

Note.—The following is a report of the *Agá Khán* case in which judgment was delivered by Arnould, J., on 12th November 1866, referred to in both the foregoing judgments of the lower and appellate Courts.—*Ed.*

THE ADVOCATE GENERAL *ex relatione* DAYA' MUHAMMAD,
 MUHAMMAD SAYA', PŪR MUHAMMAD KA'SAMBHĀ'I, and } *Plaintiffs.*
 FA'ZALBHĀ'I GULĀ'M HUSEN }

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v.

MUHAMMAD HUSEN HUSENI (otherwise called AGĀ' KHĀ'N) } *Defendants.*
 and others }

Jurisdiction—*Rule for the regulation of the rights of dissident parties in a community distinguished by some religious profession—Sunis—Shiás—Shiá Imámi Ismáílís—Agá Khán—Khojás—Injunction.*

In a suit by certain members of the Khojá community in Bombay for an account of all property belonging to, or held in trust for the community come to the hands of the treasurer and accountant of the community; for a declaration that the treasurer and accountant had ceased to be such officers of the community; for an order directing the treasurer and accountant to deliver all the property of the community in their hands; for a declaration that the property of the community was held and ought to be applied to and for the original charitable, religious, and public uses or trusts to or for which they were dedicated and to none other, for the sole benefit of the Khojá sect and none other; and that no person not being or having ceased to be a member of the same, and in particular no person professing Shiá opinions in matters of religion, was entitled to any share or interest therein; for a scheme to carry such declaration into effect; and for an injunction restraining one of the defendants from interfering in the management of the property and affairs of the Khojá community or in the election and appointment of officers, from excommunicating any members of the community, from celebrating marriages, and from demanding or receiving any offering:

Held that the Court had jurisdiction to entertain the suit.*

When the Court, in exercise of its charitable jurisdiction, is called upon to adjudicate between conflicting claims of dissident parties in a community distinguished by some religious profession, the rights of the litigants will be regulated by reference to the religious tenets held by the community in its origin, and a minority holding those tenets will prevail against a majority which has receded from them.

History of the sects of Sunis, Shiás, and Shiá Imámi Ismáílís.

History of Agá Khán.

History of the Khojás and their relations with the hereditary Imám of the Ismáílís.

Relations of Agá Khán with the Jamát of the Khojás of Bombay.

* See *The Advocate General v. Visvanáth Atmáráj*, 1 Bom. H. C. Rep. Appx. p. ix.

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The tenets of Muhammadanism to which the first Khojás were converted were those of the Shiá Imámi Ismáili sect.

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In order to enjoy the full privileges of membership in the, Khojá community, a person must be one of that sect whose ancestors were originally Hindus, which was converted to, and has throughout abided in the faith of, the Shiá Imámi Ismáilis, and which has always been and still is bound by ties of spiritual allegiance to the hereditary Imáms of the Ismáilis.

There is no public property impressed with a trust, either express or implied, for the benefit of the whole Khojá community.

Agá Khán, as the spiritual head of the Khojás, is entitled to exercise a potential voice in determining who, on religious grounds, shall or shall not remain members of the Khojá community.

THIS was a suit on the Equity side of the late Supreme Court, instituted by an information and bill, filed by the relators and plaintiffs, representing a minority of the Khojá community in Bombay, against the defendants, representing a majority of that community. The prayer of the bill sought that an account might be taken of all property belonging to, or held in trust for the Khojá community of Bombay which had come to the hands of two of the defendants, as *Mukhi* and *Kamaria* (treasurer and accountant) of the said community; that those two defendants might be declared to have ceased to be such *Mukhi* and *Kamaria* since 8th November 1861, and might be ordered to deliver all the property of the community in their possession to such persons as the Court might direct. The 5th clause of the prayer, which was the most important, and raised the question on the decision of which the result of the suit virtually depended, was in the following terms:—"That it may be declared that the said trust premises are holden and ought to be applied to and for the original charitable, religious, and public uses and trusts to or for which the same were dedicated and intended so to be, and to none other; and to and for the sole benefit of the Khojá sect and none other; and that no person not being a member, or having ceased to be a member of the same, and in particular no person professing Shiá opinions in matters of religion and religious discipline, is entitled unto, or ought to have, any share or interest therein, or any voice in the management thereof." The bill then went on to pray that, if necessary, a scheme might be settled for carrying into effect the above declaration, and also for the periodical and regular election, from time to time, of the *Mukhis* and *Kamarias* of the community, and generally for the security and management of the property of the community, and concluded with a prayer for an injunction restraining the first defendant, Agá Khán, from interfering in the management of the trust property and affairs of the Khojá community, or in the election and appointment of *Mukhi* and *Kamaria*, from excommunicating any Khojás from the said community, or depriving them of the various privileges appertaining to membership, from celebrating marriages in the *Jannát Kháná*, from demanding or receiving from any Khojá any oblation, cess, offerings, &c., in the alleged spiritual or temporal capacity of the first defendant.

The case was heard by Arnould, J., for twenty-four days during the months of April and June 1866, when the following counsel appeared for the several parties :—

Ferguson for the Advocate General.

Anstey, Scoble, and Macpherson for the relators and plaintiffs.

Bayley (Advocate General) and *Howard* for the first defendant, Agá Khán.

McCulloch and Green for Allárakhiá Sumár (the *Kamaria*) and seven other defendants.

Louis and Hayllar for Asso Gángji.

Taylor for Dharramsi Punjábháí.

On behalf of the relators and plaintiffs it was contended that the Khojás were originally converted to the Suni tenets of Muhammadanism, which had ever since been the religion of the community, and that no one not professing Suni tenets could be held to be a Khojá. The defendants, though representing a numerical majority of the so-called Khojá sect, yet, having renounced the Suni tenets and adopted those of the Shiás, could not be held to be Khojás, and were, therefore, not entitled to the possession of the property of the community or to interfere in any way in the management of the affairs of the community. The Khojás have always observed and still observe the Suni forms of ritual, and employ Suni priests. Agá Khán, being the hereditary Imám of the Ismáílis, is necessarily a Shiá, and, therefore, neither he nor those who acknowledge him as their spiritual head can claim to be considered Khojás. The Shiás are, in fact, not Muhammadans at all. The Khojás of Bombay have never recognized Agá Khán as their spiritual head, but, on the contrary, since 1829 have been constantly at variance with him. Even if the Suni sect of the Khojás had changed their religion, they ought not on that ground to be deprived of their interest in the caste property, according to Act XXI. of 1850.

On behalf of the defendants it was contended that this question, being a caste dispute, was not within the jurisdiction of the Court. It was further urged that in matters of caste governance the opinion of the majority must prevail. At any rate, the caste property must be shown to have been impressed with a trust before the party now in possession can be turned out. If the religion to which the Khojás were originally converted, was that of the Shiás, the plaintiffs, being Sunis, must fail. If there is no evidence what the original religion was, the opinion of the majority must prevail, in which case the plaintiffs, being a minority, fail. The main argument, however, was addressed to the historical question as to the tenets to which the Khojás were originally converted. The converter was himself a Shiá Imámi Ismáíli, and the whole Khojá community, with the exception of a few families in Bombay, still profess the tenets of that sect, and have always regarded, as their head, Agá Khán and his ancestors, the hereditary Imáms of the Ismáílis. The use of the Suni ritual was a politic concession to avoid persecution, quite in accordance with the doctrine of mental reservation, which is allowed by the Shiás but not by the Sunis, and in other religious practices the Khojás conform not to the Suni but to the Shiá tenets. The Dasavatar

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or religious book of the Khojás, is evidently Shiá in its origin, seeing that it assumes as true a great part of the Hindu mythology, which would be allowed to a Shiá but not to a Suni missionary. The so-called property of the Khojás consists, in fact, of subscriptions made by Khojás for the benefit of Agá Khán as the acknowledged spiritual head of the community.

In the course of the argument the following works were extensively referred to by counsel on both sides:—Hamilton's Hedaya, the Koran, Morley's Administration of Justice in India, Muir's Life of Mahomed, Sale's Preliminary Discourse to the Koran, De Sacy's Expose de la Religion des Druzes, D'Herbelot's Bibliotheque Orientale, Von Hammer's History of the Assassins, Gibbon's Decline and Fall of the Roman Empire, Milman's Notes, Kátal al Wackidi, Burckhardt's Arabic Proverbs, Dabistan, Voyages de Chardin, Burton's Pilgrimage to Mecca, Sir J. Malcolm's Translations from the Persian in Vol. 1 of the Transactions of the Literary Society of Bombay, Desatir, Dasavatar, Watson's History of Persia, Moshún's Account of the Initiation of Ismáílís, the Lokrea, the Ginans, Nasi Khut Tawarikh, Ockley's History of the Saracens, Kitab al Sigaset, Kinneir's Topographical History of Persia, History of Sir C. Napier's Administration of Sind, Elphinstone's History of India under the Mahomedans, Akbar Shah's Divine Monotheism, Autobiography of the Emperor Baber. The following legal authorities were also referred to:—*Rajah Deedar Hossein v. Ranee Zuhoor-oon-nissa (a)*, *The Khojá and Memon Succession Cases (b)*, *Shore v. Attorney General ex relatione Wilson (c)*.

ARNOULD, J., in delivering judgment, after reviewing the scope of the prayer of the bill as stated above, continued as follows:—

The 5th clause of the prayer is the most important. It, in effect, raises that question, with which the evidence in this suit has been principally concerned, as to what, in their origin, were the religious tenets of the Khojá community, and what from the beginning has been the nature of their relations, spiritual or temporal, with the ancestors of the first defendant, Agá Khán, who on his part alleges that he is, and that his ancestors in a long line of hereditary descent have successively been the Imáms or spiritual chiefs of the Shiá Imámi Ismáílís.

On the one hand the relators and plaintiffs contend that Pír Sadrdin (whom both sides admit to have originally converted the Khojás from Hinduism to some form of Muhammadanism) was a Suni; that the Khojá community has ever since its first conversion been and now is Suni; and that no persons calling themselves Khojás who are not Sunis, are entitled to be considered members of the Khojá community, or to have any share or interest in the public property of the Khojá community or any voice in the management thereof.

On the other side it is maintained by the first defendant, and by the other defendants, who are in the same interest with him, that Pír Sadrdin was not a Suni, but a Shiá of the Imámi Ismáíli persuasion; that he was a Dai, or missionary, of one of the direct lineal ancestors of the first defendant—the Imám or spiritual chief for the time then being of the Imámi Ismáílís; that from

(a) 2 Moore I. A. 411. (b) Ferry O. C. 110. (c) 9 Cl. and Fin. 355.

the time of the first conversion till now the Khojá community has been and still is, (with the exception of the relators and plaintiffs and those comparatively few families among the Bombay Khojás who adhere to them,) of the Shiá Imámi Ismáili persuasion ; that the said community (except as aforesaid) always has been bound in close ties of spiritual allegiance to the ancestors of the first defendant, Agá Khán, the hereditary chiefs or Imáms of the Ismáilis whom the Khojá community always have regarded and (except as above) still regard as their *Múrsheds* or spiritual heads.

It is to the issue thus raised that the great mass of the voluminous evidence taken in this suit was directed. It was expressly admitted by Mr. Anstey, the very learned and able leading counsel for the relators and plaintiffs, that the determination of this issue would, in effect, dispose of the whole of the present suit.

"*If the Khojás*", he said, "*are proved in their origin to have been Sunis, the relators and plaintiffs must succeed: if they are proved to have been originally Shiás or Shiá Imámi Ismáilis, or in any way non-Sunis, then the defendants must succeed.*" An attempt, indeed, was subsequently made (after Mr. Anstey's return to England had left the conduct of the case in other hands,) to recede from the position thus taken ; but, after full consideration and for reasons which I shall have to state elsewhere, I am of opinion that Mr. Anstey's view was the correct one, and that the decision of the Court upon the issue thus raised, must substantially determine the rights of the contending parties on this record.

The conclusion thus arrived at, bears upon a point which it is necessary to dispose of at the outset, the effect, namely, either as a decree or as a precedent, of a certain "Declaration of Rights" (set out at length in the 3rd paragraph of the present information and bill) pronounced by Sir Erskine Perry in the sittings of the late Supreme Court, after the third term of the year, 1851.

This "Declaration of Rights" was pronounced by Sir Erskine Perry in a suit, commenced by information and bill on 21st February 1850, between parties, some of whom (as notably the first defendant) were the same parties, and all of whom respectively represented the same interests as those now represented by the relators and plaintiffs on the one side, and the first and other principal defendants on the other side, in the present suit. The information and bill, indeed, in the present suit purports to be, and may be taken as being, in continuation of the information and bill in the former suit.

As a *decree* it is quite clear that this expression of judicial opinion is not binding: it was never drawn up as a decree, and, moreover, contains clear internal evidence that it was never intended so to be. Sir Erskine Perry, in the course of his observations, calls it, as it has consequently been termed above, a "Declaration of Rights", and expresses a hope that the Khojás, by its aid, will "be able to elect a *Mukhi* and *Kamaria* and manage their caste affairs among themselves, without rendering any further application to the Court necessary."

As a *precedent* I should, from the great learning and ability of Sir Erskine Perry, and his known familiarity with the history and usages of the Native

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populations of India, be inclined to pay this expression of judicial opinion the highest respect on all points in regard to which I could treat it as an adjudication upon precisely the same questions as those now before me, and pronounced upon the same or a very similar state of proved facts.

For instance, upon the question, whether this Court—that is, the late Supreme Court on its Equity side—has jurisdiction to entertain this case at all, regarded as a matter of caste dispute arising in a Native community—upon *this* question which, as appears from his Declaration of Rights, was expressly raised before Sir Erskine Perry in argument, and decided by him in the affirmative, I shall follow his judgment as a binding precedent.

Upon other points affecting the relative rights of the Khojá community of Bombay and of Agá Khán, the principal defendant in that suit as in the present suit, I should not feel bound by Sir Erskine Perry's decision, unless I were certified, which, from the nature of the case I have not been and cannot be (no authorized report of the evidence and proceedings in this former suit being in existence), that his decision was arrived at upon the same or substantially the same evidence as that which has so exhaustively been adduced before me during the protracted hearing of the present suit, which occupied the Court for no less than twenty-four days.

As to the great question in the present suit, that upon the determination of which, as already intimated, the decision of the controversy between these litigants, in my judgment, really turns—the question, namely, whether the Khojás are, and from the first have been Sunis or non-Sunis, subordinate to the Imám of the Ismáílis as their spiritual head or not so subordinate—this does not appear to have been a question upon which Sir Erskine Perry was called upon to pronounce, it is one, certainly, upon which he has not pronounced any adjudication whatever.

Sir Erskine Perry declared, upon the evidence before him, that certain property and certain privileges belonged to the Khojá community, but he did not decide, nor is there anything to show he ever was called upon to decide, *what are the conditions of full membership in the Khojá community*—whether the circumstance of being a non-Suni (as the relators and plaintiffs contend), or of being a Suni and as such disowning spiritual allegiance to the hereditary Imám of the Ismáílis (as the first defendant and those who join with him contend), is to exclude from caste membership in the Khojá community, and to disentitle a man from sharing or having an interest in the public property of the community, or a voice in the management thereof.

The principal question, then, in the present suit, viz., aye or no, were the Khojás, in their origin as a separate religious community, Sunis or non-Sunis—Suni or Shiá Imámi Ismáíli—bound or not bound by ties of spiritual allegiance to the Imáms of the Imámi Ismáílis—this question is quite untouched by any previous judicial decision.

It is an historical question, to be decided by evidence as to matter of fact, and is quite as much within the competency of the Equity side of the late Supreme Court, in the exercise of what is technically called its *charitable* jurisdiction, as any other question of fact arising out of the caste disputes of the Khojá community.

The cases in which similar questions have been entertained by English Courts of Equity are well known, and were copiously referred to at the bar. They are that class of cases of which the case of Lady Hewley's charities, reported as *Shore v. Wilson* (d), is probably the most familiar, and which all proceed upon and illustrate the now well-established principle that, when Courts of Equity, in the exercise of their so-termed *charitable* jurisdiction, are called upon to adjudicate between the conflicting claims of dissident parties in communities held together or distinguished by some religious profession or denomination, the rights of the litigants will be regulated by reference to what upon inquiry turn out to have been the religious tenets and opinions held by the community in its origin or at its foundation.

A minority, however numerically small, holding fast by these opinions, will be entitled to prevail against a majority, however numerically large, which can be shown to have receded from or renounced them,

The Khojá community is a community of this kind. The fact of a man being a Khojá indicates that he holds by some form or other of religious belief. What that form of religious belief was at the origin of the Khojás as a separate and distinct community, is, therefore, a question of fact which, if disputed, must be determined by evidence in a Court of Equity, when asked, in the exercise of what is called its charitable jurisdiction, to decide on the relative rights of the dissident bodies within the same sect.

The relators and plaintiffs have, in several passages of their information and bill, spoken of the Khojás as a *sect*: they notably do so in the 5th clause of their prayer, in which they asked for a declaration that the public property of the community ought to be applied to the original "*religious*" trusts for which they were originally dedicated, and for the sole benefit of the Khojá "*sect*," and that no person not being a member of such sect, especially that no person professing Shiá opinions in matters of *religion* and *religious discipline*, is entitled to any share or interest therein.

Before entering upon the direct investigation as to whether the Khojás, in their origin as a distinct and separate community, were Sunis or non-Sunis, it will be necessary, in order to a due appreciation of the evidence, first to consider the following questions:—

First—*What are the SUNIS as distinct from the SHIA'S?*

Secondly—*Who and what are the SHIA' IMA'MI ISMA'ILIS?*

Thirdly—*Who and what is the first defendant, AGA' KHA'N?*

Fourthly—*Who and what (independently of their distinctive religious belief) are the KHOJA'S, and what are and have been their relations with the first defendant and his ancestors?*

Fifthly—*What have been the relations of the first defendant, AGA' KHA'N, with the particular community to which the relators and plaintiffs belong, viz., the Khojá community of Bombay?*

First, then, as to the Sunis and the Shiás, and their respective peculiarities of religious opinion and practice.

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The Sunis are the orthodox Mussulmans, the people of the *Sonna* or Tradition. Their *kulm*, or profession of faith, is the simple one—"There is no God but God and Mahomet is the Apostle of God." To this the Shiás add, "and Ali, the companion of Mahomet, is the Vicar of God."

The elevation of Ali to an almost co-equal position with the Apostle of God himself, may be stated popularly as the great distinctive tenet of the Shiás.

Etymologically the word "Shiás" means either "Separatists" (which is probably the more correct derivation), or persons who are pure (Shiás) from the blood of those members of the family of Ali who early fell victims to the hostility of the Suni Ommeiades, the Caliphs of Damascus.

It will conduce to clearness if I here recall in rapid outline the history of the earliest divisions in Islám.

The Apostle of God died without appointing a "caliph" or successor.

The caliph or successor of the Apostle of God (who had been both a temporal and spiritual sovereign) was to succeed him in both those capacities; he was to be both "*Emir-al-Momenin*" or "commander of the true believers" and also "*Imám-al-Mostemin*" or "spiritual chief of the devout"—as we should say in our Latin or Western phrase, "Supreme Pontiff as well as Imperator or temporal ruler."

The general expectation of Islám had been that Ali, the first disciple, the beloved companion of the Apostle of God, the husband of his only surviving child Fatimá, would be the first caliph. It was not so to be. The influence of Ayesha, the young and favourite wife of Mahomet, a rancorous enemy of Fatimá and of Ali, procured the election of her own father Abubekr; to Abubekr succeeded Omar, and to him Osman; upon whose death, in the year 655 of our era, Ali was at last raised to the caliphate. He was not even then unopposed; aided by Ayesha, Moawiyah, of the family of the Ommeiades, contested the caliphate with him, and while the strife was still doubtful, in the year A.D. 660, Ali was slain by a Kharegite, or Mussulman fanatic, in the mosque of *Cufa*, at that time the principal Mahometan city on the right or west bank of the Euphrates,—itself long since a ruin, at no great distance from the ruins of Babylon.

This assassination of Ali caused a profound sensation in the Mahometan world. He was, and deserved to be, deeply beloved, being clearly and beyond comparison the most heroic of that time fertile in heroes—a man brave and wise, and magnanimous and just, and self-denying in a degree hardly exceeded by any character in history. He was, besides, the husband of the only and beloved child of the Apostle of God, and their two sons Hassan and Hoosein had been the darlings of their grand-father, who had publicly given them the title of "the foremost among the youth of paradise."

Of these sons, Hassan, the elder, a saint and a recluse, on the death of his father sold his birthright of empire to Moawiyah for a large annual revenue, which during the remainder of his life he expended in works of charity and religion at Medina. In the year A.D. 669 this devout and blameless grand-son of the Apostle of God was poisoned by one of his wives, who had been bribed

to that wickedness by Yezd, the son of Moawiyah and the second of the Ommeiad Caliphs of Damascus.

There thus remained, as head of the direct lineage of the Apostle of God, Hoosein, the younger son of Fatimá and Ali, a brave and noble man, in whom dwelt much of the spirit of his father.

Eleven years after his elder brother's murder, in the year 680 of our era, yielding to the repeated entreaties of the chief Moslem people of Irak Arabi, (or Mesopotamia), who promised to meet him with a host of armed supporters Hoosein set forth from Medina to Cufa to assert his right to the caliphate against the hated Ommeiades. He crossed the desert with only a feeble train—his wife, his sister Fatimá, two of his sons, and a few armed horsemen, when on reaching Kербela, then a desert station about a day's journey from the west bank of the Euphrates and in the near neighbourhood of Cufa, he found drawn up to meet him a host, not of retainers, but of foes. The narrative of what follows is among the most pathetic in all history. The noble son of Ali and Fatimá, the favourite grand-son of the Apostle of God, after deeds of valour romantic even in an Arab of that age, fell pierced through and through with the arrows and javelins of the cowardly assailants who did not dare to come within the sweep of his arm. One of his sons and a nephew had already been slain in his sight. His other son, his wife, and his sister were carried away captive to Damascus. They smote off the head of the son of Ali, and paraded it in triumph through the streets of Cufa. As it passed along, the brutal Obiedollah, the governor of the city, struck the mouth of the dead man with his staff. "Ah", cried an aged Mussulman whom horror and just wrath made bold, "What a foul deed is that!—on those lips I have seen the lips of the Apostle of God."

This tragic event stirred the heart of Islám to its very depths, and even now, after the lapse of nearly 1,200 years, it separates, as from the first it separated, the Mahometan world into the two great and hostile divisions of the Sunis and the Shiás,—of the Sunis, who bless the memory and are zealous in the cause of Ayesha and Abubekr and Omar and Osman—and of the Shiás, who execrate the memory of the three first caliphs, and, hardly in a less degree, that of Ayesha herself; who by degrees have come to regard Ali as something more than mortal—as not only the Vicar, but in some mystic sense an Incarnation of God; who venerate Fatimá as the first among women; and yearly celebrate the martyrdom of Hoosein, not only with the outward signs but with the inward reality of lamentation and mourning and woe.

It was on the tenth day of the month Moharram (which happened to coincide with the 9th of October of the year 680 of our era) that Hoosein fell martyred on the sands of Kербela. The Mahometan year being lunar, and ours solar, the tenth day of the Moharram occurs at various periods of our calendar; but, whenever it comes round, in all parts of Asia where Shiás are to be found, it is observed as a day of sorrow and of tears and of beating of the breasts in grief.

In Persia—which (with a brief exception under Nadir Shá from A.D. 1736 to 1747) has, ever since the accession of the Saffevi dynasty at the commencement of the 16th century of our era, been the great Shiá empire, and whose

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population has consequently been able, without dread of Suni persecution, to indulge freely in the expression of its love and sorrow for the martyred son of Ali and Fatimá—the celebration of the Moharram is a national ceremony of mourning, conducted in the capital of the Shá-in-Shá (king of kings) with a solemn magnificence that, with all its pomp, cannot deaden, or even tone down, the hysterical passion with which even strong and brave men listen to the oft-recited story of the great martyrdom (*see Chardin, Potter, Morier, and other travellers in Persia*). In India, where the Shiás have always been comparatively few and the Sunis many and powerful, the Moharram is celebrated, by the Sunis with riot and ill-managed merriment, with ribald jests, and the coarse antics of mountebanks dressed up in the skins of wild beasts; the Shiás, on the other hand, assemble sadly in their houses; or their Imámbárás, where they listen with tears and loud sobbings to the pathetic story; or, if they join in the procession at all, and are not interfered with by the regulations of the police (as has latterly been the case in Bombay), they lead along, mourning and beating their breasts as they go, a riderless white horse, representing that from which Hoosein, parched with thirst, dismounted to take his last cup of water at his tent door, when the remorseless and accursed Shamer shot through his lips with an arrow as he drank, and mingled his dying blood with the draught (e).

The neighbourhood of Kerbela is to the Shiás what the neighbourhood of Jerusalem was to early Christendom.

Near Nijuf, a day's journey from the west bank of the Euphrates and about 120 miles south-west of Bagdad, rises *Meshed Ali*, the superb mausoleum of the husband of Fatimá, the companion and the son-in-law of the Apostle of God.

About another day's journey to the north-west of Meshed Ali, still on the same or western bank of the great river, at Kerbela, now a place of considerable size and importance, is *Meshed Hoosein*, the holy sepulchre of Hoosein, the "Shehad" or martyr.

These tombs (though standing in the territories of the Suni Turks) have from time to time been adorned with the utmost magnificence by the Shiá sovereigns of Persia, and they are constantly attended by a large body of Syuds (descendants of Ali), whose services are largely rewarded by the pious benefactions of the faithful.

From all parts of Asia and at all periods of the year a constant stream of Shiá pilgrims flows towards these holy tombs. Nor is it the living only who crowd there: the fondest wish of wealthy and pious Shiás at the approach of death, is to be buried in the sacred dust that surrounds the tombs of Ali or of Hoosein; and from the river-bank long strings of camels may be seen traversing the sands towards the holy places laden with the coffins of the devout votaries, who are thus making their last pilgrimage to Nijuf or to Kerbela.

The sacred dust of Kerbela is made into moulds (called in India *Mokurs*, from their resemblance in shape and size to pieces of coined money), and into

(e) Ockley's Hist. of the Saracens, Dynasty of the Ommeiades. Yesid I, Gibbon's Decline and Fall of the Empire Ch. 50.

strings of large beads. Whenever the Shiá prays, which he does three times a day, (at sunrise, noon, sunset,) not five times a day, as the Sunis do, he is careful to put his mohur, or mould of the dust of Kerbela, on the ground, so that it may meet his forehead in the act of prostration; and, when in prayer he names the name of God, he touches one of the beads fashioned out of the dust of Kerbela that are strung on his rosary. On more solemn occasions, such as at the new moons, the Ramazan, or the Moharram, the Shiá is in the habit of partaking of a sort of sacramental cup consisting of water mingled with the dust of Kerbela.

In short, the whole religious life of the Shiá is completely steeped in a current of thoughts, beliefs, traditions, and observances, which all have their source in Ali and Fatimá, and their two sons Hassan and Hoosein—the four venerated names which with that of the Apostle of God compose the *panchton* (or Pentad) of the *Ala Saba*, or Holy Family of Islám.

Now all this the Sunis regard as so much deplorable superstition. They tell you, indeed, they respect Ali as the son-in-law of the Apostle of God and as a good man, the solemn cursing of Ali, however, was continued long after the accession to power of the Suni line of the Abasside caliphs, the successors of the Ommeiades (*f*); but to revere Ali as the Vicar of God, still more as an Incarnation of God, is utterly abhorrent to all the religious feelings of a pious and orthodox Suni. To go on pilgrimage to Kerbela, to bow the forehead in prayer on moulds made of the dust of Kerbela, to drink, on the great Mahometan anniversaries, water mixed with the dust of Kerbela—these are all practices which a Suni Mussulman shrinks from as so many forbidden superstitions.

The Suni prays five times a day; the Shiá only three times: the Suni with his arms folded across his breast; the Shiá with his arms held straight down by his side: the Shiá venerates Ali and Fatimá as something more than mortal, and execrates the memory of Abubekr and Omar and Osman; the Suni pays sincere reverence to these three caliphs, and introduces their names into the Khootheh (or Friday prayer), and into the dedicatory inscriptions in his mosques: the Suni, in India at least, celebrates the Moharram with ribald buffoonery; the Shiá with heart felt lamentations.

In a word, agreeing in reverencing Mahomet as the Apostle, and the Koran as the word, of God, the Sunis and Shiás agree in little else except hating each other with the most cordial and bitter hatred. The quarrel of Ayesha and Fatimá is an undying one, and Islám is still divided by the fierce enmities of the respective partizans of the favourite wife and of the only daughter of the Apostle of God.

The next question is, *Who are the Shiá Imámi Ismáílis?* Formally they are those among the Shiás who hold Ismáíl, the *seventh* in descent from Ali, to have been the last of the revealed *Imáms*; and who also hold that, until the final manifestation of Ali who (as an Incarnation of God) is to come before the end of all things to judge the world—the musnud of the *Imámate* or in Latin idiom the office of Supreme Pontiff is rightfully held by an

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(f) Gibbon's Decline and Fall of the Roman Empire Ch. 52.

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The *revealed* Imáms, according to the Ismáílis, are these seven :—1, Ali 2, Hassan. 3, Hoosein. 4, Zetnaleddeen (this was that son of Hoosein who survived the massacre of Kerbela). 5, Mohammed Bauker. 6, Jaffir Seeduck. 7, Ismail (who died before his father, and is called, from his father's name, Ismáíl-bin-Jaffir Seeduck).

Under the dominion of the earlier Abassides (the caliphate of the Abassides of Bagdad extended from A.D. 750 to A.D. 1272), the Ismáílis, like all other opponents of the Suni or orthodox faith, were exposed to severe persecution. Their doctrine of the Imámate made them peculiarly obnoxious. As already explained, every caliph, or successor of the Apostle of God, held, as part of his sovereignty, the office of *Imám-at-Moslemin* (Supreme Pontiff of the Devout); so that the doctrine of the Ismáílis, in the eyes of the Suni princes, was not only heresy in religion, but *treason against the State*.

The result was that, from the beginning, they were compelled to teach and spread their tenets secretly.

In all essentials the Ismáílis were Shiás, but they held in addition certain peculiar tenets, such as this respecting the Imámate, which would appear to have been first formulized into a regular system (with different ascending degrees of initiation and stages of more or less esoteric doctrine) about the beginning of the 10th century of our era by the famous Abdallah-bin-Maimun, who taught first at Ahwas, in the south-west of Persia, and afterwards at Salemieh in Syria (*g*). Abdallah-bin-Maimun, together with several tenets derived from the Magians or Zoroastrians, is said to have adopted from the Hindu philosophy, and to have engrafted into the higher stages of the Ismáíli initiation, certain principles of pantheism which by doing away with the notion of a personal God and personal conscious immortality, are easily represented as involving the doctrine of human non-accountability and even that of the moral indifferency of actions—a reproach frequently brought, but apparently without good reason, against the more esoteric teachings of the Ismáíli system.

One of the initiated disciples of Abdallah-bin-Maimun—himself a lineal descendant from Ismáíl (*h*), the 7th Imám—the Dai Abdolla—or Obeidollah, about the middle of the 10th century of our era, laid in Africa the foundations of what afterwards became the *Fatimite Caliphate of Cairo*, and which lasted till overthrown by the orthodox Suni Saladin (the chivalrous rival in arms of Cœur de Lion) about the year of Christ 1171.

This Fatimite Caliphate was a *dynasty of Ismáílis*; it was named after Fatimá, the wife of Ali and sole daughter of the Apostle of God, from

(*g*) Von Hammer's Hist. of the Assassins, translated by Dr. Wood, Edn. of 1835, London, p. 25.

(*h*) *Idem*; see also De Sacy Exposé de la Religion des Druzes. Edn. of 1833, Paris.

whom its caliphs traced their descent through Obeidollah and Ismáil, the 7th Imám.

In Cairo, under the dominion of the Fatimite Caliphs, the religious system of the Ismáílis, with its secret lodges, its many stages of initiation, and its somewhat mystic ceremonies, was matured and perfected.

It is not necessary to go into the details of these developments. *Von Hammer's "History of the Assassins"* (translated, not with any great felicity, by Dr. Wood); Silvestre de Sacy's "*Religion of the Druses*"; the *Dabistan* and other oriental authorities cited at the bar, by the exhaustive industry of Mr. Anstey on the one side and Mr. Howard on the other, supply ample materials for a dissertation on a subject of considerable interest, both historical and theological, for which, however, this is not the place.

Two points, however, connected with this part of the subject have such an important bearing on the main question at issue in this case, that they must be noticed with some degree of attention.

These two points are, *first*, the universal prevalence among the Ismáílis of the practice of "*Takiah*," or concealment of religious opinion; *secondly*, their method of seeking to make converts by assuming to a great extent the religious standpoint of the person whom they desire to convert, modestly hinting a few doubts and difficulties, and then, by degrees, suggesting, as the only possible solution of these, the peculiar tenets of their own system.

As to the *first* point, the word "*Takiah*" was of constant recurrence in the evidence taken in this suit; it was rendered, not perhaps quite adequately, 'mental reservation';—its full meaning is something more than that. It is an Arab word, whose root-meaning is "fear or caution": its full-applied meaning is "concealment of a man's own religious opinions and adoption of alien religious forms,"—either from a desire to avoid giving offence or from dread of persecution.

The polite Orientals (the Sunni Mussulmans excepted) willingly sacrifice some of their religious scruples, and conceal a portion of their religious zeal rather than hurt the feelings of those opposed to them in religious matters. This sort of religious comity is not absolutely confined to the East; even British Protestants of the laxer sort are, I believe, occasionally known in Catholic countries to raise their hats, or otherwise show some token of outward respect, as the more solemn processions of the Romish Church pass by. This is "*Takiah*," outward conformity, in order to avoid giving offence, or hurting the religious feelings of others.

Of the "*Takiah*" caused by the dread of insult or persecution, a familiar and amusing instance may be found in the demeanour of those Shiás who make the Hadj—*i.e.*, go on pilgrimage to Mecca. In that centre of Sunni bigotry and intolerance the Shiá pilgrims out of "*Takiah*" abandon their customary times and forms of prayer, praying five times a day with arms crossed, instead of three times a day with arms held straight down to their sides. Captain Burton in his very interesting "*Pilgrimage to Mecca*" describes with considerable humour how the Shiá pilgrims even force themselves to pay out-

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ward and most reluctant homage to the tombs of Abubekr, Omar, and Osman—the bitter foes of their venerated Ali, and the objects of their own most un-compromising and religious hatred. This is “*Takiah*,” adopted with the view of avoiding persecution, insult, or ill-usage for religion’s sake.

The peculiar tenets of the Ismáílís with regard to the Imámate, imposed upon them a peculiar reason for practising “*Takiah*” in all countries within the sway of the Suni caliphs; this long-enforced habit grew at last into a second nature, and the practice of “*Takiah*” became universal among the Ismáílís—the offspring of persecution and fear.

The other peculiarity of the Ismáílís—that, namely, of assuming or admitting the truth of the greater portion of the religious tenets of those whom they wished to convert to their own—is copiously illustrated by Silvestre de Saey (*i*), citing from an Ismáíli work of authority, the *Kitub-al-siyaset*, which contains, among other things, instructions for the proceedings of the *Dais* or missionaries of the Ismáílís.

If the *Dai*, or missionary, has a Shiá (not of the Imámi Ismáíli persuasion) to deal with, he is to represent himself (as in this case he might do with perfect truth) as a zealous partisan of all the Shiá doctrine. He is to dwell with uncton on the cruelty and injustice with which the Sunis treated Ali and his sons—on the martyrdom of Hoosein and the captivity of his family. He is to abuse the Suni caliphs of both lines, the Ommeiades and the Abassides, and then, having thus prepared the way, he is to insinuate, as the necessary completion of the Shiá system of faith, the more esoteric doctrines of the Ismáílís.

Is it a Jew he has to deal with?—he is to speak disparagingly of the Christians and the Mussulmans, to agree with his intended convert in still looking forward to a promised Messiah, but by degrees to bring his mind to the persuasion, that this promised Messiah can be none other than Ali, the great Messiah of the Ismáíli system.

If it be a Christian he hopes to bring over, he must expatiate on the obstinacy of the Jews and ignorance of the Mussulmans, must profess his reverence for all the chief articles of the Christian creed, but gently hint that they are symbolic, and point to a deeper meaning, to which the Ismáíli system alone can supply the key; he may suggest that the Christians have somewhat misinterpreted the doctrine of the Paraclete, that a Paraclete there is, and that it is to this—the true Paraclete—that the *Dai*, or missionary, would lead his enquiring friend.

It is needless to pursue these illustrations at greater length.

Two points may be taken as conclusively established with regard to the Imáílís:—

1. That they habitually enjoined and carried out the practice of “*Takiah*,” i.e., concealment of their own peculiar views in religion, and outward adoption of religious forms not their own.

2. That their *Dais*, or missionaries, were directed, as a general rule, to set about the work of making converts by assuming to a great extent the religious stand-point of those whom they wished to bring over to their own faith.

Both these points will be found to have an important bearing on the appreciation of the evidence adduced in this case.

And now we must notice a curious passage in history which connects the principal defendant in this case, Agá Khán, with the "*Sheikh el Jubal*," or "*Old Man of the Mountains*" of Marco Polo—with the Chiefs or (according to Von Hammer) the hereditary Grand Masters of the *Assassins of Alamut*.

After the Ismáili system had been elaborately completed at Cairo under the Fatimite Caliphs, receiving there a superstructure of Egyptian hierophantism upon the basis of Magian and Indian dogma, which it had derived from its Persian founders, it had the fortune, a little after the middle of the 11th century of our era—about the time that William the Norman was winning the battle of Hastings—to attract the attention of a very accomplished young Persian of Arabian descent and of Shiá faith, who had already given promise of a brilliant career.

This was *Hassan-bin-Saba*, the son of a learned Shiá doctor of the city of Rhaï in Persia.

Hassan-bin-Saba had been carefully trained in all the learning of his time, his great friend and fellow-student being Nizam-ul-Mulk, afterwards the renowned minister of Togrul Beg and of Malek Shah, the two first of the Toorki or Seljukian Sultans of Irak, whose seats of empire were Nisabhur and Rhaï. In his early manhood Hassan-bin-Saba met with, and had been deeply impressed by the teachings of a Dai, or missionary, of the Fatimite Ismáilis. An adventurous life of action had weakened, but not effaced, these earlier impressions when, being checked in his career of ambition by the superior fortunes of his rival Nizam-ul-Malek, he resolved to repair to Egypt in order to be instructed at the fountain-head in the more esoteric doctrines of the Ismáilis.

A three-years' residence in Cairo made him an adept and an enthusiast in the Ismáili faith, and he returned to Persia eager to propagare the tenets he had embraced.

Persia at that time was in the most rigid bonds of Suni orthodoxy, the Shepherd Chiefs of Central Asia (and such in their origin were the Seljukian Sultans of Irak) having always been among the most devoted upholders of the strictest traditions of Islám.

Hassan-bin-Saba soon found that he could only attempt openly to propagare his new creed at the imminent risk of his life. He formed his plan. Partly by force and partly by fraud he possessed himself of the impregnable mountain stronghold of Alamut (*the Vultures' nest*) built on a commanding crag on the Elburz mountains—the range that separates from the rest of Persia the provinces that lie immediately to the south of the Caspian.

Here he established himself in the year 1090 of our era just 700 years, as Von Hammer is careful to inform us, before the commencement of that other great combination (as he views it) against the established order of society—the Constituent Assembly of revolutionary France.

Here, for 35 of the remaining years of a life which was protracted beyond the age of 90, Hassan-bin-Saba employed all the remarkable powers of his

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mind in organizing a system of terror which fought with the dagger against the sword, and revenged persecution by *assassination*. He and his successors have the infamous renown of having introduced *that* word into the vocabularies of Europe. It is likely enough, indeed, that the etymology insisted on by Silvestre de Sacy may be correct, and that the word by which the Ismáílís of Alamut and Massiat were designated in the Eastern languages was *Hashishin*—a word derived from the use of the *Hashish* (a preparation of hemp, or bhang,) with which Hassan-bin-Saba and his successors subdued the souls, while they inflamed the energies of the *Fedawi*, “the self-offering or devoted,” whom they employed, to use the language of Dryden, as their “blind, unthinking instruments of death.” Be this as it may, the word *Assassination* has long been naturalized in all the languages of Europe to signify the vilest sort of murder—murder done to order.

I must resist the temptation of pursuing in further detail the story of the Ismáílís of Alamut, whose offshoot the Assassins of Massiat (a corresponding rock-fortress on the mountain range north of Lebanon) were the terror of Syria and Western Asia during the second Crusade. I take up the thread of the narrative where it becomes connected with the principal defendant in this suit, Agá Khán, as it does in the person of Hassan-Ala-Sikrihi-es-Salam (or Blessed-be-his-name), shortened into *Zakaresalam*, the 4th in succession from Hassan-bin-Saba, of those whom Von Hammer calls “the hereditary Grand Masters of the ‘Order of the Assassins of Alamut.’”

The founder himself, Hassan-bin-Saba (that is “of the line of Saba”) though a fanatic Ismáílí in religion, was not—as his family name shows—an Ismáílí by birth : he was not a descendant, either lineal or collateral from Ismáílí, the 7th Imám, the son of Jaffir Seeduck.

Hassan-ala-Zakaresalam, on the other hand, asserted for himself a direct lineal descent from Ismáíl, the 7th Imám, through Nisar, a son of Mostansir (one of the Fatimite Caliphs of Egypt) who had been brought to Alamut in the time of Hassan-bin-Saba, and whom Zakaresalam declared to have been his progenitor.

Von Hammer, drawing exclusively, as he admits, from Suni sources, leaves this statement of paternity involved in great doubt and obscurity, which is certainly not cleared up by the passage extracted from the 10th book of the Persian History, of which a translation was put in by the relators and plaintiffs. The mystery that hangs about the story seems in some degree to justify the expression of Witness No. 1, when he said that he had come to doubt the validity of Agá Khán's hereditary claims (from Ali and Ismáíl through the Fatimite Caliphs of Cairo) ever since he had found that he traced his pedigree through this Zakaresalam.

This is not the place, of course, for any attempt to clear up the obscurity of an Asiatic pedigree (a task which even Gibbon was obliged to renounce as hopeless), but it may be observed in passing that the recorded follies of this Zakaresalam are such as to make it *primâ facie* not unlikely that he might really have been a blood descendant from the Fatimite Caliphs of

Egypt, among whom are to be found, as notably in the case of Hakim-Biamr-Allah, the Mad Messiah of the Druzes of Lebanon, some of the most fatuous and extravagant of all the Mussulman princes who have ever ruled in any part of the East (j).

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By one of his proceedings, Zakaresalam excited more horror among orthodox Mussulmans than had been called forth even by the organized system of assassination established by the Chiefs of Alamut. On the 17th day of Ramazan he caused a public pulpit to be raised in the *Mosella*, or place of prayer at the base of the castle of Alamut, and thence proclaimed himself the Viceregent of God, abolished all Moslem ordinances of positive religion, declared that that sacred day of the Muhamadan calendar should thenceforth be celebrated as the *Feast of the Revelation of the Imám*, and that the people should then and there (as, from the narrative, they appear to have done without much scruple) eat the flesh of the swine and drink, even to drunkenness, of the juice of the grape.

After a short reign of about four years this self-asserted, and certainly worthy, descendant of Hakim-Biamr-Allah was himself cut off by the dagger, and the hereditary Grand-mastership of the Assassins of Alamut passed through the hands of four successors, (all of whom, with one, probably accidental, exception, are recorded in the pedigree of Agá Khán), until the year of Christ 1258, when Alamut fell to rise no more (it has ever since been a heap of ruins) under the irresistible might of Holagou, one of the grand-sons of the great Zinghis Khán (k). Although, by this utter overthrow, in which men, women, and children were unsparingly put to the edge of the sword, the Assassins of Alamut ceased to be a terror to Asia, yet the race of the Ismáílís still survived in Persia, and the hereditary succession of their *unrevealed* Imáms is traced in unbroken line down to Agá Khán, the first defendant in this suit, in the pedigree already referred to. Of these names, history knows nothing; one, indeed, Shah Islam Shah the 14th in the ascending line from Agá Khán, is currently mentioned by a tradition, very prevalent in the Khojá caste, as the Imám of whom Pir Sadrin, the converter of the Khojás, was the missionary or Dai. It appears probable that from the time the rulers of Persia became Shiá, as they did from the establishment of the Saffevi dynasty about the commencement of the 16th century of our era, all active persecution of Ismáílís ceased. After the troublous times of the Affghan invasion and of Nadir Sháh, and during the period preceding the rise of the present or Kajar dynasty, when the Zend princes had the principal power in the south of Persia (say from A.D. 1750 to A.D. 1786), we find that Abool Hassan, the grand-father of Agá Khán, was governor of the very important city of Kerman.

About the year 1813 Macdonnell Kinner, as cited by Von Hammer (l), notes in his "Topographical History of Persia" that in the district of the

(j) "The Fatimites," says Gibbon, "were either rash or pusillanimous." "Decline and Fall," Ch. 52. See Silvestre De Sacy's Religion des Druzes.

(k) The Assassins of Massiat and other rock-forts in Syria were suppressed by the Mamluk Sultans of Egypt about A.D. 1280.

(l) Hist. of the Assassins, pp. 210—211.

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Persian highlands (or *Kuhistan*), especially near the ruins of Alamut, are still to be found a remnant of the Ismáílís who go by the name of *Hooseinis*; he also remarks that the Ismáílís of Persia recognize as their chief an Imám "dwelling near Kekht" whose descent they deduce from Ismáíl, the son of Jaffir Seeduck, and that as this Imám, according to their doctrine, is an emanation from the Deity, the Ismáílís, *some of whom are dispersed as far as India, go on pilgrimage "from the banks of the Ganges or Indus" to obtain his benediction.*

These statements, read by the light which the evidence in this case throws upon them, are not without interest. The Hooseinis, who still dwell about the ruins of Alamut, are of the race who regard as their Imám the first defendant in this suit, whose own proper name, as distinct from his titular designation, is "Mahomed Hussain *Hooseini*." The Imám of the "Ismáílís dwelling near Kekht," at the time of Macdonnell Kinneir's stay in Persia, was Sha Khalilulla, the father of the first defendant. The votaries who went on pilgrimage from India to receive his benedictions, consisted mainly of the Khojás, who, as we shall soon see, had for a long period of time been in the habit of making pilgrimages to what they called *Durkhana*, i.e., to the head-quarters, or principal residence for the time being, of their *Murshed*, or Spiritual Head, the Hereditary Imám of the Ismáílís.

The question *Who is Agá Khán?* has thus already been partly answered. "Mahomed Hussain Hooseini, otherwise Agá Khán," or, as he is more formally styled when addressed or mentioned in official documents by the Bombay Government, "His Highness Agá Khán, Mehelati," is the hereditary chief and unrevealed Imám of the Ismáílís—the present or living holder of the Musnud of the Imámate—claiming descent in direct line from Ali, the Vicar of God, though the 7th and (according to the Ismáíli creed) the last of the *Revealed* Imáms—Ismáíli, the son of Jaffir Seeduck.

His own personal history has been somewhat adventurous and romantic. His grand-father Abdul Hassan, as already mentioned, was governor, under the Zend princes, of the important city of Kerman. On quitting that office, Abdul Hassan went to reside in the district of Mehelati, where the family appears to have long had considerable possessions, and whence Agá Khán derives his territorial title. Mehelati is between Hamadan (the old Ebatana of the Medes) and Koom, the latter a city about midway between Ispahan and Teheran, and important as the burial-place of more than one of the Shás of the Saffevi dynasty (the "Sofis" of Shakespeare); of Fatimá, the daughter of Imám Resa, the great saint of Persia; and more recently of Futteh Ali Shá, the 2nd in succession of the Kajar, or now ruling, dynasty, who after a long reign extending from A.D. 1798 to A.D. 1834 lies buried here in one of the most superb mausoleums that have ever been raised even to a Moslem prince.

The father of Agá Khán, Sháh Khalilulla, having for a time taken up his abode at the city of Yezd, the principal seat of the Pársis (the remnant of the Magians or Zoroastrians of ancient Persia), was slain there, with several of his house-hold, in the year of Christ 1817, in the course of one of those tumultuary brawls which are not uncommon among the lawless

mobs of the ill-policed Persian cities. "The news of this event," says Mr. Watson in his recent *History of Persia (m)*, "was received with the greatest concern by the Sháh, who dreaded lest he should be held responsible by the dangerous sect of the Ismáílís for the death of their sacred chief." Futteh Ali Shah accordingly caused severe punishment to be inflicted on all the chief assailants in this murderous fray, and he conferred on the young Agá Khán (the successor of his father in the *Imámate*) large possessions in addition to those which had descended on him through his ancestors, the government of the entire district of Kocm and Mehelati, and the hand of one of his daughters in marriage.

From this period (say 1818) till the year 1838 nothing more is recorded of Agá Khán. That (1838) was the year in which Mahomed Ali Shah, the 3rd in succession of the Khojá dynasty (he reigned from 1834 to 1848); retreated from the disastrous siege of Herat so memorably defended by Eldred Pottinger.

In that year Agá Khán raised the standard of revolt and seized the government of Kerman, where his grand-father had once presided, and where he himself had numerous adherents.

Mr. Watson (*n*) states somewhat vaguely, as the reason for this rising, that the Agá "thought the time had now come when he might assert with advantage the religious character of which he was inheritor." The native Persian historian assigns what is, perhaps, a more probable reason. Hadji Mirza Ahasi, who had been the tutor of Mahomed Ali Shah, was during the whole reign of his royal pupil (from 1834 to 1848) the prime-minister of Persia. A Persian of very low origin, formerly in the service of Agá Khán, had become the chief favourite and minion of the all-powerful minister. This person, through his patron, had the impudence to demand in marriage for his son one of the daughters of Agá Khán—a grand-daughter of the late Shah-in-Shah! This, says the Persian historian, "was felt by Agá Khán to be a great insult," and the request, though strongly pressed by the prime minister, was indignantly refused. Having thus made the most powerful man in Persia his deadly enemy, Agá Khán probably felt that his best chance of safety was to assert himself in arms—a course not uncommon with the great feudatories of disorganised Persia. Making Kerman his head-quarters, he appears to have kept up the fight with various fortunes through the years 1838-39 and part of 1840. In the latter year, overpowered by numbers, he was forced to take to flight and with difficulty made his escape, attended by a few horsemen, through the deserts of Beluchistan, to Sind, where he appears to have been hospitably received by the Talpúr Ameers. In Sind he would, of course, find no money difficulties to contend with. The Khojás of that province (numbering nearly 3,000 houses or families) have always been among his most zealous adherents, and from them and his other Khojá devotees in various parts of India and the East, there can be no doubt, he received ample supplies. That extraordinary levy the "Bukkús"—which the witness No. 24 (the Agá's Kamaria or Collector General for all Sind) describes,

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(m) Edn. of 1866 London, Vol. 1., p. 192.

(n) Hist. of Persia, p. 331.

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Supplied with such resources, Agá Khán was able, during his residence in Sind, to raise and maintain a body of light horse, who, during the latter stages of the Affghan war (in 1841 and 1842) were of some service both to General Nott in Candahar and also to General England in his advance from Sind to join Nott. For these services and for others which he was enabled to render to Sir Charles Napier in his conquest of Sind in 1843-44, Agá Khan received, and it seems still enjoys, a pension from the British Government of India (o).

In 1845 Agá Khán came to Bombay, where, as appears from the evidence of witness No. 14 and No. 18, he was received by the cordial homage of the whole Khojá population of this city and its neighbourhood. With the exception of a certain period of absence at Calcutta in the years 1846-47 and 48 (occasioned, it is said, by the remonstrances of Mahomed Ali Sháh, whose government was uneasy at the presence of the Ismáili chief in a port of such ready access to Persia as Bombay)—with this exception Agá Khán has ever since made Bombay his principal place of residence—his "Durkhána" or head-quarters. His habit during this period has been occasionally to preside at the *Jamát Khána*, or council hall of the Bombay Khojás, on the more sacred anniversaries of the Muhammadan calendar. At the Moharram he attends there with some state to hear the solemn recitation, by Shiá Moolas, of the legend of the Great Martyrdom. On that occasion, at the Ramazan, at the new moons, and on other stated days, he leads the *Nimmáz*, or daily prayer, in the *Jamát Khána*, and also presides over the distribution of water mixed with the holy dust of Kerbela. Every week on Saturday (when in Bombay) he holds a *darbár* (levee) in the *Jamát Khána* at about 7 or 8 o'clock in the evening, when all the members of the Khojá community who please may attend and have the honour of kissing his hand. The above, taken from the evidence of his very intelligent private secretary, Karrim Khán, appear to be the principal public and religious duties performed by the Agá in Bombay.

His yearly income, derived from his votaries in many various and some very remote parts of Asia, is said, by the same witness, to average a net sum equal to about £10,000 sterling of our money. Of this considerable income the greater portion is spent by the Agá in horse-racing—a pursuit of which in Bombay he is, and for some time has been, one of the principal patrons.

(o) See Major Rawlinson's letter to Mr. Maddock, 6th November 1842; Parliamentary papers relating to military operations in Afghanistan, 1843; Sir W. Napier's Hist. of Sir C. Napier's Administration of Scinde, Ed. of 1851, London.

The next question is, *Who and what are the Khojás, and what have been their relations with the hereditary Imáms of the Ismáílís, the ancestors of Agá Khán ?*

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From the evidence adduced in this case, the more probable conclusion, I think, is that the Khojás were originally Hindus of the trading class, inhabiting the villages and towns of Upper Sind. Their language is Sindi or Cutchee—a cognate dialect, and such ancient religious works as they possess are written in the Sindi language and character. Sind, an early Mahometan conquest (*p*), has long had a large Mahometan population, but a considerable portion both of the retail and wholesale business of the country has always remained in the hands of the Hindus. The position and circumstances of these remote and isolated Hindu traders were manifestly such as to favour their conversion to some form or other of Mahometanism.

That they were so converted by Pír Sadrín about 400 years ago, is admitted by both the contending parties in the Khojá community. It is also agreed that the tomb of this Pír (or saint) is at Ootch, a town of about 1,800 houses in the Native State of Bhawalpore, on the left bank of the Punjund—the channel through which the collective waters of the five rivers of the Punjab flow into the Indus—and about 40 miles above its point of junction with the latter river. Here the agreement ends; according to the traditions of the great body of the Khojá community, Pír Sadrín came from Khorasan and was an Ismáílí Dai, or missionary, sent by Sháh Islám, one of the ancestors of Agá Khán, and the form of Mahometanism which he taught his converts was the Shiá Imámi Ismáílí faith. According to the relators and plaintiffs, and those of the Khojá community of Bombay who side with them, Pír Sadrín was a Suní, whose place of residence was at Multan, and who converted the first Khojás to Suní Mahometanism.

The term “Khojá” means both “the honourable or worshipful person” and “the disciple.” Its full meaning, as applied to the community converted by Pír Sadrín, may, perhaps, fairly be taken to amount to this, “*the honourable or worshipful converts.*” It is in this sense that it is to be found used in Von Hammer’s History of the Assassins (p. 75), where he relates how one Khojá Mahomed Sheristani, having been sent from Alamut on some embassy to the court of one of the Seljukian Sultans of Irak at Rhal, was there massacred “on leaving the presence” by the ferocious Suní populace of that orthodox city, who rose *en masse* against the Ismáílí convert or disciple.

From Sind the Khojá conversion would appear to have spread into Cutch, thence into Kattywar, and through Guzerát to Bombay. In the

(*p*) The first Arabian Conquest was as early as A.D. 775; but in 750 the Mahometan conquerors were driven out, and Sind appears not again to have come under Mahometan dominion till the 12th century of our era: Eiphinstone’s History of India, p. 258-262 and Appendix, Tit. “Scinde,” p. 628.

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present time, Khojá communities are to be found in almost all the large trading communities of Western India and on the seaboard of the Indian Ocean. The Khojás are all, as a rule, engaged either in retail trade or commerce, and frequently prosecute both with considerable success.

In Sind, as appears from the evidence in this case, they number 2,800 houses or families; in Kattywar about 5,000 families. In Cutch and Guzerát the numbers are not stated, but must be considerable; Bhuj, the capital of Cutch, having long been one of their principal seats. In Zanzibar (on the African Coast) there are 450 Khojá families—in Muscat 400—and so on. In Bombay and its immediate neighbourhood they may probably number about 1,400 families, of whom about 400 side with the relators and plaintiffs, the rest with Agá Khán.

Beyond the limits of Bombay and its immediate neighbourhood no difference of religious opinion appears to prevail among the Khojás. All or the overwhelming majority of the Khojá community in all parts of India and the East, except Bombay, are the staunch adherents of Agá Khán: to take an illustration (which seems to be quite a fair one) from the evidence of witness No. 23, it appears that 445 out of the 450 families who compose the Khojá community of Zanzibar have recently signed a paper of adhesion to the Agá and to the views he is understood to represent.

Wherever a Khojá community is to be found, however small, its organization is the same: it has a *Jamát*, a *Jamát-Kháná*, a *Mukhi*, and a *Kamaria*.

The "Jamát" is the 'congregation of the people,' the assembly in council of all the adult male members of the Khojá community of the place.

The "Jamát Kháná" is the council-hall or guild-hall of the community.

The "Mukhi" is the treasurer or steward, and the "Kamaria" the accountant.

It may as well be mentioned here (as it is the clear result of the evidence, and effectually disposes of the 2nd, 3rd, and a portion of the 6th clause of the prayer of this information and bill) that these two functionaries, the *Mukhi* and *Kamaria*, are not, according to the usage of the Khojá community, elected for any ascertained and fixed period, but appear to hold their office (if they wish so to do) as long as they give satisfaction. Numerous instances were deposed to in which they continued to hold office for several consecutive years—sometimes for life—and one instance, at least, was mentioned in which the father had been succeeded in office by his son. Besides these local *mukhis* and *kamarias*, proof was given that in Sind and Kattywar (it may also be the case elsewhere) provincial *kamarias* are appointed by and hold office under the Imám, for the time being, of the Ismáílís. The duty of these functionaries is to collect and forward for transmission to the Imám, wherever he may chance to reside, the contributions raised on his account by the Khojá community.

It is conclusively shown, partly by direct evidence of account books going back considerably beyond the commencement of the present century (those of Sind to A.D. 1772, those of Kattywar to A.D. 1782) partly by evidence of tradition in the caste or sect as reliable as any other evidence of tradition adduced in this case (quite as reliable, for instance, as that which represents Pír Sadrudin to have been the original converter of the Khojás) that, for a time "beyond which the memory of man runneth not to the contrary"—from the origin—from the very outset of their separate existence as a distinctive community—the Khojás have been in the habit of transmitting as to their "Sirkár-Sahib" (lord and master), voluntary offerings (Zakat) out of religious feeling (Dharm) to the Imám for the time being of the Ismáílis, whom they revered as their Múrshed or spiritual head.

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The mass of evidence adduced on this point is too strong to be resisted. Even the witnesses called for the relators and plaintiffs were compelled to admit, that, according to the uniform reputation and tradition in the Khojá caste, their fathers "from the beginning" had been in the habit of making voluntary contributions to the fathers of Agá Khán: while the positive evidence adduced on the other side makes it impossible to entertain a reasonable doubt that the Khojás have throughout been in the habit of sending periodical collections to the Imáms of the Ismáílis in Persia, in the earlier and ruder times in the form of coin or treasure sent by special messengers called "Rais") in leathern bags (called "Jowlies"); afterwards, as commercial facilities increased, by means of *hundis* (bills of exchange) principally drawn upon and cashed at Muscat.

Not only were the Khojás, from the first, in the habit of transmitting contributions to the Imáms of the Ismáílis, but it was also, from the origin, a frequent practice with them to make pilgrimages into Persia for the sake of beholding and doing homage to these their spiritual chiefs. This practice also (called pilgrimage to "Durkháná", *i.e.*, to the principal residence for the time being of the Imám) is shown not only by the admissions of witnesses for the relators and plaintiffs, but by the positive testimony of the witnesses for the defendants, to have been, according to uniform tradition in the caste, a practice observed by the Khojás from the earliest times of their existence as a separate community: "From all time our fathers used to go on pilgrimage to Durkháná."

One witness (No. 20) gave a narrative of a pilgrimage of this kind that he made in 1836-37 to Kerman where Agá Khán at the time happened to be residing. The witness, his father and mother, a brother, and two sisters, with a party of about 100 other Khojá pilgrims, sailed from Bombay to Bunder Abbas, a portion of the Persian Coast, near the outlet of the Persian Gulf. This body of pilgrims had offerings with them, in money and rich stuffs, to the collective value of about £2,000 sterling of our money. They stayed some time at Bunder Abbas, waiting for other Khojás to collect there from other quarters, before starting on their tedious and somewhat perilous journey of twenty-one days across the mountain ranges of Southern Persia from Bunder Abbas to Kerman. At length, about 500 Khojás having collected

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from all parts at Bunder Abbas, the caravan was formed, and they made their way to Kerman. There they were lodged, at the expense of the Imám, in a large rude building, built round three sides of a great open court. They stayed in Kerman about a month or six weeks, during which period, having first made their offerings, they were admitted ten or twelve times to the presence of the Imám. "The Aga," says the witness, "sat on his musnud; we beheld his face, kissed his hand, and retired." It was for that they had come, and with that they were well satisfied.

The pilgrimage and the presents cost the witness's father about £500 of our money—a sum which, as the man was only a dealer in grain and dried fruits in a moderate way of business, seems to the modern English mind a somewhat considerable outlay to have made for such a purpose. But the West can never understand the East, especially the modern and mercantile West. To an Englishman of Chaucer's day such an expenditure for such an object might have appeared more intelligible, provided, of course, that the pilgrimage was made to a shrine or saint of Christendom, not of Paganism or Heathenese.

It is not necessary to go into the detail of the different fees—fees on birth, on death, on marriage, at the new moons, &c., of which (as the evidence of the witnesses and of the exhibits shows) the customary or voluntary contributions of the Khojás to their Imám were made up. The principal was the "Dussoon," a percentage on income. This payment has throughout been and still is paid by all Khojás, except those of Bombay. In Bombay it has for some time been resisted, and is now paid here, not as a rule, but as an exception.

It is more important to observe that all these payments are made under headings, such as "Sirkár-Sahib," "Pír Salámut," &c., which, though varied in form, all indicate one and the same appropriation—an appropriation, namely, to the Imám of the Ismáilis; as the Múrshed or spiritual head of the Khojás.

All the offerings or contributions of the Khojá community appear, from the evidence, to have this primary destination. It is out of the fund thus raised, after consultation with the agent (Warras) of the Imám, that the necessary local public expenses of the various communities are defrayed.

The witness No. 28, a Bombay Khojá and one of those who had never paid the Dussoon, though he was in the habit of paying the other customary fees, said that he paid them "as a matter of *dharma* or religious feeling." "I pay them," he said, "for the Agá; if I knew they went to any one else except our Múrshed (spiritual head) I would not pay anything at all."

Allárakhia Sumár (No. 18), the *Mukhi* of the Khojá *Jamát* of Bombay, a very respectable and reliable witness, said: "It has been ordained from the beginning that whatever funds are collected, should go to the Múrshed—the Múrshed and the *Jamát* (the spiritual head and the assembly of the

Khojás) are identical. If the *Mukhi* and *Kamaria* did not hand over the monies to the Agá, the Khojá community would pay no more fees."

Witness No. 20 said: "All the expenses of 'the estate account,' of 'the estate expenditure account' and of the '*Jamát Kháná* account,' are defrayed out of fees paid on '*Sirkár-Sahib's* (the *Imám's*) account.'" And the truth of this statement is completely borne out by the voluminous translated entries from the books which have been filed in this suit among the exhibits for the defendants.

To the same effect is the evidence of witnesses No. 24 and No. 25. This latter witness, the *Kamaria*-general for the province of Kattywar, says: "All the *Jamát Khánás* in Kattywar are built and purchased by the consent of the Warras (agents) of the Agá out of *Sirkár-Sahib's* money, and are entered in an account called the '*Jamát Kháná* account.' All the Khojás in Kattywar know that their contributions go (primarily) to the Agá; otherwise they would not pay a pie."

It is not necessary to cite further from the evidence on this point; a full consideration of the whole mass of it (and very voluminous it is) has led me clearly to the two following conclusions:—

1. That, except the comparatively small numbers of Bombay Khojás who form the party of the relators and plaintiffs, the Khojá community would make no contributions at all for public or caste purposes except in the name and primarily on account of their *Sirkár-Sahib*, the *Imám* of the *Ismáílís*.

2. That the great bulk of the so-called public property of the Khojá community, both in Bombay and elsewhere, has been acquired by monies paid out of this *Sirkár-Sahib's* fund, with the approval and consent of the properly constituted local agents of Agá *Khán* and his predecessors.

As a rule the Khojás have no *musjids* or mosques—in fact, the only Khojá *musjid* till very recently in existence was that erected in A.D. 1822 in the Khojá burial-ground of Bombay. The *Nimmáz*, or daily prayers, among the Khojas are repeated, or, as the approved phrase seems to be, performed in their *Jamát Khánás*: and in order to complete the proof of the close and peculiar connexion subsisting between the Khojás and their *Múrshed*, the *Imám* of the *Ismáílís*, it may here be mentioned that the pedigree from *Ali* through *Ismáíl* of the *Imám* for the time being, is chanted three times a day as part of the service of the daily prayer or *Nimmáz* in a form of words called the "Dowa" throughout all the *Jamát Khánás* of the Khojá community, including the *Jamát Kháná* of Bombay.

Such, then, in its origin and its past and present relations with the hereditary *Imáms* of the *Ismáílís* appears to me upon the evidence to be and to have been the Khojá community.

The next point to consider is—*what have been the relations of Agá Khán himself with the particular Jamát, or community of the Khojás of Bombay?*

His first recorded intercourse with them was one of controversy and strife. In 1829 the same party that are now represented by the relators and plain-

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tiffs, headed by Habib Ibráhim, the father of Ahmed Habibháí (the most active and influential among the present relators and plaintiffs), resisted the customary payment of the *Dussoon*, or percentage on income. Agá Khán, in order to overcome this opposition, sent to Bombay as his special agent one Mirzá Abdul Kássim, accompanied by a very energetic lady, the Agá's maternal grand-mother, Marie-Bibi, who herself appears to have harangued the Bombay Khojás in *Jamát Kkáná* assembled, and with very considerable effect, in support of the claims of their Múrshed. It was in the course of these proceedings that the bill of A.D. 1829 was filed for the purpose of enforcing these payments by a decree of the late Supreme Court. Agá Khán (in the 4th paragraph of his answer) has denied that this suit was filed with his authority; but a power of attorney sealed with the seal of the Agá clearly recites "that as in Bombay some reprobate persons had laid the foundations of disobedience, it is necessary that he (Mirzá Abdul) do bring an action in the English Court." Authority having been thus formally given, the suit was filed, but it was not proceeded with, the bill having been dismissed for want of prosecution on the 22nd July 1830.

I do not think much importance can fairly be attached to the circumstance of filing this bill. Agá Khán, a Persian nobleman, then resident in Persia, was in all probability very imperfectly informed as to the inferences that would be drawn in an English Court from the attempt to enforce by legal process such payments as these. As he did not prosecute the suit, the fair and reasonable inference is, that, on being more correctly informed, he found he had adopted a mistaken course, and consequently abandoned the proceedings. What is certain is, that after abandoning the suit he directed the recusants to be summoned before the *Jamát* of Bombay, and, on their continued refusal to pay the fees demanded of them, to be turned out of caste. Accordingly in A.D. 1830 Hábib Ibráhim and his partizans, called from their then number the *Bárbhái*, or twelve brethren, were outcasted by the whole Khojá *Jamát* of Bombay in *Jamát Kkáná* assembled. In A.D. 1835 they, on their own petition and by the direction of the Agá, were re-admitted on condition of paying (which they did) the arrears of contribution due from them, and engaging in future to pay all the customary fees that should thenceforth be demanded of them on account of the Sirkár-Sahib.

From this time till the Agá's arrival in Bombay in 1864 there is no record of any further disturbance in the community.

During the absence of the Agá in Calcutta in 1846-47 and 48, a litigation was carried on and concluded, which again divided the Khojás of Bombay into two hostile parties; it was the well-known case as to the rights of female inheritance among the Khojás (called Sajun-Mir-Ali's case) in which Sir Erskine Perry in 1847 pronounced a learned judgment (founded on the evidence of caste usage and custom) against the rights of Khojá females to inherit according to the rules of Mahomedan law (*q*).

In this litigation the Agá, then represented in Bombay by his brother Mahomed Bauker Khán, had endeavoured to uphold the rule of inheritance as laid down in the Koran, Habib Ibráhim and the party of the *Bárbháí* took an active part on the other side.

This was the commencement of fresh feuds, leading, in 1848, to a second excommunication of Habib Ibráhim and his supporters, followed by a general secession of the *Bárbháí* party from the body of the Khojá community—the seceders establishing themselves in a new *Jamát Kháná* in a different part of the Native Town.

In 1850 a deplorable event, arising out of these feuds, occurred in the *Jamát Kháná* at Mahim. Four Khojás of the *Bárbháí* party were murdered there by several Khojás of the opposite faction, nineteen of whom were tried for the offence before the late Supreme Court in the December sessions of 1850, and four capitally sentenced and hanged.

From the reluctant admissions of witness No. 20, himself one of those who were arraigned, but acquitted, on that occasion, it sufficiently appears that the bodies of these four murderers, after having been given up to the Khojá community of Bombay, were treated with undue funeral honours with the connivance, if not by the direction, of Agá Khán—a circumstance which shows the demoralising effects of religious zeal, and reflects the deepest discredit on the first defendant.

In A.D. 1850 the information and bill was filed, of which the present information and bill reports to be the continuation, and in A.D. 1851 Sir Erskine Perry pronounced the Declaration of Rights, to which reference has already been made.

This had the effect of producing a state of peace in the community, which lasted unbroken for upwards of ten years. The outcasted were re-admitted to caste; the new *Jamát Kháná* of the seceders was abandoned, and all went smoothly until, on the 20th October 1861, Agá Khán thought fit to publish the paper, a translation of which is printed in Schedule B to his answer, and is also filed as Exhibit No. 19.

In this paper Agá Khán expresses his desire to bring the Khojás to conform to the practices “of the Imámujáh creed of his holy ancestors” (in other words, of the creed of the Shiá-Imámi Ismáílis) in respect of “marriages, ablutions, and funeral ceremonies.” He states that, having seen it in print that the Khojás are Sunis, and that a certain person (meaning himself) is “peremptorily inviting them to embrace the Imámujáh creed,” he has prepared this paper in order that (as under the English Government the exercise of all religions is free) the Khojás who believe in the Shiá-Imámi Ismáíli faith may now act openly according to the practices of that religion, “which their ancestors held secretly,” especially as regards the celebration of marriages, funerals, &c. The paper ends thus:—“Now he who may be willing to obey my orders shall write his name in this book” (the paper is written at the commencement of a book with blank leaves for signatures) “that I may know him.”

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The proximate cause of preparing and publishing this paper, is stated in the paper itself, to have been the appearance, in print, of statements that the Khojás were Sunis, and that Agá Khán was attempting by coercion to make Shiás of them. This alleged reason is likely enough in itself, and is borne out by the evidence of witness No. 18, who says: "In consequence of certain newspaper articles stating that the Khojás are Sunis, the Agá got a writing prepared: he told me" (the witness was *Mukhi* of the Bombay *Jamát*) "he should like to see who of the Khojás were Sunis and who were Shiás; those who were Shiás should come and sign that writing."

Accordingly the paper lay for signature at the house of one of the Agá's sons in the Native Town at Bhendy Bazaar, and was signed by some 1,700 male, but not all adult, Khojás of Bombay, Salsette, and Mahim.

Copies were circulated among the Khojá communities of other parts of India and the East—in Sind, Kattywar, Cutch, Zanzibar, and other places, in all of which, as might be expected from the devoted adherence of all Khojás except a small minority in Bombay, to their Sirkár-Sahib, it, as a rule, received an almost unanimous adhesion. In fact, the only exception disclosed by the evidence was that spoken to in cross-examination by witness No. 25—the refusal to sign the writing by about 20 Khojá families at Mowa, a large cotton-exporting port near Bhaunagar in Kattywar. The alleged reason for their refusal to sign was, that by doing so they might offend those members of the Khojá community of Bombay who adhered to the relators and plaintiffs and with whom they had a large and lucrative business connection. They said: "We *are* Shiás already; why should we sign this writing?" and they refused to do so, or to give up their long-established practice of marrying before the Suni *Kázi*.

It is not unimportant clearly to bear in mind the precise nature of this writing. It is *not*, as it has been occasionally but incorrectly termed, a profession of Shiá faith. It is a mere declaration or pledge on the part of those Khojás who, in matters of religious opinion, are already Shiás, or rather Shiá Imámi Ismáilis, that they will, from the time of signing it, perform their funeral and marriage ceremonies, not according to the Suni form, as it is admitted they had heretofore done, but according to the Shiá form. It is an engagement that those who have all along been Shiás, or Shiá-Imámi Ismáilis in religious opinion, shall thenceforth be so also in all the departments of religious practice.

Such as it was, however, it was regarded as a fresh declaration of war by the party of the relators and plaintiffs. It led at once to a refusal by that party any longer to pay the customary fees and offerings to the Sirkár-Sahib. It led, further, to the filing of the present information and bill, (filed originally in June 1862 as amended in September 1862), the great object of which, as already intimated, is to obtain from this Court an authoritative declaration, that the Khojá community in its origin was throughout, has been, and still is, Suni, and that no Shiá (*a fortiori* that no Shiá Imámi Ismáli) is entitled to any share, interest, or voice in the management of the trust or public property belonging to the Khojá community of Bombay.

These proceedings of the relators and plaintiffs and their party led to certain retaliatory proceedings on the other side, which, as they were subsequent in date to the filing of this suit, cannot, as already intimated at the hearing, be regarded as affecting the legal status of the relators and plaintiffs. As, however, they have been deposed to by several witnesses and largely commented on by counsel on both sides; as they are requisite to complete the narrative of the relative position of the contending parties; as, moreover, they furnish the best illustration of the mode in which the process of outcasting is actually carried on in the Khojá community under the superintendence of Agá Khán, it will be desirable not to pass them over without mention.

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On the 16th of August A.D. 1862 a meeting of the whole Khojá *Jamát* of Bombay was solemnly convened in the *Jamát Khána*. This meeting, the relators and plaintiffs and their partizans, though duly summoned thereto, did not attend; neither was Agá Khán there, nor any specially constituted agent of his, though there can be no manner of doubt that all that was done at that meeting, and all that followed, was done in concert with him and by his direction. At this meeting a form of notice was unanimously agreed to, dated August 23 (set out in para. 22 of the answer of the first defendant), by which it was intimated to the party of the relators and plaintiffs, that if they consented to abide by all present and future rules framed by the whole *Jamát* for the guidance and benefit of the community, and to pay all fees and contributions due from them up to that day, then the *Jamát* would receive them with joy as brethren—if not, then, within twenty-one days from the presentation of the notice, they would be turned out of caste.

After the expiration of the twenty-one days, the required conditions not having been complied with, the *Jamát* again solemnly assembled in the *Jamát Khána*. Again none of the party of the relators and plaintiffs, though again duly summoned, were present; nor was Agá Khán there, nor any special agent of his. At this second meeting, by the unanimous vote of all the Khojás in *Jamat* assembled, the relators and plaintiffs and their adherents were solemnly turned out of caste, and have remained outcasted ever since.

In February 1864 a further and final step was taken by turning the officiating Suni Moola out of the old mosque in the Khojá burial-ground, since which worship in the old mosque has been carried on by Shiá Moolas and according to Shiá forms.

Since these transactions the party of the relators and plaintiffs have been in the occupation of a separate *Jamát Khána*, and have opened for themselves a separate masjid.

We now pass to the consideration of the question, as a matter of direct historical fact upon the evidence, as to who Pír Sadrin was, and what was the form of Mahometanism to which he converted the Khojás.

According to the tradition uniformly prevailing among the great bulk of the Khojá community—among all Khojás in short, except that numerically

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small proportion of them who are represented by the relators and plaintiffs—Pir Sadrđin came from Khorasan as a Dái or missionary of one of the ancestors of Agá Khán (Sháh Islám Sháh), and converted the first Khojás to the Shiá Imámi Ismáili form of Mahometanism.

On the other hand the relators and plaintiffs maintain that Pir Sadrđin was a Suni Mussulman, a native of and resident in Multan, and that he converted the Khojás to the Suni form of Mahometanism.

Two witnesses were called—No. 9 by the relators and plaintiffs, and No. 22 by the defendants—both of whom were Syuds, and both, as they deposed, lineal descendants of Pir Sadrđin, who each gave exactly opposite accounts of the religious opinions of that converter of the Khojás. Witness No. 9, whose ancestors had, as he said, lived in Surat for the last 100 years, declared that he himself and all his progenitors including Pir Sadrđin, were, and always had been, Sunis. Witness No. 22, whose family had, according to his statement, been for 200 years in Surat, declared with equal confidence and with equal apparent credibility that he, and they, and all his progenitors, including Pir Sadrđin, were and always had been Shiás of the Imámi Ismáili persuasion.

The testimony of one of these witnesses may be set off against that of the other, subject only to the remark that the testimony of the Shiá witness No. 22 is in accordance with, while that of witness No. 9 opposes the tradition of the greatly preponderating majority of the Khojá community.

But there are three considerations which lead me to the conclusion that the truth is with the majority.

The first consideration is this: If Pir Sadrđin had been, as the relators and plaintiffs allege, “a Suni teacher who converted the first Khojás to Suni Mahometanism,” he must have stood forth before the Khojá community as the great object of Khojá veneration, with nothnig between him and the Apostle of God. In such case the homage, the devotion, the pilgrimages which have been proved to have been made from the beginning by the Khojás to the Imáms of the Ismáilis, would naturally have been paid to the holy tomb of the great founder and saint who had converted the Khojás to the religion of Islám.

Now nothing of this kind is or ever has been the case. Pir Sadrđin lies buried in North-Western India at Ootch, in Bhawulpore; but no pilgrimages are made, no extraordinary devotion is shown to his tomb. Not a single Khojá witness has been produced on either side who has ever made a visit to the tomb of Pir Sadrđin; the only witness who gave any information about it at all, was No. 24, a witness for the defendants. He, indeed, on cross-examination said that he had known a few Khojás of Sind who had been to Ootch, and told him that the Pir had a fine *durgá* or tomb there kept up by Syuds, descendants of Pir Sadrđin, who were all Shiás: he himself, the witness added, had occasionally paid some trifling dues for keeping the tomb in repair; but it was not common for Khojás to go and visit that tomb—he did not know why.

Now this, in my judgment, is a state of things quite incompatible with the theory that Pír Sadrín, of his own mere motion as an independent founder and originator, had converted the ancestors of the Khojás to the Suni faith of Islám. On the other hand, it is exactly what might reasonably be expected, if the tradition of the great body of the Khojá community be well founded, viz., that Pír Sadrín was a mere Dái, or missionary, of a living, though distant, Imám of the Ismáílis, to whom, as to a living concrete object of respect and worship, he from the first directed the spiritual allegiance and veneration of the new converts.

The second consideration is this : as already shown, it is proved as clearly as any circumstance of the kind is capable of proof among a people where oral tradition supplies the place of written records, that the Khojá community from the beginning made pilgrimages and paid contributions to the hereditary Imáms of the Ismáílis. Now, how is this clearly-established fact to be accounted for? On the supposition that Pír Sadrín was a Dái or missionary of the then Imáms of the Ismáílis, the explanation is clear and simple; but if this be denied, what other explanation is to be given of the facts? Was there a subsequent conversion and a second founder? This is not even pretended, and, if there had been, some tradition of it it would certainly have been preserved, whereas no such tradition exists or is pretended to exist. When one allegation, supported by an exceedingly strong and uniform current of tradition, clearly explains a proved state of facts, which no other suggested hypothesis will account for, it is surely not enough for those who dispute that allegation, simply to set up a counter-allegation, supported by a far weaker current of tradition, which instead of explaining the proved facts, makes them unaccountable. If Pír Sadrín was a Suni, and converted the first Khojás to Sunism, how are we to account for the well-established fact that the Khojás, from the beginning, have been bound by ties of close spiritual allegiance, evidenced by outward acts of homage and devotion, to the hereditary Imáms of the Ismáílis?

The third consideration arises out of the character of the ancient religious books of the Khojás, and especially of the "Dásavatar," the chief of them.

Now, by a tradition long universal in the Khojá community, and never, I believe, called in question by any Khojá, till the appearance, in the witness-box, during the progress of this suit, of two or three of the more zealous witnesses for the relators and plaintiffs, the authorship of the *Dásavatar* is ascribed to Pír Sadrín.

If it be not his, then the same difficulty arises as was suggested under the last head of observation. If the original converter of the Khojás were not the composer, or (which for this purpose amounts to the same thing) the introducer to the sect, as a leading book of religious teaching, of the *Dásavatar*, how comes it that that book has been from the beginning the accepted scripture, so to speak, of the Khojá sect?

That it has been so, and, with the exception of the party of the relators and plaintiffs, still is so, is abundantly clear on the evidence. The present information and bill (in its first paragraph), adopting as true the statement

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to that effect continued in the information and bill of 1850, alleges "that the *Dásavatar* is invariably read over Khojás who are at the point of death." The evidence taken in this case proves incontestibly that in all the *Jamát Khánás* of the Khojás throughout India and the East, "including that of Bombay, the *Dásavatar*" is publicly and periodically read as a matter of stated religious observance.

If Pír Sadrín, according to the vastly preponderating tradition in the community, composed this work, or if he introduced it as a work of principal religious authority to the first Khojá converts, the explanation of its continuous and all but universal use in and by the Khojá community is easy and plain. On any other supposition it remains inexplicable, unless, indeed, the relators and plaintiffs had come prepared with proof, not a shadow of which have they even attempted to give as to when, how, and by whose instrumentality, if not that of Pír Sadrín, this book became adopted by the Khojás as the most sacred volume of their religious literature.

It is impossible to evade the force of these considerations; it is impossible not to see that the evidence on this point leads, as the only reasonable inference, to the conclusion that the *Dásavatar*, if not composed by Pír Sadrín, which is the more probable supposition, was, at all events, introduced by him as a leading religious tract or text-book for the use of the first converts among the Khojás.

Regarding, then, Pír Sadrín as the author, compiler, or adapter of the *Dásavatar*, what is the inference that arises from the nature of that work as to the nature of his religious opinions?

What is the *Dásavatar*? It is a treatise in 10 chapters containing (as, indeed, its name imports) the account of ten avatars or incarnations each dealt with in a separate chapter. *The first 9 of these chapters treat of the nine incarnations of the Hindu god Vishnu; the 10th chapter treats of the incarnation of the "Most Holy Ali."*

The negative conclusion is clear at once. No Suni could have composed, compiled, or adapted such a work as this; the idolatry of the first 9 chapters, the semi-deification of Ali implied in the 10th chapter, alike are utterly impossible.

On the other hand it is precisely such a book as a Dái or missionary of the Ismáilis would compose or adapt if he wished to convert a body of not very learned Hindus to the Imámi Ismáili faith. It precisely carries out, what it has already been shown, were the standing instructions to the Dáis of the Ismáilis, viz., to procure conversions *by assuming, as in great part true, the religious stand-point of the intended convertite*. This is exactly what this book does: it assumes the nine incarnations of Vishnu to be true as far as they go, but not the whole truth, and then supplements the imperfect Vishnuvite system by superadding the cardinal doctrine of the Ismáilis, the incarnation and coming manifestation (or Avatar) of the "Most Holy Ali." When the book is read in the *Jamát Kháná* of the Khojás, it is this 10th chapter (as appears from the evidence) which is alone now-a-days seriously attended to.

When that chapter is commenced, the congregation of the people rises and remains standing till it is concluded, making profound reverences whenever the reader pronounces the name of the ' Most Holy Ali' (*Mowla or Motizir Ali*).

The above considerations leave me in no doubt as to the only reasonable conclusion to be drawn from the evidence on the point immediately under discussion ; that conclusion is, that the preponderating tradition of the Khojá community is substantially correct, that Pír Sadrín was a Dái or missionary of the hereditary Imáms of the Ismáilis (probably of Sháh Islám Sháh), and that he converted the first Khojás to the Shiá Imámi Ismáili form of Mahometanism (*r*).

But, then, it is said, if this be so, how is it to be accounted for that, from the beginning, the Khojás in their *funerals and in their marriages have followed the practices and the rites of the Suni Mahometans?*

The fact that they have done so, is not seriously contested by the defendants, and has been most conclusively established by the evidence adduced on behalf of the relators and plaintiffs.

The answer given to the above question by the defendants is, that the Khojás have observed these practices from the beginning out of "*Takiah*"—concealment of their own religious views and adoption of alien religious ceremonies out of dread of persecution for religion's sake.

It has already been shown that "*Takiah*," in this sense, has been uniformly recommended by the teachings and illustrated by the practice of the Shiá Imámi Ismáilis.

The doctrine and practice of "*Takiah*" is unknown to the Sunis : as the orthodox and dominant body in Islám they never had occasion for it ; but it is frequently practised, as already seen, by the Shiás, and it is still more deeply ingrained into the habits of the Ismáilis who, of all other sects, have been most obnoxious to the persecution of the fierce and orthodox Sunis.

What the fierceness of Suni bigotry amounts to, is a matter difficult to convey adequately by any general terms—it will be better judged of by a single well-attested illustration.

The great Emperor Akbar ruled over India from A.D. 1546 to A.D. 1605 : as is well known, he was an ardent religious reformer, who attempted, if he did not complete, the establishment of an eclectic system that approached pretty nearly to pure theism (*s*).

He was also a great patron of literature, especially Hindu literature, the principal works of which he caused to be translated from Sanscrit into Persian. Among those employed by the Emperor in these labours was the very learned Suni Moola—Abdul Kadir—whose task it was, very much

(*r*) Sir Erskine Perry, as appears by a note to his reported judgment in the case of Khojá inheritance, had, on further reflection, arrived at the same conclusion. See note to p. 113 of *Perry's Oriental Cases*.

(*s*) Elphinstone's *Hist. of India*, Book IX, Chap. 3; Akbar Shah's *Divine Monotheism*, by E. Rehatsck, Edn. of 1866, Bombay.

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against the grain, to translate for his Imperial patron considerable portions of the Rámayana, the great epic of "those accursed pagans and idolaters," as the learned Suni called his Hindu fellow-subjects.

Abdul Kadir has left behind him a species of diary called the "Munta-kab-al-Tawarikh," which presents a lively picture of the court and of the religious projects of Akbar. This diary is often referred to by Mountstuart Elphinstone in his admirable 'History of India under the Mahometans,' and has lately been in part rendered into English by Mr. Edward Rehatsek, who has now collected into a small volume (*Bombay Union Press, 1866*) a series of translations from it which had previously appeared in the columns of *Native Opinion*, a very able periodical conducted by Native gentlemen who have received and illustrate the advantages of an English education. From the diary so translated I take, with omissions, the following notice, by Abdul Kadir, of the assassination and of what followed the assassination of Moola Ahmad, a celebrated Moola among the Shiás, who by favouring the Emperor's views of religious reform, had drawn down upon himself the especial wrath of the Sunis. "In this year (A.D. 1587) Mirza Fullad Beg Birllas decoyed Moola Ahmad, the heretic—who had publicly cursed the companions of the Prophet" (*i.e.* the three first caliphs)—"out of the house and killed him, and the words '*Hurrah for the dirk of steel*' as well as the words '*The swine of Hell*' embody the date (t). Verily when that hound was in his last agony, I beheld his countenance like that of a hog, and others have likewise seen it in the same form." For this crime the assassin was executed, or, as Abdul Kadir expresses it, "attained the rank of martyrdom" in the city of Lahore. He then proceeds thus:—"The murdered man survived his murderer only three or four days. After he was buried, Sheikh Fayzdy and Sheikh Abulfadzl appointed watchmen over his grave; but, as the court went that year to Cashmere, the inhabitants of Lahore disinterred one night his stinking carcass and burnt it." (*Page 79 of Mr. Rehatsek's Translation.*) In the above passage breathes the full spirit of the Suni bigot—the Pharisee of Islám—narrow, and formal, and fierce. If such things could happen under the reign of the great and powerful Akbar, to a Shiá who enjoyed his close personal friendship, it may easily be understood what would in all probability have been the lot of the earlier Khojás if they had openly professed the hated faith of the Ismáílís, and had not resorted to the Suni Kázis for the celebration of their marriages and to the Suni mosques and Moolas for the performance of their funerals,

To do so, indeed, was a matter of convenience, almost of necessity, as well as of *Takiah*. Even now, in wealthy and prosperous Bombay, Shiá Moolas, as it appears on the evidence, are not to be found without some difficulty. How were the Khojás, dispersed in remote and rural districts, and who, as the evidence in this case shows, had never any musjids of their own—how were they to get funeral ceremonies performed at all, unless they employed the sole

(t) It is a favourite exercise of Persian ingenuity, in recording any event, to compose a motto in verse, which, while expressing some sentiment appropriate to the event, also records its date.

agency they could find at hand—that of the Suni Moolas officiating in the Suni mosques? As regards marriages, the principle of convenience was still more strongly in favour of celebrating them before the Suni *Kázis*, who keep a regular and careful register, capable of supplying easy and authoritative proof of the fact of marriage—a fact which it is so often of great importance to have the means of establishing by legal proof. Add to this, the class of motives which in England, even since the passing of what is called the Dissenter's Marriage Act (6 and 7 Will. IV. c. 85.) which came into force on 1st March 1837, still induce so large a proportion of the dissenting body to marry according to the rites and ceremonies of the Church of England. From the last *Annual Report of the Registrar General of Births, Deaths, and Marriages in England for the year 1864 presented to Parliament in 1866*, it appears that out of the whole number of marriages celebrated in places of public worship in England, the proportion of marriages in churches to those in Dissenting chapels is 9 to 1. After making due allowance for the marriages which take place, without any religious ceremony, in the offices of the Superintendent Registrar, this proportion is so greatly in excess of that borne by the Church of England to the Dissenting population, that it shows, as the Registrar General observes, that large numbers of Dissenters willingly accept the church ritual in the performance of their marriage ceremonies.

Of course, it would be preposterous to infer from this that the Dissenters so marrying conform in other respects to the doctrine and discipline of the Church of England—the fact being notoriously the reverse. It only shows that, partly from the influence of long-prevailing practice, partly from notions of fashion and respectability, great numbers of Dissenters prefer being married by the regular functionary and in the orthodox form,—by a clergyman of the establishment in the parish church.

Motives of this class operate quite as strongly in the East as in the West ; and it will be the strongest possible proof of the influence of the Agá over the Khojá community, if he ultimately succeeds in inducing them to abandon the long-established and convenient practice of celebrating their marriages before the Suni *Kázis*.

As to the argument that, though “*Takiah*” might account for such compliance with Suni practices in times of persecution, yet it could not account for their continuance after the dread of persecution had disappeared—this reasoning can have no force with those who consider the all but omnipotent power of use and wont in the ordinary usages of social life, and who reflect on the long continuance of practices and institutions (and that not only in the East) long after the reason of their first establishment and all sufficient grounds for their perpetuation have passed away.

It appears to me that, in the presence of such considerations as these, the established fact of the performance by the Khojás, from the beginning, of their funeral and marriage rites after the fashion of the Sunis, has no appreciable bearing on the question as to what, from the beginning, were their religious opinions and tenets.

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It is much the same with the inference endeavoured to be drawn from the erection and maintenance, since A.D. 1822, of the Suni mosque in the old Khojá burial-ground of Bombay. That this mosque was dedicated as a Suni mosque (though without the usual Suni dedicatory inscription containing the names of the first three caliphs) and that it was used and attended by a certain limited portion of the Khojá community of Bombay, for the celebration of worship in Suni form—is quite clear upon the evidence. But this does not touch the question, even of the religious belief of the bulk of the Khojá population of Bombay from 1822 to 1864, far less the sole question with which this enquiry is really concerned, viz., the religious belief of the Khojás in their origin as a distinct community.

This mosque was built in the old Khojá burial-ground, and by the great majority of the Khoja community of Bombay it was only used, as the evidence clearly shows, for *funeral* purposes. The small minority—the party of the relators and plaintiffs—the wealthy Khojás of Bombay who for a couple of generations or so have adopted the respectable and orthodox faith of the Sunis—they, indeed, habitually frequented this mosque for the purposes of religious worship. But the mass of the Khojá community of Bombay still continued, as of old, to worship in their *Jamát Kháná*, where, as the evidence shows, they prayed in Shiá fashion with their arms to their sides, bowed their heads in prayer on moulds made of the dust of Kerbela, occasionally partook of water mixed with that sacred earth, and three times a day recited, in the Dowá, the long bead-roll of the ancestors of their 'Murshed,' Agá Khán, the hereditary chief of the Ismáílís.

As, for funeral purposes, the whole community used this mosque and also the services of the officiating Suni Moola, it was but natural and reasonable that that functionary should be paid (as in fact he *was* paid) by the *Mukhi* and *Kamaria* on account of the *Jamát*; but from such a payment as this it would be preposterous, in the face of such facts as have been established by evidence in this case, to infer that the Suni form of Mahometanism was or ever had been the religion of the Khojá community of Bombay.

From the above circumstances, then, (*i.e.* performance of funerals and marriages in Suni fashion), and the existence for 42 years in Bombay of a Suni mosque attended by a part of the Bombay Khojás, no clear inference can be drawn as to the original religious opinions of the Khojá community. *There are, however, other practices of a religious nature, from the observance or non-observance of which by the Khojás the inference as to their religious opinion is almost irresistibly strong.*

Take the Hadj, or pilgrimage to Mecca, for instance. If there be one religious duty which more than any other is regarded as imperative on all Sunis having the means and ability to fulfil it, it is the Hadj or pilgrimage to Mecca. Once, at least, in his life every Suni who can afford to do so is bound by every principle of religious duty to visit the spot, which to Sunis is the most sacred in the whole habitable globe. That the Sunis of India are not less zealous than those of other parts of the East in the performance of this duty, is clearly proved by the vast stream of pilgrims which, except

during the prevalence of the south-western monsoon, makes its way from all the large ports of India across the Arabian Sea to Jeddah, and thence to Mecca.

Now, what is the case with the Khojas? Why, the evidence is, that not more than eight or ten Khojás in all can be named who from any part of India and the East have ever made the Hadj or pilgrimage to Mecca; and yet these same people, according to the same evidence, go in hundreds, nay in thousands, to Kerbela, a pilgrimage quite as difficult, costly, and dangerous as that to Mecca, and which, though regarded by Shiás as a pious duty, is regarded by Sunis as a superstitious act of folly, even if it be not a positively prohibited and unlawful practice.

And, then, what is to be said of the prayers performed three times a day (not five times) in all the *Jamát Khánás* of the Khojás, and with arms held down to the sides, not crossed on the breast; of the prostrations on moulds made of the dust of Kerbela, the solemn drinking, at stated anniversaries, of water mixed with the dust of Kerbela; of the refusal to mingle in the Suni mummeries of the Mohurruum, the mourning at home or in their *Jamát Khánás* over the memory of Hoossein, the "Shehad" or martyr—the martyr done to death by those whom the Sunis venerate as the lawful caliphs or successors of the Apostle of God?

The people who do these things—the people who omit to perform the Hadj but who crowd to Kerbela—the people who are zealous for the performance of all the most distinctive religious practices of the Shiás,—these people are not and cannot be Sunis; they may be either Shiás, or Shiá Imámi Ismáilis; and the evidence in this case clearly shows they are the latter.

One final proof may be adduced on this point, and that is the practice of making pilgrimages to Durkhána—a practice which, as has already been shown, was habitual with the Khojás from the beginning. Until Agá Khán left that country in 1839-40, these pilgrimages were always made to some place or other in *Persia*, the country in which, from the fall of Alamut till the flight of Agá Khán, the hereditary chiefs of the Ismáilis have throughout, as a rule, resided. Now, if there be one thing more than another which a Suni religiously avoids, it is the setting his foot, without compulsion, on the heretical soil of Persia. A striking illustration of this is to be found in a work which I have always regarded as one of the most instructive and entertaining in the whole range of Oriental Literature—"the Autobiography of the Emperor Baber," the celebrated conqueror and founder of the Mogul dynasty (1 vol. 4to., London, 1826) translated partly by Dr. Leyden, but principally by Mr. William Erskine, the latter the son-in-law of Sir James Mackintosh and the father of the present accomplished member of the Bombay Council, the Honourable Claudius Erskine. In a note to the 244th page of that most interesting work Mr. Erskine writes as follows:—"An Usbek Moola (from Bokhara) whom I consulted" (in Bombay) "had just made the pilgrimage to Mecca. On my enquiring if he had passed through Persia, he expressed great horror. I found that, to avoid touching the soil of Persia, he had gone from Bokhara to Khokan, thence to Cashgar, thence

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to Astrakhan, thence by the Crimea to Constantinople. He then went by sea to Alexandria, and joined the caravan of Cairo. I saw him in Bombay whither he had come from Jeddah after making the Hadj. He was then preparing to return home by Delhi, Lahore, and Peshawur in order to avoid coming into contact with the Persian Shiás."

And yet the Court is asked to believe that a community which was from the beginning in the habit of making pilgrimages to various parts of Persia was also from the beginning Suni, and this, too, though the object of those pilgrimages was to pay devout homage to the hereditary Imám of the Ismáílís, a personage whom all orthodox Sunis regard as a very chief and prince of heretics.

It is unnecessary to add anything more. The clear conclusion at which I have arrived upon a full consideration of the evidence before me is this—*that the Khojás never were Sunis, but that from the beginning they have been and (with the exception of the relators and plaintiffs and their followers in Bombay) still are Shiás of the Imámi Ismáíli persuasion.*

And this in effect disposes of the whole case against the relators and plaintiffs. Fully conceding to Mr. Scoble the authority of the cases and dicta he cited on this point, it appears to me that they are not applicable to the present case. This is not a case in which the plaintiff has mistaken his remedy, but one in which he has failed in his proof. The relators and plaintiffs in this case are quite right in the stand-point they have assumed, viz., that the Khojá sect is a community held together and distinguished by certain religious opinions. Where they have failed, is in proving that these religious opinions are those of the Suni Mahometans. The Court is now in a position to give an adequate description of the Khojá sect; *it is a sect of people whose ancestors were Hindus in origin, which was converted to and has throughout abided in the faith of the Shiá Imámi Ismáílís, and which has always been and still is bound by ties of spiritual allegiance to the hereditary Imáms of the Ismáílís.*

In order to enjoy the full privileges of membership in the Khojá community, all the terms of the above description must be complied with; a person, more especially who is not a Shiá of the Imámi Ismáíli persuasion, is, to use, with a reversed application, the language of the 5th paragraph of the prayer, "not entitled unto, nor ought he to have any share or interest" in the public property of the Khojá community "or any voice in the management thereof."

Mr. Anstey was quite right when he said "*If the Khojás are Sunis, we (the relators and plaintiffs) succeed; if they are not Sunis, we fail.*"

In fact, there is no ground left upon the evidence on which the relators and plaintiffs can seek relief from this Court, either in its charitable or any other jurisdiction.

Looking, for instance, at the Khojá community of Bombay in an educational point of view, no case for the interference of the Court has been made out.

No deed, writing, or scrap of paper of any kind was produced showing any gifts of property to the Khojá *Jamát* of Bombay with an ulterior destination to be applied in the establishment or maintenance of schools for the public use and benefit of the whole community.

But was there any proof of an implied trust of this kind—any proof of the existence, in fact, at any time of any school maintained out of the public monies of the community for the general educational purpose of the community?

No proof of this kind was offered; there was, indeed, and there still is, a school held in a building adjoining the *Jamát Kháná*, and open, apparently, to all children of the Khojá community; but the evidence is that this school was originally established, and has been throughout maintained, by the *private* munificence of Mr. Kássambháí Nathubháí and three or four other wealthy Khojás of the party of the relators and plaintiffs. Moreover, as to this school, it was clearly and positively stated by witness No. 1 that the relators and plaintiffs had no complaint whatever to make.

Then look at the Khojá community of Bombay as an *eleemosynary* institution, and the result is the same. Here, again, there is no proof whatever of there ever having been any express gifts in trust for the poor of the community; but there is proof that the poor of the community have, in fact, long enjoyed a certain amount of maintenance and support at the public expense. They have been allowed free quarters on the ground-floor of the *Jamát Kháná* and some other public buildings belonging to the *Jamát*; they frequently receive relief in the form of food and clothing; and they are buried in the Khojá burial-ground at the public expense.

But the evidence is clear and decisive that, whatever benefit in the way of alms and maintenance the poor of the Khojá community have ever enjoyed, they enjoy still in as ample a measure as at any former time; and there has been no kind of proof that these benefits have been in the slightest degree interfered with by any act or omission of the first defendant or his adherents.

It remains, then, only to consider the prayer for an injunction. This, again, is to a great extent, if not entirely, disposed of by the conclusions already drawn from the evidence in this case.

In so far, for instance, as it seeks to restrain the first defendant from interfering with the election of *Mukhi* and *Kamaria*, the evidence clearly shows that it is, and throughout has been, the custom in all the Khojá *Jamáts* to consult the “Murshed” or his agents before appointing either of these important functionaries. Considering the relation, now fully ascertained by the evidence, in which the hereditary head of the Ismáílis, the Sirkár-Sáheb, has always stood to the Khojá community, and considering that the *Mukhi* and *Kamaria* (as the evidence also shows) are the officers specially charged with collecting and administering the monies raised on the Sirkár-Sáheb’s account, I can see no ground whatever for an injunction

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in the circumstances—(and nothing more is proved) that these officers are not, as a rule, appointed without consulting either the Murshed, or, in his absence, his lawfully constituted agents.

As to that part of the prayer for an injunction which asks the Court to intervene between the Khojás who on the one side are ready to make, and the Agá who on the other side is willing to receive, voluntary offerings and customary contributions, it will not bear, and does not require any serious discussion.

As we have already seen, the great body of the Khojás, unless they thought they were making payments to and for the benefit, primarily, of their Sirkár-Sáheb, would not contribute a single pie towards the public expenses of the community. To interfere, therefore, in the way desired, would be simply, even if such an interference could be carried out, to reduce the Khojá community, as a public community, to insolvency. But, virtually, it could not be carried out, and this Court has too much respect for itself to issue an order of this kind, which would be a mere *brutum fulmen*, liable to almost infinite modes of evasion, and only enforceable, if at all, by issuing attachments against more than two-thirds of the whole Khojá community of Bombay.

If Government, indeed, should be of opinion, that the receipt of some £10,000 a year by Agá Khán, while continuing to reside in Bombay, from the Khojá communities dispersed through India and the East, is, as suggested by the learned leading counsel for the relators and plaintiffs, on political grounds objectionable, they have the remedy in their own hands. But till they have applied such remedy (and I venture to think it extremely doubtful if they ever will), either by removing Agá Khán from Bombay, or prohibiting such payments being made to him while he remains here, I can see no ground on which the making of such payments on the one side, or demanding them on the other, can be made the subject of an injunction by this Court.

The only point remaining, relates to the subject of out-casting or excommunication. Now, the evidence shows that this extreme and ultimate mode of punishing a violation of the conditions of caste-membership, although, doubtless, never, in fact, resorted to except with the concurrence and by the direction of the Spiritual Head or Murshed of the Khojás, is, in form, the act of the whole Khojá community in *Jamát* assembled. Allárukhiá Sumár, the *Mukhi* of the Bombay *Jamát*, was much pressed in cross-examination as to the point, whether, if the *Jamát* considered a direction by the Agá to turn any Khojá out of caste unjust or ungrounded, they would refuse to comply with such direction. The witness had considerable difficulty in contemplating the possibility of such a case (as much difficulty as a strong Ultramontane Romanist might have in conceiving that the Pope could possibly go wrong in any matter relating to the government of the Church); but when, at length, he had been brought to entertain the hypothesis, his answer was that, in such case, the *Jamát* would first protest, and, if that proved vain, would finally refuse to comply with a direction to out-caste which they felt to be unjust.

No doubt in several passages of his answer the first defendant pitches his claims pretty high. Spiritual heads of communities are not generally remarkable for the modesty with which they state their pretensions. But in the 30th paragraph of his answer he sets forth his claim in accordance with the mode in which excommunication appears upon the evidence to have been uniformly carried out in the Khojá community. In that paragraph, after stating that "he claims to be and is the Spiritual Head of the Khojas," he goes on to say "that all Khojás resisting my doctrines" (*i.e.*, the doctrines of the Shiá Imámi Ismáili faith) are liable to be expelled "at my request by the *Jamát* from the Khojá caste."

It is quite clear that in every community having to a certain extent a religious character—and such the evidence shows to be the case with the Khojá community—there must be vested an ultimate power, in cases of obstinate refusal to comply with the defined conditions of communion, to deprive recusants of the privileges of communion,—in other words, to excommunicate them; nor do I see how such a power can be more properly exercised than by the act of the whole community on the suggestion and by the direction of its Spiritual Head. That Agá Khán is the Spiritual Head of the Khojás has, in my judgment, been clearly made out by the evidence; and to say that, as such, he is not to have a potential voice in determining who, on religious grounds, shall or shall not remain members of the Khojá community, appears to me entirely unreasonable.

In fact, in every community, whether of a religious nature or not—whether Church or Chapel, Caste or Club—there must, as requisite for the preservation of a community, and as inherent in the very conception of a community, necessarily exist a power—not, indeed, to be exerted except in extreme cases and on justifying grounds—of depriving of the privileges of membership those who persistently refuse, after due notice and warning, to comply with those ascertained conditions of membership to which, by the very fact of being members of the community, they must be held to have given an implied, if not an express, consent.

As it does not appear to me on the evidence that any other or greater stretch of power than this has ever been exerted by the Khojá community under the direction of its Spiritual Head, I must decline to grant the injunction on this ground; nor is there any ground whatever on which the injunction, as prayed, ought, in my judgment, to be allowed.

Upon the whole case, therefore, the decree which the Court must pronounce is quite clear. It is—

That this suit be dismissed as against the first defendant His Highness Agá Khán, as against Allárúkhia Sumár and his co-answering defendants, as against Asso Gángji, with costs as to all the said defendants to be paid by the relators and the plaintiffs.

As against the other defendants on the record, not in the same interest as the defendants above named, the decree is that the suit be dismissed, but without costs.

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