluctantly consented to give in, if, as stated by him in his evidence, the three trustees and Tai Maharaj were in favour of his adoption (Ex. S7.) All these incidents directly negative the supposition that Bala Maharaja's adoption was contemplated by Tai Maharaj soon after the death of her posthumous son. Let us now take up the other suggestion made by the prosecution regarding the contemplation of Bala Maharaja's adoption by Tai Maharaj. Tai Maharaj alleges in her evidence that she first selected Bala in the beginning of 1901, and the idea was developed and settled at the time of Bala's marriage in Poona, *i. e.*, about March or April 1901. Now there was no general meeting of the trustees in the year 1901 before the month of May; and it is impossible that Tai Maharaj could have told all the trustees about her alleged determination to adopt Bala before May 1901. It is, however, alleged that when Bala's marriage took place in Poona in the Maharaja Wada, Mr. Tilak was consulted by Tai

Maharaj about Bala's adoption and he said "let the marriage take place and we shall see afterwards," thus giving hopes to Tai Maharaj that her wishes may be carried out by the trustees. It is admitted that the message to Mr. Tilak was taken by Bhingarkar-boa, a respectable *haradas* of his place and a common friend or acquaintance of Mr. Tilak, Mr. Nagpurkar and Pandit Maharaj. This Bhingarkar-boa has been examined on behalf of the Defence, and has given us an account of the whole affair, which materially differs from the one given by Tai Maharaj or Mr. Nagpurkar. If Bhingarkar-boa is to be believed, and there is no reason why he should not, he was deputed to ascertain Mr. Tilak's wishes not by Tai Maharaj but by Pandit Maharaj. He states that he was told to ascertain if Mr. Tilak was agreeable to the proposal of Bala's adoption, and, if he was agreeable, then Pandit Maharaj would broach the subject to Tai Maharaj and induce her to accept the proposal. The reply to the message, taken back by Bhingarkar-boa was, according to him, in the negative, and in consequence the matter was dropped at the time. According to this account Tai Maharaj had, therefore, nothing to do with the proposal of Bala's adoption made to Mr. Tilak at this time, nor was Mr. Tilak's reply indecisive or in any way calculated to give any hopes to Pandit Maharaj. The question, therefore, naturally arises, which of these two accounts is credible; and fortunately for the defence, the answer is furnished by Tai Maharaj's autograph letter written to Mr. Khaparde in May and June 1901. ( Exs. D. 19 and D. 20 ). I have already referred to Ex. D. 20 before. It is a letter written at Sinhagar in May 1901 by Tai Maharaj to Mr. Khaparde in response to a note from him, requesting her to communicate to him her views about adoption as the matter was then soon to come before the trustees for decision. Now if Tai Maharaj had before this time already made up her mind to adopt Bala Maharaj and no one else, here was a fine opportunity for her to state her views in plain words, and there the matter would have ended; for it is not even alleged that when she wrote this letter ( Ex. D. 20 ) she was labouring under any kind of pressure, fear, intimidation or influence, due or undue. But she did nothing of the kind, and Ex. D. 20 not only makes no mention of Bala, but states in express terms " There are boys at the village of Babare. After first seeing some and then all boys, decision should be come to." Her letter to Mr. Tilak is, however, still more explicit ( Ex. D. 19 ). The marriage of Taty, the younger brother of Bala was to take place at Kolhapur in June 1901, and as Tai Maharaj wanted to attend the ceremony, the matter was reported to trustees for their sanction by Mr. Nagpurkar. The trustees were, however, unanimous in not sanctioning the proposal and their decision was duly communicated by Mr. Nagpurkar to Tai Maharaj. But Tai Maharaj thought that she could still induce Messrs. Khaparde and Tilak to accede to her wishes and consequently wrote two letters, one to Mr. Tilak ( Ex. D. 19 ) and the other to Mr. Khaparde. Mr. Khaparde's reply to it is put in by the prosecution ( Ex. 88 ). It shows that the excuse put forward by Tai Maharaj in her letter to Mr. Khaparde was that she had already passed her word to Pandit Maharaj that she would attend the ceremony. Mr. Khaparde wrote in reply that as Tai Maharaj would be breaking the promise on account of the trustees the sin of breaking the promise would devolve upon trustees and not upon her head. Mr. Tilak's reply was also in the negative, but it is not put in by the prosecution. We are, however, here concerned with the letter written by Tai Maharaj to Mr. Tilak on this occasion ( Ex. D. 19 ). In this she expressly states that Pandit Maharaj, in his letter to her, writes " We press, ( but ) it is not for adoption. We have lost our hope from the time the boy was married." These words mean, if they could mean anything, that all hopes of Pandit Maharaj about the adoption of Bala by Tai Maharaj were discomfited at the time when the marriage of Bala took place. This fully corroborates the account given by Bhingarkar-boa and satisfactorily solves the question as to which of the two accounts, Bhingarkar-

boa's and Mr. Nagpurkar's, is to be regarded as trustworthy and reliable. It is attempted to explain the statement of Tai Maharaj in Ex. D. 19 by making her say that she invented a false excuse to mislead Mr. Tilak and so induce him to grant her permission to go to Kolhapur. I have already expressed my view regarding such explanations and I do not think that the prosecution claims such a monopoly of wisdom as to think that Your Worship or for the matter of that, any man of common sense, would, for a moment, accept, much less be deceived by such undignified and self-damaging explanations. I do not know if Tai Maharaj is to be represented to the world as a woman trading in lies, and always engaged in misleading the trustees by concealing her real intentions and putting forward false excuses. It may suit the purpose of the prosecution to do so for the present, but if this duplicity is once shown and admitted to be a trait of her character, it will have to be considered, specially in connection with her attitude in reference to Aurangabad adoption particularly during her stay at Aurangabad. This disposes of the question that Tai Maharaj settled to take Bala Maharaj in adoption at the time of his marriage in Poona, and that she communicated it to the trustees at the meeting held at Sinhagar at the end of May 1901, when it was resolved to send some one to Babre to obtain information about the boys available for adoption at that place. The resolution adopted at this meeting directed Nagpurkar to go personally, and *not to wait* if no one else was available for the purpose, and this by itself sufficiently indicates the urgency of the affair. Mr. Nagpurkar, however, did not go and the trustees had to consider the subject at their meeting of 18th June 1901. The resolution passed at the latter meeting requires a separate consideration. The question now in hand is whether Bala Maharaj was selected by Tai Maharaj at the time of his marriage, and what I have stated above will, I believe, be sufficient to convince Your Worship that the evidence both documentary and oral is in consistent with the supposition that Tai Maharaj had selected Bala at the time of his marriage in Poona. The second circumstance put forward by the prosecution to prove the improbability of Aurangabad adoption is, therefore, not only untenable and misleading, but positively false.

#### THE BABRE FAMILY.

It seems to be believed that Jagannath, who, according to the story of the Defence, was adopted at Aurangabad, does not belong to the family of Siddheshwar; and that his relationship with the deceased was discovered by Messrs. Tilak and Khaparde in a hurried visit to Aurangabad. If it is contended that Jagannath is not one of the lineal descendants of Siddheshwar, there can be no two opinions about it, for the genealogical table put forward in evidence (Exs. 11 and 65) clearly shows that Jagannath is descended from the elder brother of Siddheshwar and not from Siddheshwar himself. But the trustees in making their choice of a boy to be adopted by Tai Maharaj were, as I have already shown, free to make a choice from amongst the lineal descendants of Siddheshwar or from his collateral relations or even from a family different from that of the testator. Of course, the approval of Tai Maharaj was a necessary previous condition for the adoption of any boy, for no adoption could have taken place unless she was willing to accept, and did accept the boy in adoption. But it is in evidence that Tai Maharaj herself once thought of adopting the youngest son of Mr. Khaparde, that is, a boy not from amongst the lineal descendants of Siddheshwar, nor from amongst the collateral relations, in other words, not from the family of the testator. It is therefore clear that Jagannath's adoption cannot be objected to on the ground that he is not a lineal descendant of Siddheshwar, nor does it render his adoption illegal or improbable. As regards the relationship of Siddheshwar and Harabhatji there is sufficient evidence to establish the fact that they were brothers from the family record



(Ex. 76) of Baba Maharaj and Pandit Maharaj. The relationship is again admitted by Pandit Maharaj in his examination. We have also the evidence of Narayan Vasudeo Phadke to show that some Babre people used to come over to Poona in the days of Umabai Saheb the adoptive mother of the testator, and that the said Umabai Saheb treated them as her *âpta* or *bhaubands*, i. e. family relations. This is corroborated by the testimony of Malhar Manohar alias Bhausahab Dev, the father of Jagannath, the boy adopted at Aurangabad. He states in his evidence that he used to visit Poona occasionally in the days of Umabai Saheb and has produced a letter of introduction given by Umabai Saheb on one of these occasions being addressed to her Karkun at Nasik (Ex. D. 65.) The letter is dated 18th March 1872 and describes Bhausahab Nidhonekar as one of Umabai Saheb's *âpta* or family relation. This fully corroborates the account given by Narayan Vasudeo Phadke regarding the Babre family. Even Mr. Nagpurkar admits in his evidence that he knew for a long time that there was a branch of the family at Babre. It is a custom in the Baba Maharaj family and also in the Kolhapur branch to worship the *pâdukas* of Siddheshwar Maharaj, and on occasions to pray for his blessings by chanting a small hymn in his praise. (See Ex. D 54). This recitation is usually made through a priest, and we have the evidence of Vasudev Shastri Mendargikar that the aforesaid hymn contains an express reference to Babre as the native land of Siddheshwar. Thus family history and family traditions both directly prove the relationship of the Babre branch with the testator's family, and I do not think any more evidence is needed to prove that Jagannath belongs to the same family as the testator, though he is not a lineal descendant of Siddheshwar. It is urged, though I don't think quite seriously, that the Babre people are too poor to make a choice from amongst them for an adoption by the widow of a First Class Sardar at Poona, and as a matter of fact my learned friend Mr. Strangman did cross-examine some of the Aurangabad witnesses including Bhausahab Dev on this point. This was indeed a nice subject for prolonging the cross-examination of witnesses and make the counsel's task interesting to the spectators in Court. But I do not think that the learned counsel for the Crown did mean anything more than this by introducing the subject in the cross-examination. If Jagannath's adoption at Aurangabad is to be considered as improbable, because he is born of comparatively poor parents, what would the prosecution say about the marriage of Tai Maharaj with the deceased, for Tai Maharaj is admittedly born of parents much more poor and far less respectable than Bhausahab Dev of Nidhone. The first wife of Baba Maharaj was the daughter of the Pratinidhi of Oundh, a high family, highly respected in the country. But we cannot say that of Tai Maharaj who, as Ghotavdekar has stated in his evidence, appears to have been selected by Baba Maharaj as his second wife simply because she was rather grown up for her age and was expected to attain womanhood within a short time. And if Tai Maharaj can now claim to be a First Class Sardar and the owner of an estate worth Rs. 25,000 a year simply by virtue of her marriage with the deceased, where is the harm for Jagannath to claim the estate as the adopted son of the testator? To carry the matter a little further, what was Baba Maharaj himself, before he was adopted by Umabai Saheb, and what is Bala Maharaj whose adoption the prosecution is trying to establish at the cost of Jagannath? Pandit Maharaj in his deposition tells us that the ancestral income, which would fall to Bala's share in case of division, would not be 1100 a year, or not even Rs. 100 a month, an income less than that of Bhausahab Dev at Nidhone. I hope the futility of urging poverty as one of the grounds for holding a particular adoption to be probable or improbable would be evident from the facts stated above. A rich family does not always marry or adopt from another rich family nor is it possible to do so in a majority of cases. It was therefore puerile to question Bhausahab Dev whether he desired to have his

son's name changed from Jagannath Malhar to Jagannath Maharaj, and whether he was not delighted at the prospect of his son getting a Jahagir worth so many thousands a year. Bhausahab Dev, I think, rightly answered these questions by telling the prosecution that it was not he, who, like Pandit Maharaj, sought the adoption in the first place, though as a member of the same family he did not deem it decent to refuse to give his son in adoption when Tai Maharaj and Messrs. Khaparde and Tilak went all the way from Poona to Aurangabad and requested him to do so. It was, he justly observed, a family duty, and comparatively poor though he was, he was blessed with sons, one of whom was sorely needed to save the soul of so rich a man as Baba Maharaj. It is useless to dwell longer upon this point and I would not have said even so much, had not my learned friend referred to it in his cross-examination of the Aurangabad witnesses.

#### THE ADOPTION RESOLUTION.

We next come to the resolution passed by the trustees on 18th June 1901, deciding that boys from the Kolhapur branch of the family are ineligible for one reason or another, and that a boy from the Babre family, if a suitable one be found, should be adopted by Tai Maharaj. It was in pursuance of this resolution that Tai Maharaj with Messrs. Tilak and Khaparde started for Aurangabad, and a boy from the Babre family was there adopted by Tai Maharaj. The resolution (Ex. 13) thus forms the basis of the Aurangabad adoption, and it is therefore necessary to discuss it in this place. It runs in original as follows :—

### श्री

आज रोजी ट्रस्टीची कमिटी जमली, तर्ति सर्व मंडळी बाळ गंगाधर टिळक, गणेश श्रीकृष्ण खारपडे, श्रीपाद सखाराम कुंभोजकर, व बळवंत मातंड नागपूरकर हजर राहून दत्तकाचे संबंधानें विचार होऊन ठराव करण्यांत आले ते :—

१ श्रीचीं घराणीं एकंदर तीन आहेत, पैकीं एक कोल्हापूर येथें, दुसरें पुणे, व तिसरें सारापूर येथें आहे पण त्यांचा वंश सिद्धेश्वर महाराज यांचे संतानापैकीं नाहीं असें समजतें. याखेरीज बाबरे येथें श्री सिद्धेश्वर महाराज यांचे बंधूचा वंश आहे असें झणतात.

२ यापैकीं पुणें येथें जें घरणें आहे तें कैलासवासी श्री बाबा महाराज यांचेच आहे व येथेंच दत्तक घेणेचा आहे. या घरण्यांत पुरुष संतती नाहीं.

३ करवीरचे घरण्यांत दत्तक घेण्यासारखीं एकंदर दहा मुलें आहेत. पैकीं दोन श्री पंडीत महाराज यांचे बंधु आहेत. त्यांचीं वयें हल्लीं अनुक्रमें २०।१८ अशीं आहेत. एवढ्या वयाचा मुलगा दत्तक घेणें संस्थानास भयस्कर नाहीं. याखेरीज नानामहाराज यांची चार मुलें आहेत त्यांत एक दोन मुलें घेण्यासारखीं आहेत पण त्या घरण्यांतील दत्तक या घरण्यांत घेणें इष्ट नाहीं कारण दोन्ही घरण्याचे पूर्वापारच नीट जमत नाहीं अशी स्थिति आहे. यामुळें हीं चार वर्ज्य केलीं आहेत. श्रीबुवाजीमहाराज यांचा एक मुलगा १५ वर्षांचा आहे व दोन नातु अनुक्रमें १६।११ चे आहेत. यांत शेवटचा मुलगा वयानें घेण्यासारखा आहे परंतु तो अशक्त असल्यानें पसंत नाहीं. याखेरीज आण्णामहाराज यांचे चिरंजीव राजेंद्रमहाराज झणून २० वर्षांचे आहेत पण ते वयानें मोठे असल्यानें घेणें भयस्कर नाहीं.

येणेप्रमाणें कोल्हापूर घरण्याची स्थिति आहे.

४ सारापूर येथें जे आस आहेत त्यांचे येथें एक दोन मुलें आहेत पण तीं घेण्यासारखीं नाहींत असें चौकशी अंतीं समजतें. यामुळें तीही शाखा वर्ज्य झाल्यासारखी आहे.

५ राहतां राहतां श्री सिद्धेश्वरमहाराज यांचे बंधूचा वंश बाबरे येथें राहिला, त्या वंशांत कोणी मुलगा आहे किंवा नाहीं त्याचा अद्याप शोध नाहीं पण तेथें वयानें वगैरे घेणेसारखा मुलगा असल्यास तो घ्यावा, इतर घरण्यापैकीं वेळ नये असे सर्वांचें मत आहे व तसेंच श्रीमंत मातोश्री भीताईमहाराज यांचेही मत आहे.

६ बाबरे येथे रा. रा. बाळ गंगाधर टिळक व गणेश श्रीकृष्ण खापर्डे या उभयतांनी जाऊन मुलें पसंत करावी व तिकडच्या घराण्यासंबंधानें निकाल करून यावा असें श्रीमंत मातोश्री श्रीताईमहाराज यांचे ह्मणणें आहे.

७ श्रीमंत मातोश्री श्रीताईमहाराज यांनी जाऊन मुलें पाहून मुलें पसंत करावीं.

येणेप्रमाणें ठराव करण्यांत आला आहे. तारीख १८ माहे जून सन १९०१ इसवी.

(सही) बाळ गंगाधर टिळक.  
(सही) गणेश श्रीकृष्ण खापर्डे.  
(सही) श्रीपाद सखाराम कुंभोजकर.

The fact that such a resolution was passed on the day and that Tai Maharaj was present and took part in the discussion is admitted by Tai Maharaj herself. She, however, states that at the meeting she expressly told the trustees that she wanted to adopt Bala Maharaj and no other, and notwithstanding the same she was induced to go to Aurangabad on a false pretence by Mr. Khaparde, who, she alleges, told her that as Mr. Tilak was an obstinate person they might just please him by going to Aurangabad and come back without approving any boy. This contention, apart from the fact whether it be true or false, impliedly admits that Tai Maharaj was fully aware of the contents of the resolution. Even according to her own version, the contents of the resolution were not therefore misrepresented to her, and it was impossible to do so, for the discussion and the dictation of the resolution took place in her presence. As regards Mr. Khaparde's alleged suggestion to her that she might please Mr. Tilak and yet defeat the resolution, it is flatly denied by Mr. Khaparde. Now if we look to the events of the day, it is admitted that immediately after the passing of this resolution at the Wada, Tai Maharaj went to dine at Mr. Khaparde's residence at Kirkee where she spent about two or three hours, and after her return to the Wada, drove in her own carriage to the station only to find that she was a few minutes too late for the train. She returned home, spent that night and the next day in the Wada, where Mr. Nagpurkar also resided, and of her own accord and free will on the next evening again drove to the station with Messrs. Nagpurkar and Kumbhojkar who went with her to see her off. All these acts were perfectly voluntary and done without any kind of pressure or persuasion. In other words, they were inconsistent with the supposition that Tai Maharaj disapproved of the above resolution to make an adoption from the Babre family. An explanation was therefore needed why Tai Maharaj acted in this way and the story of Mr. Khaparde's suggestion is invented. This is supported by the evidence of Tai Maharaj and Mr. Nagpurkar. But while Mr. Nagpurkar says that he and Mr. Khaparde went together to Tai Maharaj when this conversation took place, Tai Maharaj in her evidence states that Mr. Khaparde alone came to her in her room and suggested the device. This discrepancy is material and shows that the story has been invented afterwards. I have pointed out that Mr. Khaparde denies all this *in toto*, and his account is evidently more reliable, for he had no reason to respect Mr. Tilak's obstinacy, if any; on the contrary it was Mr. Khaparde who was the chief trustee and always acted as president of the trustees' meeting, whenever he was present. Then, again, we have Mr. Nagpurkar's evidence to show that Mr. Tilak was at first unwilling to go to Aurangabad with Tai Maharaj, and it was only when Mr. Khaparde pressed him and declined otherwise to go himself to Aurangabad that Mr. Tilak consented to go. If this is true, Mr. Khaparde must be a strange man indeed to press Mr. Tilak to go with him and at the same time suggest to Tai Maharaj that she might please Mr. Tilak and yet defeat the resolution ! And where, I ask, is the motive for all this duplicity and cunning even supposing that Mr. Khaparde is capable of it ? Mr. Khaparde had by this time already declined to give his son in adoption to Tai Maharaj, and the Babre people were perfectly un-

known to him. It has also been shown from the autograph letters of Tai Maharaj that upto this time she had not thought of Bala Maharaja's adoption. There is therefore no reason why Mr. Khaparde should have suggested to Tai Maharaj the alleged plan of going to Aurangabad and returning after disapproving the boys at the place. But on the other hand Tai Maharaj, who subsequently adopted Bala, must now explain why she voluntarily went with Messrs. Khaparde and Tilak to Aurangabad; and naturally enough she has been made to invent an excuse for the purpose. Mr. Kumbhojkar, if he had been called, would have given material evidence on the point. But the Court having refused to grant a commission for his examination his evidence has been shut out for the Defence.

It is alleged against this resolution that it was passed in haste that it only contemplated a *selection* of boys at Aurangabad and not an *adoption* there, and that it is silent as to where and when the adoption should take place and with what ceremonies. But all these objections are simply frivolous. In the first place, there is enough evidence in the case to show that the trustees did not hurry up this matter in any way. On the contrary it was under discussion and consideration for full three years during which time various proposals were made, discussed and some even rejected. The subject came up first before the meeting of the trustees in October 1898, next at their meeting in June 1899, and thirdly at their meeting at Sinhagar, a month before the date of this resolution in question. But besides these meetings, the matter was very often discussed between Messrs. Khaparde, Kumbhojkar, Nagpurkar, and Tai Maharaj during this period by correspondence, some of which is exhibited in the case. It is therefore unreasonable to urge that there was any haste, much less undue haste in coming to a final decision on the point on 18th June 1901. In fact Mr. Nagpurkar had been after the trustees to have the matter settled without delay. Thus in his letter to Mr. Khaparde dated 26th May 1900 (Ex. D. 55) Mr. Nagpurkar writes that "It is not proper to keep back the adoption matter. It should be promptly completed." Then again in the report and agenda paper prepared, as usual, by Mr. Nagpurkar for submission before the general meeting of the trustees held at Sinhagar in May 1901, (Ex. D. 10), he puts adoption question in the forefront in the following words:—"It is best to make an adoption soon. It should *not be left over this year.*" This shows that even Mr. Nagpurkar desired to have the matter finally settled by the trustees at their general meeting in May 1901, or anyhow before they dispersed that year, for general meetings of all the trustees were usually held only once a year and that too in May or June for the convenience of Mr. Khaparde. In the face of these statements, it cannot be argued that the matter was not regarded as urgent in 1901. In fact the trustees had come almost prepared to finish it off if possible at their annual session in 1901, and at their first meeting held from 23rd to 29th May 1901 they resolved and directed Mr. Nagpurkar to go himself if necessary, and *not wait* for a reliable person to depute, to bring information about the Babre boys (Ex. 62). It can be seen from its very wording that it was an urgent resolution as stated by Mr. Khaparde; but no action was taken upon it by Mr. Nagpurkar till 18th June, on which was held the last meeting of the trustees during that session. It therefore became necessary to entrust the work to some one else and to authorize him to dispose of the matter finally. This is what the resolution of 18th June exactly did. In the preamble it is expressly stated that the resolution relates to adoption, then paragraph 1 mentions the three branches of the testator's family; paragraph 2 mentions that the adoption is to be made in the Poona branch which is without issue; paragraph 3 disposes of all the available boys in the Kolhapur branch as ineligible for reasons stated therein; paragraph 4 deals with the Sarapur branch in the same way; and after all these branches have been disposed of in this way, paragraphs 5, 6 and 7

contain the decision of the trustees relating to the Babre branch. Paragraph 5 states that it is the unanimous opinion of *all* including Tai Maharaj that a suitable boy from the Babre branch, if any, *should be taken* and not any one from amongst the other branches. Then paragraph 6 gives the procedure and states that Messrs. Tilak and Khaparde should go to Aurangabad, select boys and *finally dispose of* the matter so far as that branch of the family is concerned, while paragraph 7 says that Tai Maharaj should go to Aurangabad and select boys. It will thus be seen that the resolution is as exhaustive as any could be, and briefly sums up the discussion about adoption that had taken place during the previous three years. Each family is dealt with separately, and after disposing of the Kolhapur and Sarapur branches, the trustees resolved that an adoption should be made from the Babre branch and that alone. This is as clear as anything could be and yet we are told that the resolution does not speak of adoption but only of selection. It is true that paragraphs 6 and 7 speak of the selection of boys by Messrs. Khaparde and Tilak and Tai Maharaj, but both these paragraphs are obviously supplementary to paragraph 5 and lay down the method of carrying out the decision of the trustees contained in the fifth paragraph. The trustees had then no definite information about the Babre boys, as the resolution of 29th May 1901 had remained unexecuted. Therefore, although they resolved to make an adoption from the Babre branch, it was necessary that some one should go, make inquiries and select a boy suitable for adoption. Who was to do it? Mr. Nagpurkar had already neglected the work and I have already stated before that the trustees wanted to finish off the matter that year. Messrs. Khaparde and Tilak were therefore naturally asked to go to Aurangabad, make inquiries, select a boy and finally dispose of the matter. It is contended that Messrs. Tilak and Khaparde were authorized only to make a selection and no more, but this view is inconsistent with the wording and the tenor of the resolution, which clearly says "निकाल करून यावा." Then again, if nothing more than a selection was to be made, where was the necessity of taking Tai Maharaj to Aurangabad as stated in the resolution? The prosecution has made a point of the word 'boys' in plural occurring in the phrase चुल्ले (boys) पसंत करवीं, arguing that for an adoption only one boy is selected and not many; but any one can see that this is nothing but a quibbling of words. चुल्ले पसंत करणे is a colloquial expression and means nothing more than make a choice from amongst many. It is true that the resolution is silent as to the place and manner of adoption, but I fail to see how that vitiates the resolution or helps the prosecution in any way. When Messrs. Khaparde and Tilak were once deputed to go to Aurangabad and finally dispose of the matter, it is plain that all other details were left to be decided by them; and such a thing is not unnatural if we bear in mind the fact that Messrs. Nagpurkar and Kumbhojkar always followed their lead. The main fact to be decided at the meeting of the trustees was the branch of the family from which the adoption should be made and that being done, no one doubted that the decision of the trustees would be best carried out under the supervision of Messrs. Tilak and Khaparde. I may further point out that it is perfectly irrelevant, so far as this case is concerned, to discuss points like these. I fail to see how the probability of Aurangabad adoption is affected if the resolution of 18th June did or did not mention any of the details above alluded to. It is a fact that the resolution was deliberately passed to adopt a boy from the Babre branch and Messrs. Tilak and Khaparde were authorized to go to Aurangabad with Tai Maharaj and to finally dispose of the matter. It is also a fact that in pursuance of this resolution they did go to Aurangabad and made an adoption there openly as proved by so many Aurangabad witnesses. Under these circumstances, it is unreasonable to doubt the validity of what they did, on the ground that the resolution did not state where and when the adoption ought to be made, by what train and by what class they should

travel to Aurangabad, how they should provide themselves with funds for their expenses, or what servants and karkuns they should take with them, or how long they should remain at Aurangabad or where they should put up, and so on. Details like these are left to the discretion of executing authorities even in Government resolutions, and I have never seen a case where the omission of such details in a Government resolution was urged as a ground to cast doubts upon its genuineness or the validity of the acts done under its authority.

Another point raised by the prosecution in connection with this resolution is that the words 'निकाल कराना' 'finally dispose of the matter' are not as explicit as they ought to be and therefore it cannot be supposed that Messrs. Tilak and Khaparde had authority to carry out the adoption at Aurangabad. It is further alleged that supposing the trustees meant to have the adoption made, there was no necessity for expressing that idea in such a laconic way. It is not difficult to effectually meet this objection. The resolution was written not for the edification of the public, educated and uneducated, nor was it an official order which was to be communicated to subordinates, and which, therefore, ought to contain full details for their guidance. It was for the use of the trustees and Tai Maharaj by whom it was to be carried out and it was enough if they understood what it meant. It is also clear from the whole previous course of the transaction that the trustees had met on that day to finally dispose of the matter of adoption as it was the last meeting of the session, and it is in evidence that they, including Mr. Nagpurkar, had met that year, with a determination to see the matter through ( Ex. 10 ). Under these circumstances, it is impossible to hold that when the resolution, after deciding to make an adoption from the Babre branch, authorised Messrs. Khaparde and Tilak to finally dispose of the matter relating to the Babre branch, "the final disposal" alluded to could mean anything but that the adoption matter was to be completed and finally set at rest by them. It is also in evidence that it was long ago settled among the trustees that in the matter of adoption no time was to be allowed to pass between selection and adoption, lest, as is usual in the cases of adoption in the Jahagirdar family, designing and disappointed persons may raise difficulties and troubles at all times. That this precaution was quite necessary is evident from the present case itself. It was the view which Mr. Nagpurkar himself held in 1898 ( Ex. D. 16 ), though he now says that he had given it up by 18th June 1901. It was also the view of Mr. Khaparde at the time of the resolution, and as regards Mr. Tilak, there is his letter marked private and confidential, written to the Kolhapur Durbar on 18th June 1901, i. e. on the same day on which the resolution was passed. This letter is very important as it discloses what was intended to be done by the trustees at the time ( Ex. D. 40 ). Mr. Khaparde has admitted that the letter was written with his knowledge, and the letter itself shows that Mr. Kumbhojkar, whose direct evidence we have not been able to secure, through no fault of us, must have been aware of its contents. It may, therefore, be taken to represent the views of three trustees at least at that time. The letter is addressed to the Diwan of Kolhapur and requests him, without delay, to grant a general sanction for adoption from the State, though such sanction, it ( the letter ) says, is required only as *a matter of form*. After this it goes on to say "As we propose to give a son in adoption shortly, we want the sanction in our hands, so that as soon as we come across a suitable boy we may without delay perform the ceremony of adoption. Such things once commenced must be done at once and hence this request". Then in the post-script we have "We do not mean to give out so soon that we are going to adopt shortly. The application will be for a general sanction". This clears up a number of doubts raised and put forward by the prosecution. It shows in the first instance that the

trustees treated the sanction of the Kolhapur Durbar as a *forma* matter, and not an antecedent condition necessary for the validity of the adoption. The sanction was no doubt needed to have the name of the adopted boy entered in the register of Inamdars, but that is quite different from such sanction being necessary for the validity of the adoption. If the sanction was delayed, one may as well complete the adoption so far as legal requisites were concerned, and defer, if he like, the public celebration thereof until the sanction was obtained. It was exactly what the trustees did in this instance. They had applied for a sanction before starting for Aurangabad, clearly stating that they intended to have the adoption effected as soon as they came across a suitable boy; though as a matter of precaution, they did not wish to give publicity to their intention at the time. I do not think it can be alleged that this was not a prudent or necessary course to adopt, for where an adoption to a Jahagirdar is concerned, there are always a number of competitors, who, if they are disappointed, are sure to raise troublesome difficulties, witness the present case, in every possible way, i. e. attempting to defeat or disprove the adoption, or if that could not be done, to prevent the estate from falling into the hands of the adopted son, or, at any rate, to prolong its devolution upon him as long as practicable. The trustees were fully aware, thanks to Mr. Nagpurkar, of these methods of opposition, and had it not been for Mr. Nagpurkar's apostasy and his consequent siding with Pandit Maharaj, the present matter would have smoothly passed over. True that Mr. Nagpurkar now professes to have subsequently changed his mind as regards the policy, but it does not follow therefrom that the other trustees had given up the idea, or that their unwillingness to give full publicity to all the details of the Aurangabad adoption until everything, including the entry of the name in the register of Inamdars, was complete, was unreasonable. My learned friend Mr. Strangman, who now doubts the wisdom of the trustees in regard to these precautions, would hardly have advised any other course if consulted by them at the time. The trustees had also before their eyes the example of the previous litigation regarding the testator's adoption; and it would be perfectly unjust to blame them for, or to draw any inferences adverse to them from the precautions which but for a black sheep amongst them would have proved effective.

Another point, in connection with this resolution, is the dissenting minute of Mr. Nagpurkar. Much has been said about it; but in my opinion the whole of the contention based upon this minute is perfectly irrelevant in this case. Mr. Nagpurkar may have disliked the resolution or may have thought at the time that the cause of Bala Maharaj in whom he was interested was about to be lost for ever. It is in evidence that after the party left for Aurangabad, Pandit Maharaj came to Poona, lived with Mr. Nagpurkar and after learning from him what the trustees had done, set about to work against them exclaiming "Well, I go, and see what to do." This interview between Mr. Nagpurkar and Pandit Maharaj may be said to be the beginning of open opposition to frustrate the work of the trustees, and is important from that point of view. But I cannot understand how it makes the Aurangabad adoption improbable. On the contrary it shows that these men were afraid that the adoption would be completed at Aurangabad. Mr. Nagpurkar does not deny that the resolution was passed at the meeting of the trustees; for in his letters to Messrs. Tilak and Kharade, dated the same day as the resolution (Exs. D. 11 and D. 12) but written after the resolution was passed, he expressly refers to the resolution passed in the morning, and asks for a reconsideration of the same on grounds given in those letters. In both these letters he does not say that he opposed the resolution in the meeting, or that he had expressed his dissent at the time, an attitude which seems to have been deliberately changed on further consideration by the time he came to write the dissent-

ing minute. These letters also show that at that time Mr. Nagpurkar believed Tai Maharaj to be of the same opinion as Messrs. Tilak and Khaparde, for Mr. Nagpurkar urges therein certain facts which he says must be known to Tai Maharaj, evidently implying that in spite of them Tai Maharaj was then in favour of the resolution. It may be further noted that on the evening of the day when this resolution was passed, Mr. Nagpurkar was simply content with advancing certain arguments, in favour of its reconsideration to Mr. Tilak and Mr. Khaparde, against whose wishes, if still adverse, he was not however then prepared to go. This is quite evident from Mr. Nagpurkar's letters to Mr. Tilak of the same date in Ex. 76. It is a letter written at the time when, at Mr. Tilak's request, he sent the Bakhar and the list of Kolhapur boys to Mr. Tilak before the party went to station on 18th June 1901. In it he says "Please to return my letter of the morning Be kind. I have communicated what I thought, *yet I am not against your wishes.* Be not angry." The letter of the morning here referred to is Ex. D. 11, and whatever Mr. Nagpurkar may say as to the effect of the words "I am not against your wishes," the sentence "Please to return my letter of the morning" cannot but mean that he did not then wish to press his arguments too far, and wished to take back his letter; and if so, the concluding words cannot be taken to be mere complimentary. So far as 18th June 1901 is concerned, Mr. Nagpurkar's opposition, if any, did not therefore go beyond suggesting arguments for a reconsideration of the decision, and if those were not heeded, he was prepared to fall in with the wishes of the other trustees. The party left for Aurangabad on the 19th and till then this attitude of Mr. Nagpurkar was unchanged. The next day or the day after, Pandit Maharaj arrived in Poona and matters took a different turn. So that by the time Tai Maharaj returned from Aurangabad, vakils had been consulted and a plan of action to openly oppose the trustees and to undo their work was already formed. It was only necessary to see whether Tai Maharaj could be induced, and if so, by what means, to accept the plan chalked out for her alleged welfare by these designing persons, and it naturally took some days after Tai Maharaja's arrival to win her over to the side of these persons. Such are the facts relating to Mr. Nagpurkar's opposition to the resolution of 18th June 1901; but as stated above they rather go to prove the probability than otherwise of the Aurangabad adoption and are therefore useless for the purpose of my learned friend. For even granting that Mr. Nagpurkar was a dissenting trustee, the others may well be supposed to have carried out the resolution they passed on the occasion. Tai Maharaja's state of mind stands, however, on a different footing and it has been shown above that so far as her external acts were concerned she acted voluntarily and went to Aurangabad with a full knowledge of the contents of the resolution. Whether this voluntariness was the result of a trick alleged to have been suggested to her by Mr. Khaparde is the only question we have to decide; and I have shown that taking into consideration all the circumstances of the case and especially the fact that Tai Maharaj had now a direct motive in inventing explanations to explain away her previous conduct, and that as a matter of fact this is not the only invention of the kind, it will, I hope, be evident to Your Worship that Mr. Khaparde's denial is not only more probable, but correctly represents the actual state of things at the time.

#### THE AFFAIRS AT AURANGABAD.

It is an undisputed fact that Tai Maharaj with six of her servants and with Messrs. Khaparde, Tilak, Durge Joshi and two other attendants of theirs left for Aurangabad by the evening train of 19th June 1901, reached Aurangabad the next morning and put up at the Sikh Mandir at that place. But there is no agreement as to what took place during the stay of the party at Aurangabad.



The story of the prosecution as set forth by Tai Maharaj is that she was all along unwilling to make even a selection, much less an adoption of a boy from the Babre branch, though she was pressed to do so by Messrs. Khaparde and Tilak, and that after Mr. Khaparde left she was kept in confinement by Mr. Tilak and she could only obtain her release from such confinement by signing certain documents which she neither read nor were read to her. This story is quite specific and definite, *i. e.* one which can be, if true, easily proved by direct evidence. Aurangabad is not a place, where a lady of Tai Maharaja's rank could be confined and the fact of such confinement could possibly remain unknown to any person. Again it is in evidence that the arrival of the party, especially of Messrs. Khaparde and Tilak, had caused some stir at least among the Brahmin community and especially the educated Brahmin community of the place. Mr. G. R. Kale, the Principal of the Aurangabad College, was the person through whom all arrangements at Aurangabad were made and though he left Aurangabad that evening, his son and several assistant masters from the High School and College, and many other gentlemen besides, used to visit the Sikh Mandir very often during the stay of the party at the place. Almost all the leading English-knowing pleaders then called on Mr. Khaparde or Mr. Tilak and not only offered, but actually rendered assistance in carrying out the adoption of Jagannath at the Sikh Mandir. It is also proved that Mr. Tilak delivered a public lecture at the place, paid or returned visits to several gentlemen and was present at one or two private tea parties specially given to him. In short, the arrival of the party and their stay in Aurangabad had become a matter of public interest and even Goda admits that many persons used to call on Mr. Tilak almost every day under these circumstances. If Tai Maharaja's story be true, it could not have been a hole and corner affair or remained unknown to the Aurangabad people. The prosecution could have therefore easily got any amount of direct evidence to support Tai Maharaj; for it is ridiculous to urge that the whole of the Brahmin community or even the educated community at Aurangabad is in conspiracy with Mr. Tilak. But even after an inquiry by the Detective Police Inspector Mr. Page, who visited Aurangabad during the Police investigation, not a tittle of direct evidence has been found out to support the extraordinary story of Tai Maharaja's ill-treatment and confinement at Aurangabad. On the contrary, we have it in evidence that the very room where she is alleged to have been confined was never placed at the disposal of the party, being a small store-room in which the owner's kit was locked up. Are we to suppose that every one at Aurangabad is prepared to perjure himself in the witness-box in order to save Mr. Tilak whom they saw for the first time on that occasion? The learned counsel for the prosecution, while cross-examining the Aurangabad witnesses, suggested the theory that Mr. Tilak had a large following at Aurangabad and that Mr. Tilak's popularity might induce people to come and swear falsely for him. I have not heard a more preposterous and fool-hardy argument, and the prosecution, that had to resort to such pleading, must be reduced to very sore straits indeed. Mr. Tilak is not a resident of Aurangabad and he became acquainted with the leading persons of the place for the first time on this occasion. Are we then to hold that graduates and under-graduates, pleaders and Shastris, reformers and orthodox, old and young, clerks and weaving masters, school-masters, Bhikshuks and Joshis, all went mad after Mr. Tilak, because when they first saw him, they found him engaged in ill-treating and confining a lady of Tai Maharaja's position in order to force an adoption upon her? Surely, it is impossible to conceive a more absurd story, and yet the prosecution cannot hope to substantiate its case without resorting to such ludicrous and absolutely incredible supposition. Tai Maharaj is here contradicted not by one or two but a dozen witnesses stating directly from their own knowledge that she was free to move in Aurangabad, and that she did take Jagannath on her lap on the morning of the day the party

left for Poona. I cannot comprehend how the prosecution means to get over this evidence. It is impossible to trifle away with it on the ground that on some minor points there may be some discrepancies between some of these witnesses. It is also idle to endeavour to belittle the importance of direct evidence of adoption taken at Aurangabad by argument based upon the wording of the draft of the adoption-deed or certain omissions, additions or insertions therein. As observed by me previously, the corporeal giving and taking of Jagannath is a fact, which can be witnessed by the senses, and when a number of persons, whose respectability or impartiality cannot be reasonably doubted, have deposed on oath that they have seen it, it would be against common-sense and justice to doubt this evidence on the strength of Tai Maharaja's word and certain flimsy and illusive probabilities. I cannot too often urge upon Your Worship's attention the fact that this is a trial for perjury, and unless the impossibility, and not mere improbability of the accused's statement, is established, no conviction can be legal, or for the matter of that, just, proper and judicial.

Let us now see what evidence the prosecution has produced to support Tai Maharaja's version of the Aurangabad affair. It is admitted that six servants, three of whom were her personal attendants, had gone to Aurangabad with her, and of these six, Godu alone has been put into the witness-box to corroborate Tai Maharaja's story, and we are told that the rest are not called because they are favourable to Mr. Tilak; in other words because they are not prepared to lie with Tai Maharaj. I have already brought to Your Worship's notice the fact that some of these witnesses have made statements to the Police, that these were in the possession of the prosecution, and still the prosecution have deliberately omitted their names from the list of witnesses in this case. Another piece of evidence brought forward by the prosecution consists of two letters alleged to have been written by Tai Maharaj to Mr. Nagpurkar, one on the 21st and the other on the 23rd June 1901. Both these letters are produced with envelopes to vouch for their genuineness, and we have the evidence of Ranade, Omkar and Dada Phatak, all of whom state that the letters were shown to them after their receipt by Mr. Nagpurkar at Poona. So far as usual circumstances connected with a letter are concerned, the prosecution has thus endeavoured to make a complete case in its favour, never thinking that in spite of all these precautions, the genuineness of a letter can be successfully impeached by showing that the facts, mentioned therein as having occurred, did not, as a matter of fact, exist at the time when the letter was written. In other words we can prove that a letter is spurious by showing that its content are false. Both these letters ( Exs. 14 and 15 ) bear dates anterior to Mr. Khaparde's departure from Aurangabad and if the incidents mentioned therein were true, Mr. Khaparde was expected to know them. But we have his word that the letters are clumsy fabrications in which a large superstructure of falsehood is raised on a slender basis of a few facts. These letters were also shown by the prosecution to Mr. Keshavrao Bhide, Head Clerk to the Educational Inspector at Aurangabad, who used to call on Tai Maharaj almost every day while she was at Aurangabad and who accompanied her to Ellora, and he was asked to say if from his knowledge of the events of those days, he believed the letters to be true and whether he was not astonished that Tai Maharaj should give such an account of the incidents of those days. The witness read the letters and unhesitatingly answered that the facts mentioned therein are untrue and that he *was* astonished to see that Tai Maharaj should have written down such gross and palpable lies. It may also be noted that out of the Aurangabad witnesses there is none to support the statements made in these letters. Are we then to suppose, the prosecution might ask, that the envelopes bearing the postal stamps are fabrications, and that Messrs. Omkar, Ranade and Dada Phatak are all dupes or liars ?

The mystery is by no means so difficult to solve as it seems to be at the first sight. The envelopes may not be fabricated, but it is not difficult to remove the original letters contained in them, and make use of the sanctity of these envelopes for imparting a colour of truthfulness to new fabrications put into them, especially where the writer of the letter and the addressee are both interested in making the fabrications. As regards the evidence of Messrs. Omkar, Ranade and Phatak who were called to identify the letters as being the same as were shown to them at the time, it may be noted at the outset, that none of them not even Mr. Omkar, who is an Honorary Magistrate, had either initialled the letters at the time when they were shown to him, nor put any other mark for identification on the same. Then, again, the letters were simply shown, and read to these witnesses by Mr. Nagpurkar who alleges that he went to them to seek their advice. Now Dada Phatak is not prepared to swear that Exs. 14 and 15 were the same letters as were shown to him about two years ago, and that as he does not know the handwriting of Tai Maharaj he cannot say that they are the same identical letters. So far as his evidence is concerned, it is therefore nothing but a vague memory of its contents as read to him by Mr. Nagpurkar and is hardly worth anything. Keshavrao Ranade's evidence stands on the same footing. The letters were read to him by Mr. Nagpurkar, though he is a friend of Mr. Nagpurkar, and Ranade now identifies the letters only by his recollection of what was read to him. As regards Mr. Omkar he says that he recognises the handwriting of Tai Maharaj, but at the same time he admits that his knowledge of her handwriting is only superficial or indifferent. Any identification of these letters by persons like these after an interval of two years from the time when the letters were casually shown to them can hardly be considered reliable, in the face of the fact that the contents of the letters are sworn to be in direct conflict with the actual state of things at the time. The internal evidence of the letters also affords a strong proof of their being fabricated. The letter of the 21st June (Ex. 14) contains an endorsement purporting to be in the handwriting of Bele and written in pencil. Now it seems strange that if the letters were written at the same sitting, why Bele should use his pencil when Tai Maharaj wrote the upper portion in ink and when Bele used the same ink for addressing the envelopes. Then, again, the address of Mr. Nagpurkar, as it is usually written on the envelope, is found written in pencil at the end of this letter; and it is difficult to explain why it should have been so written when the letter was to be immediately put into an addressed envelope and posted. Godu in her evidence informs us that she was present when the letter was written, and saw Bele and Tai Maharaj dipping their pens into and taking ink from the same inkstand, and yet the result is, strange to say, a writing in pencil! Godu further tells us that Tai Maharaj only signed after Bele had written the letter, while the letter now produced is written and signed by Tai Maharaj. The endorsement again makes Tai Maharaj say "I do not approve of the boys at the place." Now no boys were brought to Aurangabad on or before the 21st, and it is absurd to speak of their approval or disapproval before they were brought to Aurangabad. I wish to draw Your Worship's attention to another piece of internal evidence. The letter purports to be written on Friday the 21st of June 1901, and any man would ordinarily speak of the preceding day as "yesterday" (*kāl*) and not as "Thursday." But Bele is made to write here "As for the Thursday, the committee sat for a very long time." This sentence is a sure indication that the letter was written long time after Thursday the 20th June, when the committee or the meeting alluded to therein was held. (At this stage, the Court inquired if it is noticed that the word एक (one) in Bele's pencil postscript appears to have been written over the word दोन (two). Mr. Karandiker thanked the Court for drawing his attention to the fact and remarked that the original word दोन (two) in "two days" was quite inconsistent with the facts of the case, and

proved the more that, at any rate, the whole postscript, is an after-insertion. He also drew the attention of the Court to the fact that below Bele's pencil postscript there appears another, also in pencil, in a different hand, and the Court, after examining the same, remarked that it looked like that of Tai Maharaj's hand-writing. Mr. Karandikar thereon observed that if the whole letter of Tai Maharaj was written in ink, this pencil postscript of her is unaccountable.) The letter dated 23rd (Ex. 15) contains an allusion to the five boys, to the harsh words used by Mr. Tilak, and the proposed guard of drawn swords. Now, it is in evidence that Tai Maharaj returned from Ellora at about 2 p. m. on 23rd June, and if her statement is to be accepted the letter must have been written before 9 p. m. on that day. But it will be seen from the evidence recorded in the case that during these 6 or 7 hours Messrs. Khaparde and Tilak were engaged in taking their meals, and after that a few hours' rest which was sorely needed after a continuous journey for 12 hours in a bullock cart. It was at about lamplight that the boys and their guardians were introduced to Tai Maharaj and the interview lasted for some time. There was hardly, therefore, enough time for Tai Maharaj to write this letter and post it before 9 p. m., after her interview with Mr. Khaparde and the guardians of the boys. Tai Maharaj has given us two different accounts as to when the letter was written. First she said that it was written immediately after her return from Ellora, that is, at about 4 p. m. and before she had an interview with Mr. Khaparde. But subsequently she altered the story, and said that the letter was written after the interview and posted without delay by Bele. This alteration was evidently made with the object of accounting for the details of the interview described in the letter, a fact which seems to have occurred to the mind of the witness after she gave the first account. But even after this change in the account, the contents of the letter are not fully explained. For the first letter alleged to be written by her (Ex. 14), was written after Messrs. Tilak and Khaparde left for Nidhone, and after the writing of this letter she conversed with them both for the first time at the interview on the evening of Sunday, the 23rd June 1901. This leaves scarcely any time for the alleged ill-treatment, she says, she was subjected to in this letter. I may also mention that the first letter reached Poona on the 24th June 1901, and was ready to be delivered at the 1st delivery which takes place at about 7 A. M. Mr. Nagpurkar's post is delivered at the window to the special peon from the Wada who, it is admitted, usually goes to the Post Office in the morning before the time of the first delivery. In the ordinary course, this letter must therefore have reached Mr. Nagpurkar before 8 A. M., if not earlier, on the morning of the 24th June 1901; for the Post Office is less than 5 minutes' walk from the Wada. And yet in a telegram to Tai Maharaj (Ex. 71) which was received from Mr. Nagpurkar for booking at the Telegraph Office, at about 9-10 A. M. on that day, he says "No letter, anxiety, obtain Mr. Tilak's permission for me to go to Nasik if you stay longer". Now if this telegram be true, Mr. Nagpurkar had not received any letter from Tai Maharaj before 9-10 A. M. on the 24th June 1901, and yet in ordinary course, a letter, bearing the post stamp of the first delivery of 24th June 1901, must have been in his hands before that time. This inconsistency was pointed out to Mr. Nagpurkar, and the only explanation he gave was that the telegram was written by him before the arrival of the Post, but the servant who was told to take it to the Telegraph Office, 2 or 3 minutes' walk from the Wada, perhaps delayed handing over the message in the Telegraph Office till 9 A. M. Now on the face of it, such an explanation is absurd, for every one, especially the peons, know very well that telegrams mean urgent business, and no one, unless he be exceptionally insane, will delay to deliver a telegram for despatch, the more so when the Telegraph Office is only a few minutes' walk from him. Neither can I understand how Mr. Nagpurkar should have written and despatched such

a telegram on the morning of the 24th without waiting for the arrival of the morning Post. It might be urged that Aurangabad letters are generally delivered by the evening delivery, and as no letter was received the previous evening, Mr. Nagpurkar was quite justified in sending a telegram early in the morning of 24th June 1901. But even this contention does not stand in the present case, for 23rd was a Sunday, and it is a fact well-known to all who usually receive letters through the Post Office that there is no delivery in the afternoon on Sundays in Poona. So look at the matter from whatever standpoint you will, it is improbable that Mr. Nagpurkar should have written and despatched a telegram before waiting for the arrival of the Post on the morning of the 24th June 1901. Therefore the upshot of the whole is that an envelope now accompanying Ex. 14 was received by Mr. Nagpurkar on the morning of the 24th June, but it did not contain a letter from Tai Maharaj. Perhaps if Goda is telling the truth that Bele wrote a letter and Tai Maharaj only signed, it may be *that* letter and surely not the one in dispute, and he therefore despatched a telegram to Tai Maharaj ( Ex. 71 ) to inquire how she fared as there was no letter *from her*. This view is further strengthened by the fact that the addresses on both the envelopes are in the handwriting of Bele, and not of Tai Maharaj, though it is not unusual for Tai Maharaj to address the envelope herself, ( Exs. D. 19. &c. ). Bele is not called as a witness to say that these were the very letters enclosed by him in the envelopes, the addresses of which are said to be in his hand-writing. That is where the shoe pinches, and Bele was summoned in the Police investigation. The prosecution probably wanted to throw the responsibility of calling Bele on the Defence. But as remarked by me previously, the Defence can legally rely upon the sins of omission by the prosecution, and when the contents of these letters are proved to be false by the independent testimony of the Aurangabad witnesses, there was hardly any necessity to give further evidence about the fabrication of these letters. Evidently somebody has managed to put new wine into old bottles, but, he was not a clever manipulator, and has been discovered not only by his omissions but by his anachronisms displaying his ignorance of the actual state of facts at Aurangabad on the day when these letters purport to be written. Finally I may mention only one more point. The letter of the 21st is said to have been written immediately after Messrs. Tilak and Khaparde left Aurangabad for Nidhone on that day, *i. e.* between 2 and 3 P. M. The Post-box at Aurangabad was then cleared at 5-15 P. M., and in ordinary course this letter (Ex. 14) ought to have reached Poona and delivered to the addressee in the afternoon on Saturday the 22nd June 1901. But instead of that it seems to have been despatched from Aurangabad on the 22nd of the same month, and we are, therefore to suppose, in order to make Tai Maharaj's story probable, that somebody delayed posting the letter just as Mr. Nagpurkar's telegram of 24th June was delayed for three hours in transmission from the Wada to the Telegraph Office at 2 or 3 minutes' walk. A story, that requires so many improbable suppositions to support it, does not deserve to be seriously thought of, and when it is so directly opposed to actual facts, the conclusion that it is worthless becomes irresistible.

Another incident at Aurangabad on which the prosecution has laid some stress is the discussion which took place between Tai Maharaj on one hand and Messrs. Khaparde and Tilak on the other, on the day of their arrival at Aurangabad, and before Messrs. Khaparde and Tilak started for Nidhone. Tai Maharaj at this meeting urged that the Babre boys should be taken to Poona, and upon it both Messrs. Khaparde and Tilak pointed out to her the inadvisability of the course, and placed before her their reasons for holding that view. The discussion lasted for some time and eventually it was settled to decide the matter finally at Aurangabad, and

Tai Maharaj asked Messrs. Khaparde and Tilak to go to Nidhone to fetch the boys. That is the story of the Defence, while the prosecution urges that Tai Maharaj at this meeting flatly told Messrs. Khaparde and Tilak not to go to Nidhone, and the latter did so without her consent. Mr. Khaparde has plainly contradicted Tai Maharaj on this point. But it is still contended that even accepting the Defence story, it discloses some hesitation, some unsettling of the mind on the part of Tai Maharaj immediately on arrival at Aurangabad, and it is argued that such hesitation is not consistent with the story that she had fully accepted the resolution of 18th June before she started for Aurangabad. This was put to Mr. Khaparde in his cross-examination and he has plainly stated that such hesitation, as was observable in Tai Maharaj at Aurangabad, was due to Mr. Nagpurkar having spoken to her on the 18th, and after the missing of the train on that day, on the 19th June 1901. Mr. Nagpurkar admits that he had conversations with Tai Maharaj on these days, and it is, to say the least, highly probable that he must have approached Tai Maharaj with the arguments that are embodied in his letters to Messrs. Tilak and Khaparde Exs. D. 11 and D. 12, dated 18th June 1901, and in which he asked them for a reconsideration of the decision passed in the morning of that day. The arguments did not produce any effect on Messrs. Tilak and Khaparde, but it is quite in keeping with the character of Tai Maharaj if they somewhat unsettled her mind. But this effect was only temporary and when the matter was fully explained to her, she also came round to her former view of acting upon the resolution of 18th June, and asked Messrs. Tilak and Khaparde to go to Nidhone. Such are the facts of the case and there is nothing unnatural in it, for Tai Maharaj, as observed by Mr. Khaparde, is a lady that is easily led away by those who surround her. But the prosecution has raised a fabric upon it, which there is absolutely no evidence to support except the statement of Tai Maharaj. It is interesting to note in this connection that even in her alleged letter to Mr. Nagpurkar from Aurangabad (Ex. 14) she is made to say that after great difficulty and trouble she had to agree with Messrs. Khaparde and Tilak after a prolonged discussion. This shews that when this letter was fabricated there was no idea of denying *in toto* that Tai Maharaj consented to Mr. Khaparde's and Mr. Tilak's going to Nidhone, though the idea of excessive pressure or moral influence was present to the writer's mind whosoever that writer may be. But the story has now received further developments and Tai Maharaj is made to say that Messrs. Tilak and Khaparde did not go to Nidhone with her consent. The prosecution itself felt that there was a variation in the story in this particular, and Tai Maharaj was asked in her examination-in-chief what she meant by the expression "She had to agree to their wishes" in Ex. 14. She replied that "The meaning was that they went to fetch the boys, I could not oppose it, I had to agree with them." This, it will be readily seen, hardly explains the contradiction unless repetition is held to be an explanation. I do not wish to say anything at this place about the pressure or moral influence alleged to have been exercised on Tai Maharaj at Aurangabad. The case for the prosecution is that no adoption took place at Aurangabad and not that the adoption was brought about by moral pressure or influence; and the case so set forth would be successfully met even if the existence of moral pressure is held to be true in carrying out the adoption. The point is that Mr. Tilak asserts that there was corporeal giving and taking, and Tai Maharaj says that there was none. The question of force or moral pressure or even of the validity of the adoption does not, therefore, arise in this case, and the prosecution must be held to fail if the fact of giving and taking is established, be it by moral pressure, force, or fraud, or even against the alleged testator's wishes or the sanction of the Kolhapur, the British or the Nizam's Government. This case of perjury has arisen out of proceedings before Mr. Aston in the probate case; and he himself has clearly stated that

the issue before him was "whether an adoption took place *at all* at Aurangabad and (not its *validity*)." (The italics are Mr. Aston's.) Under this view of the case the alleged letters of Tai Maharaj ( Exs. 14 and 15 ), supposing them for a moment to be genuine, prove nothing which would substantiate the case for the prosecution. If they speak to any thing it is moral or physical pressure. But if such was ever resorted to, it is difficult to understand why it should stop at making Tai Maharaj sign some document, and not extend to the actual giving and taking of the boy. If it was the intention of Mr. Tilak to force an adoption on Tai Maharaj by pressure or coercion, and Tai Maharaj was helpless in his hands at Aurangabad, and was prepared to do any thing to obtain her release from confinement, I fail to understand what was there to prevent Mr. Tilak from placing a boy on the lap of Tai Maharaj. If the theory of force or compulsion, moral or physical were regarded as possible, there is nothing to prevent us from holding that the adoption must have been completed at Aurangabad and not left imperfect by omitting the actual giving and taking of the boy. I do not mean by these observations to imply in the slightest degree that any force was as a matter of fact used at Aurangabad. The Defence has adduced ample evidence which plainly contradicts any such possibility. What I mean is that even if we were to take the prosecution at its word, and bear in mind, that Mr. Tilak as a lawyer knew what were the requisites of a legal adoption, and that, as a matter of fact, the idea was present to his mind for the words "given in the lap" appear in the draft of the adoption deed ( Ex. 73 ), it is absurd to suppose that he should have used force, as alleged, only for obtaining Tai Maharaja's signature to the document and not to effect the corporeal giving and taking of the boy. My learned friend would thus see how the theory of the prosecution, if pushed to its logical conclusion, brings us to a *reductio ad absurdum*. This leads me to the consideration of certain points in connection with the draft of the adoption-deed, and the deed itself. It is alleged that the adoption-deed merely speaks of the boy being "given" and accepted as a son, and this, it is contended, does not necessarily include corporeal giving and taking. In support of this contention it is urged that the words "The boy has been given in adoption on the lap" originally occurring in the draft have been struck out. The prosecution, however, has failed to notice that in place of these words, "You have accepted him as a son" are substituted in the adoption-deed and that the amendment is more comprehensive as well as expressive of acceptance. An adoption-deed must contain terms expressly indicating the giving as well as the accepting of the boy, though giving implies acceptance and acceptance implies giving. On this principle the phrase "The boy is given" or even "is given on the lap" cannot be considered as sufficiently expressive, and hence it was deemed necessary to put in a few phrases which denoted acceptance and connoted giving. The draft as it originally stood contained the expression "given" several times, while there was only one expression of acceptance *viz.* "that he became your son." To this a further expression was added, *viz.*, "you have accepted him as your son," thus making the acceptance more clear and distinct than it was in the original draft. In reply to the contention that the words "giving" and "taking" are not enough to denote corporeal giving and taking, I can only say that it is more clever than honest, and in support of my view I refer Your Worship to Mayne's Hindu Law, paragraph 141, (5th Edition), the first sentence of which says "The giving and receiving are absolutely necessary." Then again in the preceding paragraph the author after quoting the texts of Shaunaka and Bandhayana says "in these much stress is laid upon the giving and receiving of the boy" and throughout the whole paragraph the words "give" and "receive", simple and unqualified, are used to denote the corporeal or actual giving and taking of the boy to be adopted. When standard text-writers on the law of adoption use the words "giving" ( दान ) and "receiving" ( ग्रहण ) in

the sense of corporeal giving and taking, it is not at all strange if these words are so used in adoption-documents or ordinary parlance. "Given" means "absolutely given," both in Marathi and Sanskrit, and it is only, when we want to qualify the method of giving, we add such qualifying words as mental, verbal or corporeal. Thus we have the words वाग्दान to indicate a gift by word of mouth, but when no such qualification is intended, the word दान alone is made use of. For instance, the adopted son is called दत्त and not सारित्तिक दत्त. But I need not go into this linguistic discussion. I shall be obliged to my learned friend if he takes up, say a hundred adoption-deeds, and points out to me how many of them contain the words सारित्तिक or corporeal. It is the usual language of these deeds to say that the boy is "given" and "taken," and if one wants to be still more emphatic, to further add that "he is no longer my son," or "has henceforward become your son." The distinctions between mental, verbal and corporeal giving and taking are the work of lawyers, and it becomes necessary to advert to them only when we come to analyse the constituent parts of a valid adoption. So in the matter of adoption all that we say is that the father "gives" the boy and the adopter "accepts" him, and it means everything for a practical man of business. But let apart the adoption-deed of Jagannath and look at that of Bala ( Ex. D. 1 ) whose adoption is complete according to the story of the prosecution. There is not a word in this deed about "corporeal" giving and taking as such, nor is "the lap" mentioned anywhere. The operative words there used are simply दान and प्रतिग्रह and दिला and घेतला. If this deed is valid, as admitted by the prosecution, and if the operative words used therein do not imply the absence of "corporeal" gift and acceptance, I fail to see on what grounds a different construction is to be put on the adoption-deed of Jagannath. If quibbling is argument, we might go on quibbling to the end of time, and say that though an adoption-deed may contain the words "given on the lap," yet it does not mean complete adoption, for a boy may as well be given on a lap like a book or any other article, the acceptance being yet wanting; or we may further argue that the writing of the words "given on the lap" does not mean that the actual fact of giving has taken place, for adoption-deeds which contain conditions are usually executed before the actual fact of giving and taking takes place. Arguing in the same strain we may even go further and say that if this adoption-deed be produced in a court by a witness, stating on oath that the deed represents all the facts, he could be easily prosecuted for perjury on the ground that when the words "given" and "taken" were written, the boy as a matter of fact was not corporeally given and taken ! The truth of the matter is that the fact of adoption, that is, actual giving and taking of the boy, has in every case to be proved by the direct testimony of witnesses, and when it is so established, any attempt to quibble it away by fastidious niceties is quite absurd, howsoever, pedantic or learned it may appear to be. The contention, that Tai Maharaj was not made an executing party to this deed, lest at the time of the registration she might refuse the execution thereof before the Registrar, is of the same type. It presupposes that Tai Maharaj was an unwilling party in the transaction, which is disproved by positive evidence, and secondly we have the evidence of Messrs. Rale, Parnaik and Bhausaheb Dev himself, that the present form of adoption-deed was selected at the persistent request of Bhausaheb. It is also in evidence that even after this form was fixed upon, a man was sent to bring the Registrar into the meeting where the deeds were executed and it was settled to get these deeds registered by the Registrar in the presence of the whole assembly. But as the Registrar was on leave, the idea had to be given up. Lastly, I may bring to Your Worship's notice the letter passed by Tai Maharaj to the father of Jagannath which was produced before the Aurangabad commission for the first time, and proved by the evidence of Messrs. Rale and Bhausaheb. It contains everything which a fastidious lawyer may wish. It is addressed to Malhar Manohar, signed by Tai Maharaj (Ex. D. 57) and attest-



ed by Mr. Bale and Mr. Tilak. It runs as follows :—“Acceding to our request, you have given in adoption to me your middle son Jagannath as an heir to and for the continuance of the family and name of my deceased husband Shri Baba Maharaj. I shall protect him as my son in every respect, whether he turns out hereafter to be a man of learning, or a fool. He alone is the real owner. You need not entertain any anxiety about him. He has the same right which a son of my body, if there had been any, would have had. A separate deed of adoption has been already executed. It is not necessary to write more as all things are mentioned in that deed. I shall not adopt another boy besides this, and shall protect him well. I shall give due facilities if you or his mother or other persons desire to come to or see him. Be it known.” I do not know if anything more can be put in writing to mark the completion of the act of giving and taking a boy in adoption; and when the theory of the alleged confinement of Tai Maharaj at Aurangabad is exploded this letter ought to set at rest all impious doubts regarding the fact, if not the validity also, of Jagannath’s adoption. It is an admitted fact that no *Homa* was performed at Aurangabad, nor was music used, nor again any festivities held on the occasion. It is contended that the absence of these ceremonies raises a presumption against the fact of adoption, and we are seriously referred to passages in treatises on the Law of Adoption as an authority on the point. But this to my mind betrays only a superficial knowledge, if not utter ignorance, of the necessary requisites of a valid adoption according to the Hindu Law. Music or tom-tom is not a necessary accompaniment to any ceremony amongst Hindus, and no presumption can be drawn from its absence at any ceremony. As regards the *datta homa* it is optional in the case of an adoption of a *sagotra sapinda* ( I. L. R. 24 Bom. 218 ), and when the adopter is a woman no *mantras* can be used by her at the time of giving and taking. Shastra and custom both agree on this point. But it is unnecessary to refer to these law points in this Court. We are here concerned with the factum of adoption and not with its validity; and when the fact of adoption is proved by overwhelming direct testimony, it is ridiculous to contend that its existence is rendered less probable by the absence of music, non-distribution of the *Dakshina*, absence of presents or feasts to Brahmanas, processions on horse-back or the non-use of powder, flags, attendants in livery, carriages, horses and their trappings. Non-essential accompaniments like these may sometimes be received as supplementary evidence when the existence of the main fact is almost established. But it is a fallacy to suppose that the absence of these accompaniments may be used to cast doubts upon the existence of the fact established by direct independent testimony. Even the adoption of Bala Maharaj when it was first contemplated to take place in Poona was, we have Mr. Nagpurkar’s word for it, to be carried out without the assistance of the paraphernalia mentioned above, and it was still intended to be a valid adoption according to the Hindu Law as understood and interpreted by Tai Maharaj, Nagpurkar and Co.

#### EVENTS AFTER RETURN TO POONA.

When the charge in this case was originally framed by Mr. Aston, he knew little about the events at Aurangabad except what Tai Maharaj stated in her evidence. It is true, that Mr. Tilak in his evidence before him had given full details of the Aurangabad adoption; but these were not then believed, and Mr. Tilak was sent to the City Magistrate for trial. The main ground, on which Mr. Aston, and after him the prosecution, relied, was the conduct of Mr. Tilak after his return with Tai Maharaj and party to Poona from Aurangabad on the morning of 29th June 1901; and it is, therefore, necessary to examine this point at some length in this place. It is needless to say that under the circumstances stated above the conduct of Mr. Tilak

after his arrival in Poona, when it was first scanned by those who initiated these proceedings, was scanned quite independently of the occurrences at Aurangabad. Inferences, drawn from such a stand-point of view, cannot but be one-sided and misleading, and as a matter of fact so they are. I may, however, observe that after the Police investigation there was no excuse for the prosecution to persist in the view it may have inherited from persons who initiated these proceedings. However, fairly or unfairly, the attitude of the prosecution is still the same, and, therefore, it becomes necessary, as observed above, to discuss this question more fully at this stage. The first, and I might even say the principal, document, on which the prosecution relies to establish the probability of its case, is the Yadi, which Tai Maharaj, with Mr. Tilak's advice, wrote to the Agent to Government for Sirdars in the Deccan on the evening of 29th June 1901, and an English letter containing a summary of the same, which accompanied it. ( Exs. 68 A and 68 B. ) These letters purport to give an intimation of the Aurangabad adoption to the Agent after the arrival of the party in Poona; and it is assumed that everything was reported therein, and that what is not reported must not have occurred at all. The Marathi Yadi at first recites that Tai Maharaj, *i. e.* the signatory of the Yadi, had gone to Aurangabad with Messrs. Khaparde and Tilak in order to see if there were any boys eligible for adoption in the family of the brother of Shri Siddheshwar at Nidhone. What follows is relevant to the point in issue and I quote the words from the original :—“ सद्दर गांवांतून पांच मुलें औरंगाबादेस आणलीं; पैकीं तेथील लोकांच्या विचारें रा. रा. मल्हार मनोहर ऊर्फ भाऊसाहेब देव यांचा मधला मुलगा चि. जगन्नाथ उमर वर्षें सहा यास पसंत करून इत्तक वेण्याचें द्रविलें आहे. त्याप्रमाणें कागदपत्रही झाले आहेत. इत्तविधानाचा समारंभ पुढें पुणें मुक्कामी होईल. तेव्हां रितीप्रमाणें मेहेरबाणांस दरबारास आमंत्रण होईल.” The English letter expresses the same in the following words :—“ Five boys were brought to me for selection and from amongst them I have, with the advice of several respectable gentlemen, selected one Jagannath aged six years, the middle son of Mr. Malhar Manohar Dev a respectable gentleman in those parts and who is descended from the same ancestors as ourselves. Preliminary documents have been executed and the ceremony of adoption will shortly be celebrated in Poona, when due intimation and invitation will be formally given to Your Honour.” Both these papers distinctly refer to the fact of *documents* being executed at Aurangabad, and as neither of the papers pretends to fully describe the nature of the documents, the documents in the original must, in ordinary course, be referred to to ascertain their character as well as the facts of which they are intended to be a record. But this position is entirely ignored and these exhibits are gratuitously believed to be a full and the only correct record of what took place at Aurangabad. It is on this hypothesis that we are told that nothing happened at Aurangabad beyond the selection of a boy and that the Marathi words इत्तक वेण्याचें द्रविलें आहे cannot therefore mean anything more than selection. This is no doubt plausible at the first sight, and credit for ingenuity must be given to the person who first suggested this idea. But unfortunately for the prosecution, this view rests on assumptions not borne out by facts, nor reasonable in themselves. Thus first of all I see no reason why these letters should be considered as any thing beyond letters of formal intimation to the Agent. Neither Tai Maharaj nor Mr. Tilak were bound to enter all the details of adoption in these papers, nor was it intended to do so. It is therefore unreasonable to regard these letters as constituting any kind of estoppel on the parties. Again if certain documents are expressly referred to in these letters and these documents are in existence, common-sense requires that the documents themselves ought to be read in order to ascertain what they are and what they profess to record. In short, these two letters and the adoption-documents referred to therein, must be read together and any omissions in the letters, which are on the face of them incomplete, made up and supplemented by the statements recorded in the

documents. It is a general principle of law that what is stated by reference in a document is included in the whole. If we apply this principle to these two exhibits, we must construe them to mean selection *plus* what was recorded in the documents. In short, the meaning of these letters is not complete unless the documents are read along with them. If this is done, there remains no ambiguity or incompleteness. But it might be asked why the adoption matter should have been stated by reference and not by express words in these letters. The reason will be plain to any one who has read (Ex. D. 40) *i. e.* the letter addressed to the Diwan of Kolhapur by Mr. Tilak immediately before he started for Aurangabad. In that letter Mr. Tilak expressly states that he and other trustees do not mean to give publicity to the adoption matter for some time and requests for an immediate sanction of the Kolhapur Durbar. Neither this sanction, nor even a reply to the aforesaid letter of Mr. Tilak to the Diwan, was received by the time the Yadi and the letter were written to the Agent, and as stated previously it was not prudent to openly give out the fact of adoption until every other ceremony in connection therewith had been gone through. The use of the expression इत्तक चेष्याचे इतलें आहे in Marathi, literally meaning "has been fixed for adoption," is partly due to the fact that although all *legal* requisites for adoption were gone through at Aurangabad, yet the *public* ceremonies after such adoption were still to be celebrated, and in common parlance this could be expressed only by a phrase like the one used in the letter. But granting for the sake of argument that these exhibits are to be read without the documents they refer to, they are, at worst, inaccurate and incomplete record of what took place at Aurangabad; and it would be unreasonable to raise upon them the whole fabric of the prosecution. What took place at Aurangabad is now amply proved by independent testimony, and it is no longer excusable to persist in the error of judgment committed by persons, who had not before them all the facts of the case.

This was not, however, the only letter which was written under Mr. Tilak's advice after he arrived in Poona. It is in evidence that Mr. Nagpurkar signed three letters 'by order' on the next day and these were addressed to Mr. Kumbhojkar, Mr. Malhar Manohar Dev, father of the boy adopted and to Mr. Khaparde. The only point of difference between the story of the prosecution and that of the Defence is that the words "by order" mean "by order of Tai Maharaj" according to the Defence. The actual words are "by order, Balvant Martand Nagpurkar, Karbhari nisbat Shri." One of these letters, *viz.* that addressed to Mr. Malhar Manohar Dev, has been produced by him in his evidence at Aurangabad. It commences with "अनेक आशिर्वाद विशेष" and ends with "हे आशिर्वाद," a form of address appropriate and consistent only if the letter is regarded as written by Tai Maharaj. In this letter it is stated "you will receive copies of the Probate and the Will, sent herewith, as promised. You will learn everything therefrom. Give my blessings to *Chiranjeeva* Jagannath. It is not necessary for me to write more as you are already taking care of him. Mr. Tilak would soon write to you as to what arrangements should be made for his education in future." If the boy Jagannath was not actually taken in adoption at Aurangabad, the anxiety here displayed for his education is meaningless. The form of the letter supports the story of the Defence that the letter was one from Tai Maharaj to Bhanu Saheb Dev and that Mr. Nagpurkar signed it by her order. But even accepting, for the sake of argument, Mr. Nagpurkar's statement that he signed it by the order of Mr. Tilak, it does not support the case for the prosecution. The contents of the letter remain the same in either case, and nothing is gained by the prosecution by making Mr. Tilak write this letter, for even Mr. Tilak would not evince any anxiety for the education of Jagannath unless the latter's adoption was complete. In other words, the letter represents either Tai Maha-

raja's view or Mr. Tilak's view regarding the status of Jagannath on the 30th of June 1901, and in either case it is unfavourable to the prosecution. As regards Mr. Nagpurkar's view of the Aurangabad adoption on that day, we have his report to the trustees dated 30th June 1901. ( Exh. D. 13 ). The new budget, framed by the trustees at their general meeting at Sinha-gar in May 1901, was to come in force from the 1st of July of that year, and Mr. Nagpurkar reports to the trustees that it is difficult to carry out the new budget in which the expenditure is considerably cut down. In mentioning the difficulties, he says " The ceremony of adoption is soon to take place. Therefore, at times, it seems to me that the proposed arrangements may be made afterwards. By that I do not mean that the expenditure should be increased. Yet if a servant or two, a karkun or a horse, &c. is to be maintained for him, they (existing servants, &c.) would be of use." Mr. Nagpurkar in his cross-examination admitted that the ceremony here referred to meant one relating to Jagannath, and that the latter is referred by the pronoun " him " in the above sentence. He has, however, been made to say in his re-examination that this refers to Bala Maharaja's adoption. But unfortunately for him it is in evidence that negotiations for Bala's adoption had not yet commenced, and the trustees knew nothing about the intended adoption of Bala Maharaj, while the whole tenor of the report indicates that the trustees knew whose adoption it was, and there was none that time but that of Jagannath. The reference therefore must be taken to relate to Jagannath as at first admitted; and if so, it is plain that Mr. Nagpurkar too at that time was under the impression that the ceremony relating to Jagannath's adoption was shortly to take place and that a horse or a karkun would be soon required for him. This impression he could not have formed if he knew that a boy has been merely seen, or, at best, selected by somebody at Aurangabad. It is admitted by Mr. Nagpurkar that the report is made by him voluntarily and without any pressure. From the 1st to the 6th of July 1901, certain negotiations were going on between Mr. Nagpurkar and Mr. Tilak regarding the minute of dissent which he wrote on the resolution of 18th June 1901 ( Ex. 13 ), and which minute of dissent was first seen by Mr. Tilak on 29th June 1901 after his return from Aurangabad. Mr. Nagpurkar was told that as the minute of dissent was not recorded at the meeting it was not fair for him to have it added afterwards, because the paper was in his possession. Exs. 17 and 18 are the letters which Mr. Tilak wrote to Mr. Nagpurkar in this connection, and when he declined to do anything Mr. Tilak cancelled (Ex. 19), so far as Mr. Tilak was concerned, the general power of attorney which was granted to Mr. Nagpurkar. Then followed the report of Mr. Tilak to the trustees dated 5th July 1901 ( Ex. D. 14 ). This report was filed in the proceedings of suit No. 358 of 1901 in the First Class Sub-judge's Court at Poona, on the 15th of November 1901, *i. e.* a day previous to the commencement of the examination of Mr. Tilak before Mr. Aston. In this report, Mr. Tilak expressly states how Mr. Nagpurkar has been endeavouring to upset the work of the trustees by siding with Pandit Maharaj, ever since the return of the party from Aurangabad "after finally disposing of the matter, as resolved, *by giving a boy on the lap of Tai Maharaj.*" If Mr. Tilak's letter to the Agent is to be taken into account, there is no reason why the statement in this report should not also be considered along with it. For, in the correspondence which took place after Mr. Tilak's return from Aurangabad and before the 15th of July, there is no paper where a full account of what took place at Aurangabad is given in one place, nor was it so intended to be given in any of them. Therefore it is unfair to select one statement out of this correspondence and ignore the rest, if the prosecution want to rely on Mr. Tilak's subsequent conduct as disclosed by this correspondence. The nature of the negotiation between Mr. Nagpurkar and Mr. Tilak is deposed to by Bala Saheb Natu in his examination and he distinctly states that both Tai Maharaj and Mr.

Nagpurkar well understood at the time that an actual adoption had taken place at Aurangabad. This statement of Bala Saheb Natu is fully corroborated by Tai Maharaja's statement before the Agent to Government for Sirdars in the Deccan, dated 6th July 1901 ( Ex. D. 22 ). That statement was made at the Agent's Bungalow, and is the first expression of disapproval of the Aurangabad adoption by Tai Maharaj. It begins with the following words :— “ दिळकानें केलेला मुलगा मला पसंत नाही तर आपल्यावाचून मला कोणी नाही. ” *i. e.*, “the son *made* by Mr. Tilak I do not approve. There is no one to me except yourself.” If these words mean anything they clearly indicate that Tai Maharaj here complained that she did not approve of the son *made*, that is, *given in adoption* to her, one regarding whom everything necessary to constitute the *sonship* had been made at the instance of Mr. Tilak, and that she appealed to the Agent as the only person who could assist her to get out of the difficulty. In fact it is an appeal for help, an appeal not improbably backed up by importunities, for it was made at a personal interview, and its disingenuousness is apparent from the mention of Mr. Tilak's name in connection therewith in a way to imply that everything was done by Mr. Tilak, who was known to be not a *persona grata* with Government officers. In fact, this was the first overt act of the intrigue planned by the new advisers of Tai Maharaj, and it was intended to enlist the sympathies of Government officers in their favour. But the plan of action does not seem to have been fully developed by this time, and though Tai Maharaj laid this complaint before the Agent, there is not a word in this statement about her alleged confinement at Aurangabad, or similar other stories, which are now put forward by Tai Maharaj, though she had the fullest opportunity to write anything she wanted at the time. So Tai Maharaj in this statement does not go beyond complaining about what she called Mr. Tilak's adoption at Aurangabad. The fact of adoption itself is not disputed, but the boy is disapproved and the Agent's intervention is sought to enable Tai Maharaj to take a Kolhapur boy in adoption without even mentioning Bala Maharaj. But we are not here concerned with these details. What is important for our purpose is that upto this time Tai Maharaj was not disposed to dispute the fact of adoption, but only disapproved it. The phrase दिळकानें केलेला मुलगा is as expressive as it is laconic, and when Tai Maharaj had deliberately written these words before the Agent, it is useless to argue that the actual fact of adoption at Aurangabad is not proved by subsequent correspondence. Tai Maharaj does not say that the boy was “selected” by Mr. Tilak, but “made” by Mr. Tilak and there can be no mistake about her meaning, for if the boy had been simply selected there was no necessity for seeking the Agent's help in the matter. The statement in Mr. Tilak's report dated 5th July that “the boy was placed in Tai Maharaja's lap” and Tai Maharaja's statement of the 6th before the Agent, *viz.* ‘the son made by Mr. Tilak’ give a direct lie to the theory of the prosecution, based upon the disingenuous interpretation of Exs. 68 A and 68 B, that it was after his return from Aurangabad that Mr. Tilak conceived the idea of forcing on Tai Maharaj the adoption of a boy who was simply selected at Aurangabad; and that when Tai Maharaj adhered to her purpose of adopting Bala, Mr. Tilak was led on step by step to assert in his letter to the Agent on the 13th of July 1901 that there was a corporeal giving and taking at Aurangabad. Of course the testimony of Aurangabad witnesses proves to the hilt the falsity of such a suggestion. But even keeping that testimony aside for the present and arguing from the correspondence alone, the case for the prosecution becomes untenable, unless the prosecution is allowed to omit what is inconvenient, and rely upon such random statements picked out from the correspondence as are favourable to its case. The prosecution arguing in this strain next refers to the telegram dated 11th July 1901 ( Ex. 1C ) sent by Mr. Tilak to the Diwan of Kolhapur, not to grant sanction for Bala's adoption on the *Yadi* of Tai Maharaj sent to the Durbar on the previous day. In this telegram Mr. Tilak says that “giving and taking of a son has

been completed by a registered deed at Aurangabad with trustees' consent," and I request Your Worship's careful attention to the disingenuous construction put upon this telegram by the prosecution. We are told that the words used in the telegram mean a documentary giving and taking only as distinguished from corporeal. But I call this interpretation disingenuous because the word used in the telegram is "completed" and not "constituted by", and 'completed' evidently means that there was a giving and taking and that the registered deed formed the last or the completing feature of the transaction. This is evident from another telegram ( Ex. D. 41 ) which Mr. Tilak sent to the Diwan on the same day after receiving a reply to his first telegram from the Huzur Chitnis to the Raja of Kolhapur. In this telegram Mr. Tilak says "trustees cannot sanction Bala Maharaja's adoption. Another boy has been already given and taken. Any other adoption would now be invalid in law." I think the prosecution can give some credit to Mr. Tilak for his knowledge of law, and when Mr. Tilak expressly refers to law he may well be taken to know what it means, though in ordinary letters he may appear to use loose or inaccurate expressions, for a man is not expected to play the lawyer every moment of his life. There was another ground, why Tai Maharaja's adoption of Bala would have been illegal, *viz.* the absence of trustees' consent according to the will of Bala Maharaj; and this too was communicated to the Kolhapur Durbar in other telegrams of the same day ( Exs. D. 42, D. 43, D. 44 ), and the Durbar was requested to give notice of the same to Pandit Maharaj. Both these grounds, *viz.* want of trustees' consent and the previous giving and taking of a boy, are mentioned at length in the written representation ( Ex. D. 45 ) sent by Mr. Tilak to the Diwan of Kolhapur on the 11th of July 1901, and referred at the end of the telegram of that day ( Ex. 10 ) by the words "details posted." The prosecution, it may be mentioned, only produced the telegram ( Ex. 10 ) and kept back the representation ( Ex. D. 45 ) which was referred to in it as "posted" on the day. In this representation Mr. Tilak expressly states that at Aurangabad they not only 'selected' but also 'settled' to take in adoption a boy named Jagannath. Then follows an account of the adoption-deed and other documents executed openly in a meeting at Aurangabad, and it is stated that "the adoption business is thus practically completed (mark the word 'completed') so far as the giving and receiving of a boy is concerned, and no other boy can now be adopted according to law. *What remains* is the ceremony which the trustees have resolved to celebrate soon after His Highness' permission to adopt is obtained in this case." It is stated further in the same representation, in reference to Pandit Maharaja's intrigues, "When we returned from Aurangabad, it became known both here and at Kolhapur, that the trustees were unwilling to adopt a boy above 12, and a boy from the Aurangabad family or branch has been *selected, given and taken in adoption.* This is a great disappointment to certain members of the Kolhapur branch especially Pandit Maharaj." Here the words "selected," "given" and "taken" are all used and there can be no mistake about their meaning. The same words are again used in another representation ( Ex. D. 46 ) sent to the Diwan on the 12th of July 1901; and Jagannath is said therein to have been "settled upon, given and taken" with the consent of the trustees at Aurangabad. Lastly, we have Mr. Tilak's letter to the Agent dated 13th July 1901 ( Ex. 74 ) in which "the giving and taking in adoption of a boy" is said to have been "effected with the full consent of Tai Maharaj at Aurangabad" and the Agent is informed that the proposed adoption of Bala is virtually a second adoption and therefore not valid in law. There is another paper referred to by the prosecution in support of its case. Bala Maharaja's adoption was to take place in Poona on the morning of the 13th July and on receiving information about it, Mr. Tilak applied to the Civil Court for an injunction to stop the adoption ( Ex. 42 ), and filed an application for the purpose on 12th July 1901. It is alleged that no mention of Aurangabad

adoption has been made in this suit, and this, it is alleged, lends some support to the case for the prosecution. I again say that nothing can be more disingenuous than this, for we have now several statements about the Aurangabad adoption made by Mr. Tilak before this suit, especially his report of the 5th July, and, logically speaking, if the Aurangabad adoption has not been mentioned in this suit it must be attributed to some cause other than the one suggested by the prosecution. This has been fully explained by Mr. Ramachandra Vishnu Patwardhan, the pleader who framed this suit, in his examination for the Defence. No injunction can be granted to stop an adoption on the ground that there is a previous valid adoption ( I. L. R. 13 Bom.27), and so the suit had to be framed exclusively on the ground of breach of trust. It may perhaps be urged that this view of law is not sound; but that is beside the question, for whether sound or not, it was the view taken at the time and it fully explains the frame work of the suit. Surely the prosecution does not mean to say that Mr. Tilak, lawyer as he is, ought to have taken care to proclaim from the house-top the fact of the Aurangabad adoption in season and out of season. On the contrary, as observed by me previously, indiscreet publicity in this matter would have raised troubles and difficulties—the same which we have now to confront owing to Mr. Nagpurkar's apostasy. It will be evident from all this that if we read the whole correspondence or all the letters written by Mr. Tilak on this subject after his return from Aurangabad upto 13th July 1901, no inference can be drawn therefrom against the fact of the actual adoption of Jagannath at Aurangabad, that is against his corporeal giving and taking at the place. The case for the prosecution has been based only on a few disconnected statements picked up from this correspondence and letters, and read without reference to the context or to other statements contained in that correspondence. This is not only unfair but illegal, for it is a settled rule of the law of evidence that whenever we have to rely upon correspondence or letters, we must take the whole correspondence together, and I am sure Your Worship will come to the same conclusion on the point.

#### THE DEFENCE EVIDENCE.

Such is the evidence led by the prosecution to support the first item in the charge for perjury. It consists of the direct testimony of Tai Maharaj, who is practically the prosecutrix, and her *alter ego* Godu, and this is said to be corroborated by certain inferences drawn from papers connected with the adoption affair. It has been shown that these inferences, so far as they go, are not perfectly incompatible with the story of the Defence, while some of them are nothing better than ingenious suggestions or explanations, which can be invented in any case by any legal gentleman of industry, provided the party can afford to pay for his labours. It is not only unsafe but illegal to hold that suggestions or inferences like these can make up the absence of sufficient direct testimony in any case, much less in that of perjury. In this connection it must again be remembered that the prosecution has not been able to produce any documentary evidence directly supporting its case. The only documentary evidence of this kind offered is the two alleged letters of Tai Maharaj from Aurangabad, and it has been shown that they bear, on their face, evident marks of being fabricated for this case. It is not strange, that when Mr. Nagpurkar was in constant correspondence severally with Messrs. Kharparde and Kumbhojkar and when the Defence has so many of his autograph letters to categorically contradict the statements made by him—nay when even letters of Tai Maharaj have been produced to prove the falsity of the story now put forward by her,—is it not, I ask, strange that the prosecution, by which I mean Tai Maharaj and Mr. Nagpurkar jointly or severally, should not have been able to produce any letters of Messrs. Kharparde or Kumbhojkar to shew that Bala Maharaj was intended to be

adopted from the beginning, that the alleged wishes of the testator regarding adoption were known to the trustees, that the Babre branch of the family was not descended from the elder brother of Siddheshwar, that the party that went to Aurangabad had gone there only for the purpose of selection, and similar other points on which the prosecution professes to rely? This absence of documentary evidence is the more remarkable because the proceedings of the trustees are all in writing and regularly kept up, and also because Mr. Khaparde was almost constantly consulted and any advice or opinion he gave was always communicated by letters, except when he happened to be in Poona in which case his opinions were recorded in the proceedings of the trustees. In short, the whole case for the prosecution rests on the probabilities of the kind referred to above, and oral explanations invented by Tai Maharaj and Mr. Nagpurkar to pervert the plain meaning of trustees' resolutions or acts done under those resolutions; while the whole documentary evidence is entirely in favour of the Defence, and it is further supported by the direct testimony of Aurangabad witnesses. In fact the whole balance is in favour of the Defence. The Defence, as I have previously noticed, is entitled to rely upon the weakness of the case for the prosecution, and strictly speaking, the accused ought not to have been called upon to enter on his Defence. But as it was, the evidence for the Defence has been taken and it is therefore necessary to make a few observations upon it.

In the first place, I wish to bring to Your Worship's notice in how straightforward a manner the trustees of the estate have all along dealt with the matter of adoption. The posthumous son of the testator died on the 9th of March 1898 and the very first proposal of adoption, which the trustees had to deal with, was that of Bala Maharaj who was proposed for adoption by his brother Pandit Maharaj through the Kolhapur Durbar almost the next day after the death of the posthumous child (Ex. D. 52). A proposal like this made with indecent haste and impudence was naturally rejected with as much promptness and indignation, and ever since it has, among other reasons, set the trustees against the adoption of Bala Maharaj. Mr. Khaparde has stated in his evidence what these other reasons were. Pandit Maharaj and his family were not well spoken of in the society, in spite of the fact that he holds by inheritance the office of the spiritual preceptor to the Maharaja of Kolhapur. It was not a light task to select a proper heir to the estate and high name of the deceased, and the trustees naturally took time to consider over the matter, which was discussed by correspondence amongst them, until the first meeting of the trustees in June 1898. There were proposals for the adoption of Mami's son, *i. e.* Tai Maharaja's brother and also of the youngest son of Mr. Khaparde at that time, but nothing was decided at this the first general meeting of the trustees. Mr. Tilak, who was not present at the first meeting, could take part in these discussions only after 6th September 1898, and then when he suggested some arrangement in his first interview with Mr. Nagpurkar, he found that the other trustees had already made some progress and settled upon some principles to guide them in the matter. At the meeting in October 1898, it was resolved to make a systematic inquiry about Kolhapur boys and Mr. Kumbhojkar was asked to place all the available information before the trustees as soon as practicable. This resulted in some correspondence, in which Tai Maharaj took a substantial part (*vide* Ex. D. 64.) between Messrs. Kumbhojkar, Nagpurkar and Khaparde before and after this meeting of the trustees, and finally the information was placed before the trustees at their third annual meeting in June 1899. It should be noted that all correspondence about this matter took place between the three trustees other than Mr. Tilak, and that the latter, who is now represented before this Court as the chief actor in the matter, took no part in private consultations of the other trustees. At the meeting of June 1899, there was



a preponderance of opinion favourable to the third son of Nana Maharaj among all the Kolhapur boys, but for astrological reasons, the matter was again left to Mr. Khaparde, who was to consult Durge Joshi on the point. I would request Your Worship to mark the fact that Mr. Tilak does not figure in the scene beyond what was required of him as a trustee. He had hardly any personal likes or dislikes in the matter, and cared little who was adopted, provided the interests of the estate were safely guarded. Tai Maharaj was present at all these meetings ; and from October 1898 to March 1899 she was Mr. Khaparde's guest, and as such resided in his house at Amaraoti. She had thus the fullest opportunity to know and was kept informed of what was going on all this time. It is therefore now absurd to say that she thought so and so from the beginning or that her wishes were not consulted in the matter. If it is alleged that she acquiesced in all these proceedings only under the belief that she was being well advised, it was surely no fault of the trustees, nor can they be held responsible for it. They were doing their duty, their proceedings were regularly kept up and Tai Maharaj was fully cognizant of what was going on. When the matter came for final disposal before the trustees in May 1901, Tai Maharaj was expressly asked in writing to state her views in the matter (Ex. 80). To this she sent a written reply (Ex. D. 207) stating " there are boys at Babre, after first seeing some and then seeing all, decision should be made." Here there was the best opportunity for her to state her views ; and yet not a word about Bala or any other Kolhapur boy appears in this letter. Are the trustees to blame for this ? The matter was hanging fire for three years and all including Tai Maharaj knew that it was to be finally decided that year. She was given the fullest liberty to state her views ; she did state them and the trustees acted upon them. Under the circumstances is it not strange that of all the trustees, one, who took the least part in all these discussions, has been dragged before the Court for carrying out into execution a resolution passed by all. Mr. Khaparde has expressly told us that during the stay of the trustees and Tai Maharaj at Sinhagar in May 1901, Mr. Tilak was so busy with his own work that he took no part in the discussion beyond attending the meetings when called to do so. And still it is now alleged, without a particle of evidence to support it, that Mr. Tilak of all the trustees was the principal person to force the Aurangabad adoption on Tai Maharaj, when as we have it in Mr. Nagpurkar's evidence that Mr. Tilak was at first unwilling to go to Aurangabad and agreed upon going after being pressed by Mr. Khaparde. But to proceed with the story, after meeting at Sinhagar another meeting was held on the 1<sup>st</sup> of June to finally dispose of the adoption matter and this resolution was duly carried out by Messrs. Khaparde, Tilak, and Tai Maharaj, who voluntarily went with them to Aurangabad. All this, I say, is a plain and natural story supported by the written proceedings of the trustees and written correspondence between Mr. Khaparde, Kumbhojkar, Nagpurkar and Tai Maharaj exhibited in the case. Of course, every minor point in the affair extending over three years cannot be expected to be covered by written evidence, and designing persons will always find points, upon which, by means of oral evidence, they may endeavour to put a different construction. But when a story is proved in substance by documentary evidence, oral evidence adduced to misconstrue and pervert some of the minor points in it, must always be received with great suspicion. The present case for the prosecution is exactly of this kind and Your Worship will, I hope, hold that the proceedings of the trustees regularly kept up are far more reliable than the oral explanations or additions now invented. The Defence has placed before the Court all the documents and papers in the proceedings of the trustees, and disingenuity apart, I appeal to Your Worship to say if the trustees have not acted fairly and in a straightforward manner throughout. The prosecution professes to base its case on probabilities, but what can be more probable or

natural than the above story of the Defence. The trustees deliberated over the matter for three years and put down in writing what they finally resolved and the same resolution was carried out under the direct superintendence of two of them, whose lead the other two always professed to follow.

#### WANT OF MOTIVE.

This naturally leads me to consider if the prosecution has established any motive why Mr. Tilak or two other trustees should act so perversely as alleged by the prosecution in this case. Mr. Tilak, as a Kokanastha Brahmin, could not have given his son in adoption to Tai Maharaj, and it is in evidence that Mr. Khaparde did not wish to do so. Then what on earth could be the motive of these two gentlemen in forcing a particular boy on Tai Maharaj? I have not seen, during my experience extending over nearly a quarter of a century, an offence committed by any one without a motive, and a man must indeed be insane to go *in* committing number of perjuries and forgeries &c. absolutely without any motive. And when the prosecution proposes to charge a man with having committed a series of serious offences without any motive or even without any adequate motive, the obvious inference is that either the prosecution or the accused is labouring under some kind of infatuation. It is in evidence that neither Mr. Khaparde nor Mr. Tilak cared to make any personal gain out of this trust. And it is also in evidence that Mr. Tilak never took more than official interest in the affairs of the trust. Why should Messrs. Tilak and Khaparde therefore go the length of bringing about the adoption of Jagannath by force or fraud as alleged? It is suggested that they wanted a long minority in order that they may long retain the power and patronage, which such a trust places in their hands. But even this theory is quite disingenuous and absurd. Not a single instance has been adduced where power and patronage formed a consideration in this case either with Mr. Khaparde or Mr. Tilak. The management was left in old hands, and not a single friend or protegee of Mr. Tilak is shown to have derived any profit or advantage from the trust estate. On the contrary it is in evidence that the estate worth about 25 thousand a year was burdened with a debt of a lac and 50 thousands, the interest on which alone amounts to 10 thousands a year. The trustees had therefore not only to cut down the expenditure considerably, but deliberately advise the adoption of a minor boy, as it is a matter of common experience that in cases of encumbered estates, it is only during the minority of the owner that any saving could possibly be made. Government and Government officers always act on this principle when an heir to a jahagir is to be selected by them, and it is surprising that Government itself should now come forward and prosecute a trustee for following the same policy, instead of advising Tai Maharaj that it is in the interest of the estate. It would also appear, from Ex. D. 7, that, at one time at any rate, Tai Maharaj herself desired to adopt a boy under 7 or 8 years. In fact the immediate cause of rupture between Mr. Nagpurkar and the other trustees was the resolution about the budget passed at Sinhagar in May 1901 (Ex. 62). This was followed by the resolution of 18th June 1901, and from that time it became Mr. Nagpurkar's interest to upset the trust, so that he, Tai Maharaj and Bala Maharaj may do whatever they liked with the trust estate. His first *protest* dated 18th June 1901 (Exs. D. 11 and D. 12) was a mild one and he was not then prepared to assert himself. After the party left for Aurangabad, he had interviews with Pandit Maharaj, and was admittedly in communication with his pleaders and advisers. By the time Tai Maharaj returned to Poona, Mr. Nagpurkar's and Pandit Maharaja's plan of opposition was settled, but it took some time to gain over the lady, and it was on the 6th of July, *i. e.* after Mr. Tilak formally reported the whole affair to the other trustees on the 5th, acting on the advice of these intriguers Tai Maharaj went to the Agent and appealed for

help (Ex. D. 22). The story of the alleged confinement at Aurangabad was not yet concocted. There were, however, frequent consultations between Tai Maharaj, Mr. Nagpurkar, Pandit Maharaj and others as to how Bala's adoption could be brought about. The sympathy of the Agent to Government for Sirdars in the Deccan was enlisted in the cause by the device of making Tai Maharaj appeal to him for help in a cause, which a lady's appeal may have led him to believe to be a righteous one. It must have also been settled at this time to make Mr. Tilak the scape-goat, and so secure the sympathy and support of Government. Tai Maharaj was won over by a promise of life-estate to her and Mr. Nagpurkar was reconciled by a promise in the conditional deed that he too would hold his post for life ( vide Ex. D. 17 ). Bala's adoption was thus arranged to take place in Poona on the 13th of July 1901, Bala consenting to accept an allowance of Rs. 200 a month until the debts of the estate were paid. Tai Maharaj was also to have all ornaments and other movable property, which were to be at her sole disposal, and she was besides to take away from the income of the estate for her own exclusive use the sum of Rs. 20,000 recovered on the life-policy of her husband and credited to the general estate by the trustees ( Exs. D. 4 and D. 17 ). Tai Maharaja's young daughter was also not overlooked, and it was provided that a sum of Rs. 20,000 should be spent on her marriage and, if necessary, a loan for the purpose may be raised on the security of the estate. It was further agreed that Bala, who had almost attained majority at the time, being nearly of the same age with Tai Maharaj, was to do nothing in regard to the estate except under orders of Tai Maharaj, who was to continue in the management with Mr. Nagpurkar as life karbhari as long as she wished. It is no wonder that Tai Maharaj easily fell into the hands of the designing persons when such an irresistible bait was offered to her, and within a fortnight after her return from Aurangabad became ready and willing to repudiate the Aurangabad adoption, to accept Bala for her adopted son and to upset the trust if necessary and possible; for she well knew that she was not entitled to any thing under her deceased husband's will, (her name even not being included amongst the trustees), except a provision for maintenance, and that if the Aurangabad adoption stood, she could in the event of disagreement with Jagannath, get only such allowance as the trustees might settle for her. ( See Ex. 67 ). And what trustee, with any sense of responsibility of his position, could have been a party to this wholesale and unscrupulous piece of jobbery? Bala consented, for his income was to be increased from 1100 to 2400 a year: an increase of over hundred per cent. by a single *coup d'etat*. The only trustee who has attested this deed of agreement is Mr. Nagpurkar and his motives in such a wholesale disposition of the estate can be better imagined than told. He was to be a karbhari for ever, and his mistress Tai Maharaj was to govern and manage the affair as long as she pleased. It was impossible to expect that either Mr. Khaparde or Mr. Tilak could have as trustees tolerated a thing like this; and it is not surprising that Tai Maharaj should soon have applied for the revocation of the probate at the instance of the selfish advisers that surrounded her, and made up her mind to demolish at one stroke the trust, the trustees and the adoption of Jagannath by inventions and lies, either of her own make or coined for her and supplied ready made by her advisers. Thus while the prosecution has absolutely no motive to suggest why men like Messrs. Khaparde and Tilak should attempt to force the adoption of Jagannath upon Tai Maharaj by fraud, perjury and forgery; the Defence has fully established that both Tai Maharaj and Mr. Nagpurkar have powerful motives to upset the trust, and it is a pity that the sympathies of Government should have ever been enlisted in such a cause! As for Mr. Tilak, it has been shown that he never cared to be a trustee, his name not being included in the draft will, but consented to have name inserted in the final will, simply because

he could not refuse the pressing request of his friend on the death-bed. It is again in evidence that he could not take any part in the management of the estate till 6th September 1893, and even afterwards he was not concerned with the actual management of the estate until an interference became absolutely necessary in the opinion of other trustees. He, it is admitted by Mr. Nagparkar, was unwilling to go to Aurangabad, and it was only by accident that the task of carrying on the actual adoption of Jagannath fell upon him alone, Mr. Khaparde having left Aurangabad for Amraoti without completing the adoption business, on account of urgent professional engagements. It is now also shown by the evidence of several eye-witnesses that Mr. Tilak has described in his evidence what he actually saw and did at Aurangabad. It is such a trustee that is now made the victim of a vexatious and prolonged prosecution conducted by misinformed Government, and it is in Your Worship's hand to do justice to him under the circumstances.

#### AURANGABAD WITNESSES.

Lastly we come to Defence witnesses on the point of Jagannath's adoption, witnesses who state from their own personal knowledge that they saw Jagannath placed on the lap of Tai Maharaj on the morning of 28th June 1901. All these witnesses except Durge Shastri were examined at Aurangabad, and I shall therefore now examine the evidence taken on commission at Aurangabad. There were sixteen witnesses in all who were examined on commission at Aurangabad. One of these Mr. Padhye is the Drawing-master, who prepared the ground plan of the Sikh Mandir and who was examined simply for the purpose of putting in the plan prepared by him. Mr. Hartley, the Engineer of the Aurangabad Mill, was also examined on the point of Tai Maharaja's visit to the mills, but he said that he did not remember anything about it. The clerk to the registrar was called to prove the registration of the adoption-deed of Jagannath, engrossed on the Nizam's stamp paper. The registration record in Nizam's dominion is kept in Urdu, and it is therefore the practice of the Registration Office at Aurangabad to translate in Urdu all Marathi documents offered for registration. According to this rule the adoption-deed (Ex. 67) has been translated in Urdu (Ex. D. 60), before it was registered in the office. It is in evidence that when Mr. Tilak, Tai Maharaj and others left Aurangabad the adoption-deed was left behind in charge of one Vishnupant Kulkarni; and Bhanu Sahab Dev, the father of the boy, was asked to get it registered and send the same to Poona with the said Kulkarni. The Urdu translation of the deed was entered into the registrar's book on 3rd July 1901 and this translation agrees word for word with the original deed in Marathi, thus furnishing a complete refutation of the suggestion or suggestions that these deeds must have been tampered with, when Mr. Tilak after his arrival in Poona was gradually led step by step to assert that the corporeal giving and taking of the boy was effected at Aurangabad with Tai Maharaja's consent. The evidence of the registrar's clerk is thus material and important. It sets at rest all doubts as to the genuineness of the adoption-deed. At any rate the deed now produced in court is conclusively shown to be the same as it was when Tai Maharaj and Mr. Tilak left Aurangabad. This gives a lie to the story of Tai Maharaj that the words indicating her assent over her signature on the deed were not these when she signed it, meaning that they must have been subsequently inserted by some body; and it corroborates the story of the other Aurangabad witnesses that the said words were written in their presence at the request of Tai Maharaj before the latter signed the deed. But this is only by the way. The question of the alleged forgery of the adoption-deed is not in issue in this case, though the evidence now recorded exposes the falsity of that charge. If we leave aside the three witnesses mentioned above, there remain thirteen more, all of whom were examined

on points related with the adoption of Jagannath. Five of these are connected with the College and the High School at Aurangabad, one being the Principal himself, another his son and teacher of Mathematics in the College, third the Shastri of the College, and two others teachers in the High School. Besides these five, three out of 13 belong to the Nizam's Educational Department, one the Head Clerk to the Educational Inspector Aurangabad Division, one the Marathi clerk in the same office, and one, the Master of a Vernacular School. There is a private Sanskrit School at Aurangabad and the Head Shastri of this school was also examined, among the thirteen, on the point of the Shastris' meeting held on 27th June 1901 to discuss the horoscopes of the boys. Of the remaining four witnesses, two are senior English-knowing pleaders practising in Aurangabad District Court, one the Weaving master a respectable Brahman in the Aurangabad Mill getting Rs. 200 a month, and the last, the father of the adopted boy *Jagannath*. All these thirteen witnesses are eye-witnesses and as they directly contradict Tai Maharaja's story, regarding the Aurangabad adoption, it is necessary to analyse and examine their evidence at some length in order to judge of the full effect of the contradiction. The father of the adopted boy *Jagannath* may be kept aside for the present, and we shall then have a dozen witnesses, who have no interest whatsoever in supporting one side rather than the other and all of whom hold respectable position in the Aurangabad society. Nine of these witnesses were present in the meeting where the boy *Jagannath* was given and taken in adoption, but two out of them, viz. Hari Ram Shastri and Mr. Dhongde were not in the meeting all the time. Their evidence, therefore, does not go further than proving the fact of the meeting, of Tai Maharaj, *Jagannath*, Bhausaheb, Mr. Tilak and other people, being present therein, and the general business transacted at the meeting. The remaining seven were present at the meeting all along and they depose to the execution of the deeds in their presence and the placing of *Jagannath* on the lap of Tai Maharaj by his father Bhausaheb Dev. If we add to this number the name of Durgé Shastri, who was examined at Amraoti, we have in all eight witnesses, who state on oath that they did witness with their own eyes the corporeal giving and taking of *Jagannath* at Aurangabad, that is, his being placed on the lap of Tai Maharaj. It should be further noted that among these eight are included Messrs. Rale and Par-naik, the pleaders, Mr. Bhide the Head Clerk, the junior Kale and above all Durgé Shastri, an old man of seventy, whose unimpeachable piety and disinterestedness are admitted even by Tai Maharaj. Are we to suppose that these eight witnesses have come forward to give their evidence on oath simply to save Mr. Tilak? That is the real point in the whole case and its solution is facilitated by the story set up by Tai Maharaj. The conflict between the unanimous testimony of these witnesses and the story of Tai Maharaja is not confined to a single point, viz. the corporeal giving and taking of *Jagannath*. The story of Tai Maharaj is made up of several parts: (1) that she was kept in confinement at Aurangabad by Mr. Tilak; (2) that she obtained release by signing certain documents, which Mr. Tilak brought to her in her room; (3) that when she signed the documents, there was no one else present except Parvati and Mr. Tilak; (4) that the documents were never read to her; (5) that she never asked Mr. Tilak to write the words of consent above her signature; (6) that there was no meeting held on the morning of the 28th in the marble hall of the Sikh temple and that she never sat in that meeting for any purpose; (7) that an armed guard was kept to watch over her and that the same guard went with her as far as the Railway Station; (8) that while at Aurangabad she did not move out of the Sikh Mandir; (9) that she did not pay a return visit to Mr. Bhide's wife; (10) that she never saw any boys with a view to adoption; (11) that Bhausaheb Dev and *Jagannath* were not present at the station and she did not speak to them; (12) that she did not pay a visit to

the mill and lastly (13) that she did not take any boy on her lap at any time during her stay at Aurangabad. It is true that the item of the charge, we are now considering, relates only to the last of these points, but it has to be borne in mind that the prosecution or Tai Maharaj has deliberately set up a story which is so linked with the last point that the latter cannot be wrested from the rest of the story, and its truth or falsehood independently ascertained. In other words, if Tai Maharaja's story be true, it is true, in all its parts or false *in toto*. I would respectfully urge upon Your Worship's attention this peculiar characteristic of the case for the prosecution on this item of the charge. If it can be shown that Tai Maharaj was never kept in confinement at Aurangabad, or if it is proved that there was a meeting held in the marble hall of the Sikh Mandir on the morning of the 28th, and Tai Maharaj, Jagannath and his father were present at that meeting, or if it is shown that Tai Maharaj did not sign the documents in her room in the presence only of Parvati and Mr. Tilak, the whole story of the prosecution falls to the ground. In short, by preferring to rest its case on the denial *in toto* of the story for the Defence, the prosecution has knowingly undertaken the risk of being blown up all along the line by a defeat sustained at one of the points. It is not for me to discuss the wisdom of this policy. I only point out the fact and urge it upon the attention of Your Worship. There is another point which must also be carefully attended to in weighing the Aurangabad evidence. Tai Maharaj and Mr. Tilak have both told their stories on oath, and since the perjury in the present case consists in the contradiction between the stories of these two persons and not between two statements made on oath by Mr. Tilak, (supposing there can be any manner of comparison between Tai Maharaj and Mr. Tilak) we shall have to leave aside both Tai Maharaj and Mr. Tilak and consider what other direct evidence exists to support the story of either party. In other words, we cannot pit Tai Maharaja's evidence against the evidence of Aurangabad eye-witnesses. The evidence of Tai Maharaj is matched by that of Mr. Tilak, as Tilak is not charged with himself making two contradictory statements, in which case he would be pitted against himself. It is true that Tai Maharaj is a witness, while Mr. Tilak is the accused, but this is a mere accident, for another judge might have believed Mr. Tilak and disbelieved Tai Maharaj. Keeping aside, therefore, both Tai Maharaja's and Mr. Tilak's statements, let us see what corroborative direct evidence exists on either side. Viewed in this light, the direct testimony in support of Tai Maharaja's story consists of the evidence of Godu who entirely depends for her maintenance on Tai Maharaj, while Mr. Tilak's story is supported by at least eight witnesses, none of whom is dependent on Mr. Tilak or cares to seek any favour from him. Parvati, another servant of Tai Maharaj and one who went with her to Aurangabad and has been called by the prosecution, has, it may be further noted, also deposed substantially against Tai Maharaj especially on points where there is a special reference made to her. We have also to consider what I have stated above, namely that Tai Maharaja's story is made up of no less than thirteen different points and it is categorically contradicted on every one of these points by the witnesses for the Defence. In short, the prosecution is beaten all along the line and not merely at one point, though as observed by me previously, the giving in or defeat at one of the points would necessarily mean giving in or defeat all along the line. It may perhaps be urged that Tai Maharaja's evidence may be pitted against that of Mr. Tilak as well as against the testimony of Aurangabad witnesses, and in that case we shall have to consider the position of Tai Maharaj in estimating the value of her evidence. Admitted; but on the other side we shall also have to consider the position of Mr. Tilak in estimating the value of evidence against the prosecution; for we must either include both or exclude both. My learned friend Mr. Strangman is sure to belittle the importance of the Aurangabad witnesses by telling Your Worship

stories as to how certain witnesses failed to give satisfactory answers to some of his involved and lengthy questions or how a particular witness gave a wealth of details not wanted by my learned friend, or how a third confined himself only to a few leading points. Your Worship may also be told that in an affidavit made by Mr. Rale a year ago, he has not mentioned the fact of corporeal giving and taking now deposed to by him in his evidence. But objections like these can be easily and satisfactorily explained. When a witness gives a wealth of details, the counsel on the other side is sure to refer to the frailness of human memory and remark "how could a man remember so much," while if a witness be brief, he will be asked "how he remembers so little." Similarly if a witness keeps a diary, *e. g.* Mr. Khaparde, who brought all his regularly kept up diaries in Court, the opposite counsel will not trouble himself much about them; but when a witness keeps no diary he will be asked how he could remember the details without a diary. This reminds me of a verse in Sanskrit where the poet says that if a servant speaks much, he would be stigmatized as garrulous, while if he but speaks little, he would be set down for a dumb fool. In short these are stock objections, which can be used in each and every case; and if we set these aside, it will be found that the testimony of Aurangabad witnesses is hundred times more valuable than that of Tai Maharaj and Mr. Nagpurkar, who have told us from the witness-box that they wrote this or that letter falsely or fraudulently to deceive a friend, a relation or a co-trustee. Tai Maharaja's evidence is open to another objection that it was given by bits or instalments, after much hesitation and with convenient pauses. Her interest in the subject matter of this trial is also a strong incentive for her to suppress and pervert plain truths, where they would tell against her. On the other hand, Aurangabad witnesses have no such motives. It is idle to suppose that they are in conspiracy with the accused or that they are interested in supporting him. We have further to bear in mind that Tai Maharaja's story consists of denials and is easy to invent. But it has, at the same time, made the story incredible or almost absurd. Apart from the fact of adoption, the story is again liable to be contradicted on many points, thus as regards the alleged confinement of Tai Maharaj at Aurangabad, all persons who constantly visited the Sikh Mandir can easily say if the story is false or true. And when these persons positively tell us that they saw Tai Maharaj moving about in the city; that she visited the mill; that a number of people including Jagannath and his father were at the station, that Jagannath was there taken into Tai Maharaja's compartment for a short while; that meetings were held in the Sikh Mandir on the 27th and 28th June 1901; that at the meeting of 27th a certificate was signed and given by the Shastris (Ex. D. 51); that on the morning of Friday the 27th June 1901 there was a meeting held in the marble hall of the Mandir, and Tai Maharaj signed the adoption-deed after reading the same and after Mr. Tilak had written the words of consent thereon at her request; that they never saw any armed guard in the Mandir or at the Station; that the room where Tai Maharaj alleges herself to have been confined was not placed at the disposal of the party at all; that a number of people used to call on Mr. Tilak; and that the latter's visit to Aurangabad, being the first, was regarded as a matter of some public consequence; and that whatever Mr. Tilak did was done openly in the presence of a number of people; I say, it is impossible for any man of common sense to hold that all these gentlemen admittedly holding respectable position in the Society, men whose testimony it is not possible to secure in a false cause, are anything but truthful and reliable; and if so, why should we disbelieve them only in one particular, *viz.* the corporeal giving and taking of Jagannath, which they say they witnessed with their own eyes and which follows as a matter of course when the story of Tai Maharaja's alleged confinement is exploded. Unfortunately Your Worship has declined to grant another com-

mission for taking the evidence of those witnesses, whose attendance the Judicial Superintendent at Aurangabad could not secure for want of local jurisdiction over them, otherwise the number of eye-witnesses to the corporal giving and taking of Jagannath at Aurangabad would have been increased by half a dozen at least ; whilst to disprove the statements of Tai Maharaja as regards her alleged confinement, a still larger number of eye-witnesses would be forthcoming. In fact it is a matter which is known to many people in Aurangabad; and as some of the witnesses observed, it was surprising to many there, that we in Poona should be discussing the preponderance of probabilities based on the misconstruction of a word here or a phrase there, when the question at issue could have been easily decided by taking the case to Aurangabad, and examining a few witnesses at that place. The prosecution must have known from the Police inquiry that this was the easiest and simplest as well as the most straightforward and direct course to follow in the interest of justice and economy, both of time and money, to Government as well as the accused. But instead of adopting this straightforward course a mass of circumstantial evidence of doubtful utility, if not absolutely irrelevant, has been imported into the case, evidence which could not have and did not obviate the necessity of eventually resorting to the direct testimony on the point at issue.

I shall now conclude my observations on the first item of the charge by bringing again to Your Worship's notice the legal requisites necessary for conviction in a case of perjury. To put the whole thing in a nutshell we have to weigh here Tai Maharaja's and Godu's evidence as against Mr. Tilak's supported by that of more than a dozen eye-witnesses. Each side claims to further rest its case on probabilities, many of which can be interpreted or misconstrued one way or the other according to the ingenuity of the operator. Your Worship will have therefore to consider whether Tai Maharaja's and Godu's testimony establishes *the absolute impossibility* of Mr. Tilak's story being true, supported as it is, by a number of eye-witnesses. It is also shown the whole of the documentary evidence is in favour of the Defence; while the two alleged letters of Tai Maharaj produced by the prosecution, are to say the least, exceedingly suspicious. In cases where claims to property are in issue, and where a decision has always to be given in favour of one side or another, the decision is naturally on a consideration of the balance of probabilities. But the rule in criminal cases is entirely different. In these, the accused has always the presumption of innocence in his favour, and unless the prosecution establishes his guilt by a clear and unimpeachable evidence, the accused is entitled to be acquitted. In other words he cannot be convicted on the supposition that a *preponderance* of probabilities is against him. If there be any doubt, or if the proof falls short of *moral certainty*, the case must result in an acquittal. This is what is meant by the maxim that "in criminal cases the benefit of the doubt must always be given to the accused." But besides this distinction as to the effect of evidence in civil and criminal cases, there is a further distinction on the same point made between criminal cases themselves, and the offence of perjury is one of them. For besides the usual presumption of innocence made in favour of the accused in every criminal case, the accused in the case of perjury is entitled to have regard paid to his oath until his statement is disproved. It is on this ground that Norman J. in *Reg vs. Ahmed Ally*, has laid down the rule that "no man can be convicted of giving false evidence *except on proof of facts, which, if accepted as true, show not merely that it (accused's story) is incredible, but that it is impossible that the statements of the party accused made on oath can be true.* If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand." (The italics are in the original.) The facts now placed before Your Worship are to be judged by this



standard. The impossibility of Mr. Tilak's statement being true must be clearly established, and Your Worship will have to see if the duty, thus imposed by law on the prosecution, has been discharged according to the test laid down in law. It is not a question of the relative credibility of witnesses, but of the absolute impossibility of the Defence story being true. The direct evidence on behalf of the prosecution if we take out Tai Maharaja's evidence from it is almost nil and "probabilities which are useful as aids in considering the true value of direct evidence, can seldom be safely had recourse to alone for the purpose of invalidating direct evidence." (*vide* Lallah Jha *vs.* Jullebmatool Zubra 21 W. R. 436.) Tai Maharaj has herself admitted that she wrote letters which were false and fraudulent, and it is evident that her story of alleged confinement at Aurangabad is a myth. Under these circumstances it is absolutely unsafe to accept her statements, and act upon them (*Vide* I. L. R. 14 Calc. 167). It has also been ruled that when direct testimony is opposed by conflicting evidence, or by ordinary experience, or by the probability supplied by the circumstances of the case, the consideration of the number of witnesses becomes most material. (*Starkie, Evidence, 828*). Nor can we, in such cases, it is justly observed, overlook the motives of parties and witnesses on either side. I have shown that from whatever stand-point you examine the evidence adduced in the case it is found to be fully in favour of the Defence and taking every thing into consideration, I feel no hesitation in saying that on this item of the charge the accused is fully entitled to an acquittal at the hands of Your Worship. I proceed to the examination of the other item in the charge.

## PART II.

### SECOND ITEM IN THE CHARGE:—WRONGFUL CONFINEMENT.

The charge on this head runs as follows :—

“ And secondly by knowingly and falsely stating as follows :—

‘ We never kept her under any restraint nor intended to do so ’ meaning thereby that neither had you the said Bal Gangadhar Tilak, nor had one Ganesh Shrikrishna Khaparde, nor had one Shripad Sakharam Kumbhojkar, nor had any one of you the said Bal Gangadhar Tilak, Ganesh Shrikrishna Khaparde and Shripad Sakharam Kumbhojkar in concert with either one or both of the remaining two of you at any time either on or between the 16th and 20th days of July 1901 kept or abetted the keeping of one Tai Maharaj under any restraint nor had you nor any of you the said Bal Gangadhar Tilak, Ganesh Shrikrishna Khaparde and Shripad Sakharam Kumbhojkar intended to do so.

Whereas in truth and infact as you the said Bal Gangadhar Tilak well knew when you gave such false evidence as aforesaid, the said Tai Maharaj was confined in a certain Wada in Poona, to wit Bhau Maharaja's Wada at the order and to the knowledge of you the said Bal Gangadhar Tilak and the said Ganesh Shrikrishna Khaparde from or about the morning of the 16th day of July 1901 until the evening of the 20th day of July 1901 and was so confined as aforesaid to the knowledge and with the assistance and consent of the said Shripad Sakharam Kumbhojkar from or about the 17th day of July 1901 until the evening of 20th day of July 1901 and that you the said Bal Gangadhar Tilak did thereby commit an offence punishable under section 193 of the Indian Penal Code and within my cognizance, and I hereby direct that you be tried by me on the said charge.”

Before proceeding to the examination of the evidence on this charge, it is necessary to examine the charge and see what it exactly means. It is a charge of perjury relating to wrongful confinement, and not of the substantive offence of wrongful confinement itself. It is not only useful but necessary to keep this distinction in mind, because the elements or essentials of the offence are different according to different views. The first item of charge, *re* adoption, related simply to the fact of the corporeal giving and receiving at the time of the adoption; in short, it was mainly a question of fact, and as such differs from the present one, which is a mixed question of law and fact. We have not merely to see whether any, and, if at all, what restraint the lady was kept under, but we have also to consider what was the position, intention, or the belief of the parties concerned under those circumstances. Wrongful restraint or wrongful confinement thus becomes a mixed question of law and fact; and, in the present instance, when the accused is not charged with *wrongful* restraint, but perjury in connection thereof, the question of belief or opinion as to what constitutes restraint, which must, if the expression has to be given any definite legal meaning, be understood to mean *wrongful* restraint (for, without this idea, nothing is present to any one's mind as “any restraint”), becomes still more material, and we shall, therefore, have to consider the questions of law and questions of fact blended in this charge separately for convenience.

The sentence picked out for the purpose of this charge from Mr. Tilak's evidence, is “ We never kept her under any restraint, nor intended to do so.” In this sentence the meaning of words *we*, *restraint*, and *intended* is not quite clear. The charge, as framed, interprets “*we*” to mean, *several*-

ly or jointly, one, or two, or three of the trustees, viz. Mr. Tilak, Mr. Khaparde or Mr. Kumbhojkar, or any two, or all of them. But I do not understand how the sentence could be construed to mean *we severally*. This point is very important; for it is a case of perjury and what the accused actually said is alone to be taken into consideration. There may or may not have been any wrongful restraint. We are not concerned with it just now. But we have to see what the accused stated about it on oath; and the statement of the accused is "*we* never kept her under any restraint, nor intended to do so;" and there is absolutely no authority either from the context or otherwise to interpret "*we*" in the sense in which it is done in the charge. In the whole deposition the distinction between 'I' and 'we' is kept up, and on several occasions the meaning of 'we' has been clearly explained. In this connection I shall, therefore, draw Your Worship's attention to other portions of Mr. Tilak's evidence where he has himself explained that by "*we*" he meant the three trustees, Mr. Khaparde, Mr. Kumbhojkar and himself. This explanation is given in connection with the alleged confinement of Mr. Nagpurkar only a few sentences short time after, and on the same day when the statement in the charge was made. And the explanation is repeated on 28th November when Mr. Tilak referring to the same matter was expressly asked "Who are *we*?" to which he answered "The three trustees Khaparde, myself and Kumbhojkar." It is, therefore, clear that the word "*we*" in the sentence referred to in the charge must be understood to mean the three trustees jointly and not severally.

Another point which requires to be cleared up is the meaning of the sentence in the charge, especially of "restraint" and "intention," and also whether Mr. Tilak was giving his *view* of certain facts, or stating an independent fact itself. For this purpose we must look to the context. The sentence now picked out and on which the present charge is based occurs in the beginning of Mr. Tilak's deposition before Mr. Aston on 21st November 1901. Mr. Tilak was first asked whether the front door of the Maharaja Wada was or was not closed after the 16th July. In reply Mr. Tilak admitted the fact, but added that the door was kept open some part of the day for certain purposes, especially in the morning and evening. Upon this, the Court, that is Mr. Aston, made some remarks, and Mr. Tilak replied to them. It is in this connection that the sentence in the charge occurs. I, therefore, extract the whole of this portion of the deposition.

"*Court.*—The suggestion appears to be that you were locking in the lady Tai Maharaj and preventing ingress or egress, as far as that lady was concerned, and I do not gather from your answers how you answer that imputation.

We never kept her under any restraint, nor intended to do so.

*Court.*—Your previous answers do not show that, and this is why I made this above remark.

A.—I can explain any of the answers which may appear to go against this view.

Q.—How was she to leave the house or be communicated with if you kept the door locked and kept watch?

A.—She never usually wanted to go out, and if any one wanted to see her he had to send in his card or give intimation to Mr. Khaparde."

If we take this passage as a whole it leaves no doubt about the meaning of the sentence in the charge. Mr. Tilak never denied that the front door was locked during the greater part of the day. In short there was no dispute about the facts. But the Court took a particular view of those facts, namely, that they constituted the locking up of Tai Maharaj in the Wada,

and prevented her egress and ingress therein; and the Court wanted to know how Mr. Tilak would answer that "*imputation.*" In fact Mr. Tilak had here his attention drawn to the suggestion, or the view, or as the Court expressed it, the "*imputation*" in this connection. And Mr. Tilak appears to have soliloquized, expressed, as in a conversation, his own view, *viz*, that "we never kept her under any restraint nor intended to do so." In other words, Mr. Tilak's *view* of the facts was different from that suggested by the Court. What he meant was that the *closing* of the front door during the greater part of the day did not, nor was it intended to, constitute any restraint on the lady. The Court could not understand that *view*, and observed that Mr. Tilak's previous answers did not show that, and therefore the Court made the "*remark.*" To this Mr. Tilak replied that he would explain anything that appeared to go against his *view*, and as a matter of fact did explain it. Now I ask Your Worship to consider whether Mr. Tilak's statement about restraint is not a statement of *view*, rather than a statement of *fact*. To me, if it be permissible to say so, this portion of the deposition appears to be a sort of conversation between the Court and the witness, each holding his own *view* of the *facts* disclosed in the evidence. This appears clear from the words *imputation*, *remark* and *view* which were used by the Court and the witness in this connection. And it would indeed be a finer question if any such remark or soliloquy by the deponent is a 'statement' within the meaning of Sec. 191 I. P. C. I do not mean to suggest that there can be no perjury even in matters of belief; for a witness holding one opinion or belief may state the contrary on oath, and thus perjure himself. But in that case we shall have to show that he *did hold a contrary view at the time*. That is the principal point which I wish to draw Your Worship's attention to in this connection. In the first place the whole passage appears to me to be a sort of a statement of what took place by way of conversation, remarks and counter-remarks, or even soliloquy between the Court and the witness, howsoever unusual and uncommon such a thing may be; and in that case it would not be legal to base any charge of perjury upon any remarks or statement of this kind made in such conversations. But apart from this view, we have still to consider that the statement is a statement of belief or opinion on certain facts, and that it is quite possible that two men may hold *two different views* on the same set of facts. In order to charge Mr. Tilak with perjury on this head, it must, therefore, be shewn that Mr. Tilak held a different view at the time, and there is no evidence offered by the prosecution on this point. I should ask Your Worship to refer to illustration (c) to Section 191 I. P. C. in this connection, which shews that a statement as to one's *belief*, about a certain signature to be in the hand-writing of a particular person, may be *true*, though, as a matter of fact, the signature may not be in the said person's hand-writing. It is further urged from the context that the word "restraint" refers to the prevention of egress and ingress, or, in other words, confinement in the house by locking up the front door, and it has been so interpreted in the charge. The charge as it is now framed speaks of abetment, but it is not borne out by the original sentence in Mr. Tilak's deposition. Mr. Tilak never referred to any abetment by any trustee, and, as this is a charge of perjury and not of the substantive offence of wrongful confinement, it is not justifiable to go beyond the words actually used by the witness.

#### RELATIVE POSITION OF THE TRUSTEES AND TAI MAHARAJ.

I have already stated that the present item of charge differs from the first in being a mixed question of law and fact, whereas the first was a mere question of fact. We must, therefore, see what was the legal position of the parties exercising the alleged restraint in this case; for it is quite possible that what amounts to criminal or wrongful restraint in one case may be no restraint whatever in another. Thus, for instance, if Tai Maharaj

is an independent person living in her own house and Messrs. Khaparde, Tilak and Kumbhojkar go without any right into that house and lock the front door and stay there for a few days, that is an altogether different case than if Tai Maharaj is shown to be a minor under the guardianship of Messrs. Khaparde, Tilak and Kumbhojkar, the latter being in the legal possession of the house, and as such closing the front door of the house in the interest of the estate entrusted to them. The two cases stand entirely on different footings, even as regards the intentions of the actors therein; and it is, therefore, necessary, to clearly understand the relative position of the parties before we examine what facts are proved by the evidence adduced in the case. Now it is an admitted fact that Messrs. Khaparde, Tilak and Kumbhojkar were and are the executors under the will of the late Baba Maharaj, and as such have been granted probate and the authority to administer the estate under the Probate and Administration Act V of 1881, by the District Court of Poona, on 16th February 1898. An attempt to disturb that probate has proved futile, and ruled out by the High Court, ( I. L. R. 26 Bom. 792. ); and this probate admittedly was in force on the days when the alleged confinement is said to have taken place, that is, between 15th and 20th July 1901. It is also in evidence that the trustees not only took the probate, but have been in actual possession and management of movable and immovable property ( Ex. D. 56 ) referred to in the will. Now at the time of the death of Baba Maharaj his widow Tai Maharaj was, even according to the prosecution, a minor, being not more than 15 or 16 years of age. Even supposing, therefore, that the estate devolved upon her for life at the time of the death of the testator, the trustees, according to the terms of the will, were the duly appointed managers and guardians of that estate and also of the person of the minor, for the will expressly states " I hereby authorize the undermentioned gentlemen to manage my estate and household and all other affairs &c. after my death in every way and in the same manner as I used to do; and I have appointed them trustees or panchás." Here the word for household in the original is " घरची " and it refers to the family affairs of the testator as distinguished from the management of the estate movable or immovable. The above clause must, therefore, be understood to mean that the trustees under the will are invested with all the testator's powers ( to be exercised after his death ) regarding the management of the estate as well as of the family affairs of the deceased. This makes the trustees guardians of the property as well as of the person of Tai Maharaj. In addition to this provision in the will, there is another, i. e. that " if no posthumous son is born ( testator's wife was pregnant at the time of his death ), or, if one is born and dies prematurely, a son should be given in adoption on the lap of Tai Maharaj as many times as may be necessary, by the consent of the trustees, and the latter should manage the movable and immovable estate on behalf of that son until he attains majority." According to these provisions the trustees become the guardians both of person and property not only of Tai Maharaj but also of the natural or adopted son till he attains the age of majority. It is therefore unquestionable that the trustees do possess the same powers which the testator had over the minor members of the testator's family both in respect of person and property. And if this is once conceded, the trustees become the guardians under the Guardians and Wards Act VIII of 1890, according to I. L. R. 21 Cal. 206, ( *in re Srish Chunder Singh and others* ). In this case a testator appointed four trustees to manage his estate after him and also on behalf of a son to be adopted by his widow until he attained the age of majority. After adoption, the widow applied for the guardianship certificate to the adopted son. But Mr. Justice Sale refused to grant it on the ground that the executors under the will had been given the care and management of the property until the infant attained the age of 21 years, and " it constituted the executors guardians within the meaning of the *Guardians and Wards Act*, and therefore no other guardian could be appointed under section 7 of the said Act." This settles the

point that the *executors*, who take the probate and administer the estate, *do become guardians* within the meaning of the Guardians and Wards Act. Of course, they are appointed by the will, but such appointment being recognized by the Guardians and Wards Act, the testamentary guardians do become guardians also under the Guardians and Wards Act. And if Messrs. Khaparde, Tilak and Kumbhojkar were guardians under the Guardians and Wards Act of the person and property of Tai Maharaj or even of the property of Tai Maharaj, and if they were appointed by the will when Tai Maharaj was admittedly under 18 years of age, then according to section 3 of the Indian Majority Act IX of 1875, as amended by Act VIII of 1890, Tai Maharaj's minority lasts till she completes her 21st year; for the said section clearly says "that every minor, of whose person, or property, or both a guardian shall be appointed or *declared by any Court of Justice* before the minor attained the age of 18 years, shall be deemed to have attained his majority when he shall have completed his age of 21 years, and not before." The old section simply spoke of the *appointment* by any Court of Justice, but by Act VIII of 1890 the section has been amended as stated above, and the guardian need not now be appointed by any Court of Justice, but it is enough if he is *declared so* by any Court of Justice. The executors under the will of the late Baba Maharaj, having obtained probate from the District Court of Poona, authorizing them to manage the property, do, therefore, come under the wording of this section; and Tai Maharaj therefore must be taken to be a minor until she completes her 21st year. According to this view of law, the position of the parties is reduced to this, namely, that Messrs. Khaparde, Tilak and Kumbhojkar were in legal possession of the Wada at the time of the alleged confinement as testamentary guardians of the property whether of Tai Maharaj or of Jagannath, as well as of the person of either, and that certain rooms in the Wada were assigned for the residence of Tai Maharaj where she resided as a ward of the above-named trustees or testamentary guardians. This is not a new view advanced for the purposes of this case. Both Mr. Tilak and Mr. Khaparde have expressly stated in their depositions that they considered Tai Maharaj to be their ward whether she was below or above 18 years at the time of her alleged confinement and that they were the guardians both of her person and property under the will of the testator. It is true that neither of them referred to any particular provision of law in his deposition, but it was unnecessary to do so at the time, nor can a witness be expected in a witness-box to quote High Court decisions or particular provisions of law in detail in support of his opinion or belief. It is enough if he says that such was his belief according to his general knowledge of law. And this much has been stated both by Mr. Khaparde and Mr. Tilak. Further Your Worship may have noticed that when, at the instance of Pandit Maharaj, Mr. Jeffreys the Police Inspector and Mr. Kamte the Head Constable went to the front door of the Wada on the morning of the 16th July 1901 to inquire if Tai Maharaj was confined therein, both of them were told by Messrs. Khaparde and Tilak that Tai Maharaj was minor, and they, that is, the trustees, were her guardians, and that the Wada was in the possession of the trustees. Mr. Kamte who was examined on behalf of the prosecution fully corroborates the statement; and I am not now urging upon Your Worship's attention a new view regarding the relative position of the parties. I have to bring to Your Worship's notice one more point in this connection, *viz.* when the period of majority is once extended to 21 years under the Indian Majority Act, even the revocation of the probate or similar other cause will not again throw it back to the lower limit of 18 years (*vide* I. L. R. 3 All. 598; I. L. R. 13 Bom. 285). A guardian must be at first appointed or declared before the minor attains the age of 18 years, and when this is the case, the limit of majority is irrevocably extended to 21 years, and the case cannot be taken out of the operation of the Indian Majority Act, even by the cancellation of the guardianship certificate. In the present

case there has been no such cancellation though attempts were made to that effect. And the case therefore is stronger than any of those referred to in the above decisions. In short, Tai Maharaj, who has admittedly not completed her 21 years even at present, must be regarded to have been a minor living under the guardianship of the trustees at the time of her alleged confinement; and I need not say how it changes the whole aspect of the case.

#### POSSESSION OF THE WADA.

According to this view of the law it is not difficult to decide who was in the possession of the Wada, and who had the control of its front door. Admittedly the trustees were in possession of the whole movable and immovable property including the Wada under the probate (Ex. D. 56) ; and as stated by Mr. Khaparde, only a portion of it was assigned by the trustees to Tai Maharaj for her residence. Mr. Tilak had also stated the same thing in his deposition. When asked whether the Wada was the private residence of anybody, he said that it was Tai Maharaja's private residence; but further on he has expressly stated that it was in the possession of the trustees who had a right to live there if they chose for trust purposes. As for Mr. Nagpurkar he himself lived in the Wada as Karbhari of the trustees, and when Bala's marriage was to take place in the Wada, he allowed it to be celebrated there after first obtaining Mr. Tilak's permission to do so. Even Pandit Maharaj, therefore, knew that trustees' permission was required even for a temporary use of the Wada, and it was obviously this knowledge which made him quit the house without opposition in response to the notice by the trustees given to him on the night of the 15th—16th July 1901. The exclusion of Mami and Fadke from the Wada in 1898 are instances in point to establish the exercise of the right by the trustees over the Wada, and also over the movements of Tai Maharaj.

#### THE LEGAL VIEW.

Such are the facts of the case ; and we are now to see whether any kind of wrongful confinement can be said to have taken place under these circumstances. There is no evidence to show that except on the Thursday evening Tai Maharaj ever asked or desired to go out and was prevented or refused permission. On the contrary she plainly admits that she never made any request on any of these days except on Thursday evening, and, then too not herself directly, but through Shankar ; while in her statement before the Police it is stated that on the Tuesday and the Wednesday she never attempted to go out, nor expressed to any one her desire to go out, nor was she prevented from going out by any one. This reduces the case simply to this:—That the trustees, who, as legal owners, were in possession of the Wada, had in that capacity ordered the front door to be closed for the greater part of the day ; and Tai Maharaj who was residing in a portion of the Wada did never express her desire to go out, nor asked the trustees to allow her to do so, nor did she go to the door and was ever prevented. Under these circumstances the question is whether she was wrongfully confined in the Wada. If the Wada was hers and the trustees nobodies, it might have amounted to wrongful confinement, and that is probably the view which Tai Maharaj takes of the situation (Ex. 31 ; Ex. 70 ). But she full well knew that the view was not tenable, and that accounts for why she never filed any complaint either against Mr. Khaparde or Mr. Tilak for the substantive offence of wrongful confinement. She was asked this question in her cross-examination, and after a good deal of hesitation, she replied that she did not go to a criminal court because men, meaning men in the house, were not favourable to her. But this is obviously a lame excuse, for the men, who have now appeared in Court to give evidence in her favour, could not have been less favourable to her than they are

now. The real question at issue was whether she was a minor, and Mr. Tilak and Mr. Khaparde her guardians. That question, as I have shown above, must now be answered in the affirmative; and, in fact, if we examine the relations between Tai Maharaj and Mr. Khaparde, they were, as admitted by Mr. Nagpurkar, those that exist between a junior and a senior member of a family. My learned friend Mr. Strangman may ridicule the idea that whenever Mr. Khaparde and Tai Maharaj resided in the same house, Tai Maharaj always asked Mr. Khaparde's permission to go out of the house, and not merely gave intimation of the same to him. It is a custom or rather a rule in every Hindu house-hold and you cannot laugh it away like that. Again Mr. Khaparde was not simply a testamentary guardian, but an elderly relation in whose house Tai Maharaj lived, as his guest, for six months at Amaraoti. And it is quite natural to suppose that whenever they were together, she would take his permission to go out. But I leave that point aside for the present; for it is in evidence that Tai Maharaj did not ask permission to go out nor was any refused. It is also admitted that the trustees were in possession of the Wada as trustees; and the watchmen at the gate were their servants acting under their orders. The trustees had therefore every right to close the front door of the Wada if they deemed it necessary in the interest of the estate, and Tai Maharaj as their ward might complain of wrongful confinement only if she asked and attempted to go out and was as a matter of fact prevented from going out. If she did not do that, or if she remained in the Wada and did not go out simply for the purpose of not offending or displeasing the trustees, it is I say no wrongful confinement or restraint; nor can Mr. Tilak or Mr. Khaparde be charged with perjury, if under these circumstances they honestly believed that the closing of the front door did not constitute any wrongful restraint to or confinement of Tai Maharaj. It is a case of moral influence which parents or guardians, who are defined to be temporary parents, exercise over minors under their charge. Even actual physical restraint is justifiable in such cases; and Courts of Justice will in certain cases compel a ward to return to the custody of his guardian (*vide* Sec. 25 of the Guardians and Wards Act VIII of 1890). (At this stage Mr. Karandikar read from Mayne's Criminal law certain paragraphs relating to the powers of the captain of a ship who can, under certain circumstances, lawfully use what in other cases would amount to wrongful restraint; and observed that the captain cannot be charged with perjury, if he were to say that he did not use restraint under the circumstances.) In the present case, however, we need not go so far. Here the guardians were in possession of the house, the front door of which was locked by them in the interests of the estate, and the question is whether a ward can complain of it as wrongful restraint, if he chose to remain in the Wada without expressing his desire to go out or attempting to do so. I think the question is clearly settled by *Reg. vs. Lakshaman Kalyan* (Unreported Bombay Criminal Rulings, 11 January 1875, West and Nanabhai JJ., Ratanlal's Digest of Criminal Rulings, page 89). In this case A invited B to his house in order to be ready to give evidence in a judicial proceeding. A used no physical coercion nor threat of any kind to detain B in his house, but B, from a mere general dislike or dread of giving offence to A, remained there. The District Magistrate convicted A of an offence under Sec. 339 of the Indian Penal Code. But the High Court reversed the conviction holding that the conduct of A did not constitute an offence whether of wrongful restraint or otherwise. The judges, West and Nanabhai JJ., observed that "The influence exercised appears to have been an invitation by the accused to the complainants to come to his house in order to be ready to give evidence in some judicial proceeding and the withholding of permission to return. There was no physical coercion and no threat or physical injury if they should pass beyond certain



bounds. It does not indeed appear that any threat was used at all. The *moral influence* which could have operated under these circumstances must have been a *mere dislike* or *dread* of *giving offence* to the accused but if though the existence of a feeling like this, *an expression of a desire* or *mere silence* is to be converted into the exercise of criminal restraint, *no person of any social standing would be for a moment safe from Criminal charges based on the folly and weakness of other people.*" (The italics are mine). This was a case where the relations between A and B were not of any special kind. Both of them were free citizens; and yet it was distinctly held that if B remained in the house of A simply for the fear of displeasing him, it did not constitute an offence. The present case, even if we were to look at it as an ordinary one, that is, Tai Maharaj not being under any legal obligation or subordination to the trustees, is amply covered by this decision. But I maintain that our case is stronger still, because Tai Maharaj was then the ward of the trustees. There is another case to which I wish to draw Your Worship's attention. I refer to *Queen-Empress vs. Howana*, (Unreported Bombay Criminal Rulings, 11 March 1889, Jardine and Candy JJ., Ratanlal's Digest, page 451). In this case A and his wife were in possession of a certain house and based their rights thereto under a will of the deceased previous owner N. The accused were father and son, the latter of whom claimed a right to the same house on the ground of his being an adopted son of the deceased N. The accused during the absence of the complainant entered the house, ejected the complainant's wife and locked up the premises. The Magistrate who tried the case convicted them under Sec. 341 of I. P. C. Thereupon in revision it was held by the High Court, reversing the conviction and sentence, that the accused having locked up the house under a *bona fide* claim to the same, no offence was committed. Here the existence of a mere *bona fide* claim to the house was held sufficient to take the case out of the operation of the Penal Code. The present case is stronger in as much as the trustees were in actual possession of the house under the probate, authorizing them to administer the estate, granted by the District Court of Poona; and up to the time no attempt whatsoever was made or steps taken by Tai Maharaj to dispossess the trustees or claim the possession of the estate for herself. The front door again was not closed for the whole day, and it is not proved that Tai Maharaj ever desired or attempted to go out. Under these circumstances it is impossible to hold, according to the principle of law laid down in the above cases, that Tai Maharaj was kept under any wrongful restraint. She could have gone out if she wished by requesting the trustees who would have made necessary arrangements for carriage &c. But she did not choose to do so, may be, on account of moral influence or some other cause; and not having done it, it is not open to her to say that the trustees kept her under any restraint. That is the right view of the case, and it matters nothing if Tai Maharaj, supposing herself to be the full owner of the property and the trustees nobodies, entertained at any time a different opinion. The case is not to be decided according to her view, but according to facts proved and the law applicable to those facts.

#### THE FACTS OF THE ALLEGED CONFINEMENT.

We now come to the examination of the evidence led by the prosecution to establish the fact of the alleged confinement. It is a common ground that the front door of the Wada was closed, except for a few hours in the morning and evening, from 16th to 20th July. Mr. Ranade is the only witness who says that he had to call out every day at the door for permission to enter the Wada for the purpose of fetching water from inside. But herein he is contradicted not only by Mr. Khaparde, but even by prosecution witnesses; and I do not think it will be seriously doubted that the front door was not open in the morning and in the evening. As regards the locking up of certain rooms inside the Wada, we have only the evidence of

Tai Maharaj and Mr. Nagpurkar, the latter of whom at any rate never seems to have personally gone in and tried the locks. Gangaram says that only the guest-room was locked. Godu says nothing about the locks. While Parvati expressly states that all the doors and passages were open as usual. Mr. Khaparde and Wasudeo Shastri also say the same. And on this evidence it cannot be held proved that there were any new locks inside the Wada. At any rate, it is admitted that the rooms assigned to Tai Maharaj had no locks put on them, whatever the case may be as regards the room allotted for the purposes of guests. It cannot, therefore, be maintained that Tai Maharaja's movements in the Wada were restrained in any way, unless it is shown that she had an absolute and an indefeasible right to each and every room in the Wada, which, according to the view stated above, cannot be maintained. The alleged confinement of servants and other persons is not relevant. And so far as Mr. Nagpurkar is concerned, the point was given up. So I shall not trouble Your Worship with any remarks on this head, except pointing out how the evidence of Babu, the nephew of Mr. Nagpurkar, who was called by the prosecution after the examination of the prosecution witnesses was over, has been blown up by the evidence of school registers which showed that not only Babu but Mr. Nagpurkar's son and another younger nephew regularly attended the school during these five days. There thus remain only two incidents said to have taken place on Thursday. The first of these is the message sent by Tai Maharaj on Thursday evening at about 5 p. m. to Mr. Khaparde asking permission to go to Rama's temple that evening. It is admitted that the trustees were sitting in a meeting at this time, and Mr. Khaparde replied that as Tai Maharaja's presence would be required for the transaction of business, it would be better for her to stay, with which she willingly complied. Now in this connection I wish to draw Your Worship's attention first to the fact that Shankar who took Tai Maharaja's message to Mr. Khaparde, and carried back Mr. Khaparde's reply to Tai Maharaj, is not examined by the prosecution, though his name was entered in the list of witnesses for the Crown, and though he had appeared in Court during the trial in response to a summons served upon him. His evidence would have been material to show what the message was and in what spirit the reply was received. We have, however, in evidence that Tai Maharaj did not press her request on that day. Nay we have her word that, except on this occasion, she never asked during these five days, personally or through servants, permission to go out, or attempted herself to go out. It is also in evidence that she usually attended all the meetings of the trustees, or, rather the trustees made it a point to hold their discussions in her presence in order to keep her informed of what they did. There is, therefore, nothing extraordinary if Mr. Khaparde desired that she should stay in the Wada on Thursday evening, as her presence was necessary for the transaction of business before the trustees. Lastly, we have the story of Tai Maharaja's going to the small window near the upstairs privy on the northern side of the house and from thence requesting Ghotavadekar and Fadke to help her in effecting her release from the alleged confinement. This story is deposed to by Ghotavadekar and Fadke, who say that at the time when this conversation took place several passers-by by the road were attracted by this extraordinary incident to the spot, and that the residents of houses on the opposite side of the road came up to their front doors to witness this unusual scene. In short, it was, according to them, a matter which attracted public attention at the time, and yet, strange to say, that, except Ghotavadekar and Fadke, there is no other gentleman called to prove the story. Nay, Ghotavadekar goes so far as to state that he and Fadke were the only respectable gentlemen in the crowd that had assembled on the road. It is also strange that neither Fadke nor Ghotavadekar, who profess to be the friends of Tai Maharaj, did anything to bring about her release after this incident. On the contrary, Mr. Fadke says that he asked her to come to the front door, or to the windows of the front hall, and thence make a complaint to him. All this seems to be ludicrous, especially for a man like

Fadke or Ghotavadekar; and there is little doubt that the story is one of those which have been cleverly invented for the purposes of this case. The window near the privy is a small unfrequented window, and if the conversation had really taken place and a crowd as alleged had been attracted below the window to hear it, it is impossible that the incident could not have been known to the owners and residents of houses just opposite this window on the other side of the road. And yet we have the evidence of Sahasrabudde and Matange, the owners and residents of the opposite houses, called for the Defence, who clearly state that they never witnessed or heard anything of the kind having occurred during these days. Again if we look to the events of Thursday in the Wada, they also make the story improbable. We have Mr. Khaparde's word that early that morning he resolved not to take his meals that day without settling the disputes between the trustees one way or other, that it was about 1 p. m. when Mr Nagpurkar, through Tai Maharaja's intervention, sent his letter of retraction (Ex. 22) to the trustees, and that the latter sat till about 4 p. m. for the transaction of business after which Mr. Khaparde and others took their meals. If this is true, it is incompatible with the story of Tai Maharaj going to the window at about 1 p. m. on the same day and coming across just at the time with an unknown woman who carried Tai Maharaja's word to Fadke, and Fadke in his turn sending for Ghotavadekar, and both of them holding an important conversation with Tai Maharaj just below the window in the presence of a crowd attracted to the place by the novelty of the scene. It is not also shown that this incident was ever brought to the knowledge of the trustees by any one whether at the time or afterwards, nor any one, living in the neighbourhood of the Wada, is shown to have any information about the same. It must, therefore, be rejected as incredible on its very face. At any rate no inference can be drawn from it in favour of the story of the prosecution.

#### WHY THE FRONT DOOR WAS CLOSED.

This leads me to the consideration of the question why the front door was closed. Mr. Khaparde in his evidence has stated his reasons for doing so. After the party returned from Aurangabad, Tai Maharaj fell into the hands of designing persons, and arrangements for the adoption of Bala Maharaj were made on the 13th July 1901. Mr. Tilak however intervened and it was settled to postpone it until the arrival of the other trustees, *i. e.* Messrs. Khaparde and Kumbhojkar who were communicated with by telegram (Ex. 20). The previous day Mr. Tilak had applied for injunction in the F. C. Sub-Judge's Court, Poona, (Ex. 42). But after the dispatch of the above telegram the application was dropped. Mr. Tilak's direct intervention in the matter does not go further. For when Mr. Khaparde arrived on the scene on the 15th July 1901, he took the matter entirely in his own hands. Pandit Maharaj, Bala Maharaj and their mother were in the Wada on that day, and Mr. Khaparde learnt late at night that the adoption of Bala was arranged for, early the next morning. Thereupon Mr. Khaparde sent for Mr. Tilak, and Pandit Maharaj was warned that the step he was taking was illegal, that there was already an adoption at Aurangabad, and that the trustees could not allow anything of the kind to take place in the Wada. The same advice was also given to Tai Maharaj. But on their refusal to listen to it, the trustees had to notify to Pandit Maharaj, Bala Maharaj and their mother, that as the trustees were in the legal possession of the house, the former by remaining on the premiss without the permission of the trustees would be committing an offence, and would have to take the consequences thereof (Ex. 21). Pandit Maharaj and others left the house in consequence early in the morning of 16th July 1901, and went to reside in Ranade's house opposite the Wada. It has been suggested that this was a strong measure for the trustees to take, even if they had the authority to do so. But it seems to have been forgotten that the nature of a remedy depends

upon the nature of the disease; and when persons would not listen to any reasonable request or proposal, there was no alternative left but to ask them to leave the premises. That is not, however, a point in issue, and we may leave it aside for the present. What the trustees had now to consider was that matters having proceeded so far, what should be done to set the house in order, and to prevent, if possible, any complications of the kind in future. Mr. Nagpurkar and others were siding with Pandit Maharaj at this time, and so attempting to defeat the resolution of the trustees whose servants they were. Tai Maharaj was also given to understand that she was a full owner, that trustees were nobodies, that the Aurangabad adoption was not complete or could be defeated, and that she was under no obligation to consult the trustees any longer, as the will of her husband had become inoperative. The first business before the trustees was therefore to settle these questions, if possible, by discussing the matter in a friendly spirit with Tai Maharaj, Mr. Nagpurkar and others. And as a preliminary step to all this, it was deemed necessary to close the front door and shut out undesirable strangers who, from previous experience, were known to have directly induced or incited the persons in the Wada to take a defiant attitude towards the trustees. It was also known that Pandit Maharaj had gone to reside in the house opposite. And it was not at all unlikely that he might try to come in and create new complications if possible. It is in evidence that immediately after leaving the Wada, he went to the Police and complained, not that he was turned out, but that Tai Maharaj was kept in confinement, inasmuch as she was prevented from leaving the Wada with him, which was not however a fact. The Police Inspector Mr. Jeffreys with Mr. Kamte came to inquire to the Wada, but as stated above, went away after learning from Messrs. Khaparde and Tilak that Tai Maharaj was not confined, that she was a minor, and the trustees were her guardians. It will be evident from this, that Pandit Maharaj was anxious to get into the Wada if possible. And in the interests of the estate the trustees were equally anxious to keep him and his men out. That is why the front door was closed during the greater part of the day, and not for keeping in confinement any of the inmates of the house. It was alleged that Mr. Nagpurkar was not allowed to go out as a Karbhari and servant of the trustees. But the reasons for it were obvious, and the point has been given up. I need not, therefore, enter into a detailed examination of the same. The trustees had now to settle the questions above referred to both with Mr. Nagpurkar and Tai Maharaj, and it is not at all strange if it took 4 or 5 days to arrive at some solution of the questions. There were almost constant and continuous discussions and arguments, and the proceedings of the trustees' meetings during these days will show how Mr. Nagpurkar vacillated at first, then yielded, then again retracted and finally consented to serve the trustees faithfully, and desist from working against them or their resolutions in any way. It is suggested that Mr. Nagpurkar was induced to accept the final arrangement, because he was confined for 4 or 5 days. But this is a pure myth. He knew that Mr. Khaparde was to leave and must leave soon. But what induced him to accept the position, if anything induced him to do so at all, was the determination of the trustees to dismiss him from his post of Karbhari, in case he still persisted in working against the resolutions of the trustees. The situation was such that the trustees had to decide one way or the other once for all, and to take immediate steps for the preservation of the interest committed to their charge. Both Tai Maharaj and Mr. Nagpurkar knew this, and they thought it wise to submit at the time, though from the later events it seems that the submission was only temporary. This sufficiently accounts for why Tai Maharaj herself consented to give up, for the time being, the idea of adopting Bala Maharaj, and to write to the Kolhapur Durbar accordingly (Ex. D. 48). It is alleged that this Yadi was not voluntarily given by Tai Maharaj, but was obtained from her by confining her for 5 days. This contention is, however, completely disproved by Ex. 35.

It is in evidence that on Saturday 20th July 1901, Messrs. Khaparde, Tilak and Kumbhojkar went to the City Magistrate's Court at about 11 A. M. to file a complaint of criminal breach of trust against Mr. Nagpurkar who had refused to deliver to the trustees the charge of valuable ornaments which were entrusted to his care as Karbhari. While these three gentlemen were in the Magistrate's Court, Tai Maharaj sent to them the Yadi ( Ex. D. 48 ), which, according to her, was a reasonable settlement to come to for the time. Messrs. Khaparde, Tilak and Kumbhojkar returned to the Wada on the receipt of this Yadi in Court, when they found that two officers from the District Court had come to the Wada for the purpose of interviewing Tai Maharaj on behalf of the Agent. The interview was to be between Tai Maharaj and these officers alone; and as Tai Maharaj was then in Mr. Nagpurkar's quarters in the Wada, it was arranged for at that place. These officers were sent by the Agent to hand over to Tai Maharaj the sanction of the Kolhapur Durbar to her Yadi of 10th July, and to ascertain from her if the Yadi bore her signature and if she sent it herself. The officers accordingly delivered the Agent's letter to Tai Maharaj and requested her to write her reply below it ( Ex. 35 ). In it, Tai Maharaj, after stating that she signed and forwarded the Yadi of 10th July, further added that " in this connection I am sending this day another Yadi to the Kolhapur Durbar." These words were actually written and scored out, and it is admitted that the Yadi herein referred to is Ex. D. 48, which was actually sent to the Durbar that evening. Now if the Yadi had been obtained by force, Tai Maharaj would not have voluntarily written the above words in the endorsement. It is alleged by the prosecution that it was the presence of these officers on that day in the Wada that made the trustees fly in the three directions of the compass, and so put an end to the alleged confinement. If so, there was every reason for Tai Maharaj to disown the Yadi before these officers. But instead of doing so, she actually makes a statement referring to it, and nothing can more clearly disclose the voluntary nature of the transaction. It is true, the words are scored out afterwards, but that is because the officers probably did not want anything more than replies to the questions asked by the Agent. Whatever be the case, it is in evidence that Tai Maharaj wrote this endorsement of her own free-will, and it cannot now be argued that the Yadi was taken from her by force. The meeting of the trustees in which this Yadi was considered was held in the evening, that is about 4 hours after the officers of the Court left the Wada; and at this meeting, at which Mr. Nagpurkar and Tai Maharaj were present, it was resolved to send Tai Maharaj's Yadi ( Ex. D. 48 ) to the Kolhapur Durbar together with a similar Yadi from the trustees requesting the Durbar to drop the matter for the present. The proceedings of the meeting ( Ex. 49 ) will further show that Mr. Nagpurkar also assumed a conciliatory attitude, and the ornaments, after being examined and found correct, were again given in his charge for safe custody. It is said that he did not then consent to desist from working against the trustees. But this is not true. For though the condition does not appear in the letter he wrote to the trustees before the meeting, yet in the resolution ( Ex. 49 ) about him, passed in the meeting, it is distinctly stated that his name is retained on the list of servants on the understanding that he would not work against the trustees during the period of his leave for three months on full pay, at the termination of which the question of his claim to his previous post will be considered. This resolution is signed by Mr. Nagpurkar himself along with the other trustees, and Tai Maharaj was also present at the meeting. It cannot, therefore be alleged that the reconciliation, or the final settlement, or by whatever other name we may designate the arrangement, was arrived at by fear of confinement or force; for this resolution was passed some hours after the departure of the officers from the Civil Court, whose visit, it is said, put an end to the alleged confinement, and caused all the trustees to disperse. I should, therefore, ask Your Worship to specially note that the final resolutions were passed on the evening of the 20th of July, when

all parties were admittedly free to act as they liked. It is true that these resolutions and the arrangements embodied in them were not eventually carried out by Tai Maharaj or Mr. Nagpurkar, both of whom again turned round and carried out their former designs, having, as Mr. Khaparde has stated, again fallen into the hands of designing persons. But that does not in any way detract from the voluntary character of the arrangement or settlement made on the 20th of July 1901 a few hours before Mr. Khaparde left for Amaraoti ; and if this is voluntary, the theory of confinement becomes meaningless and falls to the ground. The trustees were the guardians of the property and person both of Tai Maharaj and Jagannath whose adoption had taken place at Aurangabad. It was, therefore, a clear duty of the trustees and executors to prevent, if they could, a second adoption, to advise Tai Maharaj not to go in for it, and exclude if necessary, interested and designing persons from gaining access to Tai Maharaj, who was the Ward of the said trustees. It was also necessary to give Mr. Nagpurkar distinctly to understand that so long he wanted to serve the trustees he must serve them faithfully or not at all. There was no intermediate course, and that he would not be allowed to work against the trustees and yet draw his pay from the estate. Now this was not an easy task to perform, if we take into consideration the fact that both Tai Maharaj and Mr. Nagpurkar had already gone a great deal in disowning the control and authority of the trustees. The arrangement arrived at was not as satisfactory as the trustees wished. But it was hoped that in course of time both Tai Maharaj and Mr. Nagpurkar would see the folly of persisting in the course suggested to them by other advisers. This hope, however, was not fulfilled, and hence the present case. It is alleged by the prosecution that Messrs. Khaparde and Tilak took these strong measures to force the Aurangabad adoption on Tai Maharaj, although nothing beyond selection had taken place at Aurangabad. But the absurdity of such a proposition is obvious. For whatever the prosecution might say of Mr. Tilak, and it is admitted that he was not to gain anything personally by it, Mr. Khaparde would not have undertaken all this on his responsibility, if the Aurangabad adoption had not really taken place. The trustees, especially Messrs. Khaparde and Tilak, had before them a case of one of the co-trustees going against them, and their ward set upon repudiating their control and authority. Under these circumstances any guardian or trustee would have excluded meddle-some advisers by closing the doors of the house against them, and acted in the same way as Messrs. Khaparde and Tilak acted in the present instance. I urge this view of the case upon Your Worship's attention and I have no doubt that Your Worship will then see that the door of the Wada was closed not for confining Tai Maharaj, but to exclude undesirable strangers who were trying to set up Tai Maharaj against the trustees. In short, whatever they did was in discharge of their duty as guardians, and not for injuring any body; and under these circumstances what Mr. Tilak said is perfectly true, *i. e.* that the trustees did not keep Tai Maharaj under any restraint nor intended to do so. Therefore, he can not but be acquitted even on this head of the charge.