High Court,
Bombay.
O. O. C. J.

Suit No. 729 of 1905.

Haji Bibi . . . . . Plaintiff

vs.

H. H. the Aga Khan & others . . . Defendants.

Judgment per Russell J. –

The main question in the case.

Although in this suit no less than 128 issues have been raised and the suit itself has attained the

distinction

distinction of having taken up the longest time on record in these Courts, the real questions at issue are of a simple character and are not more than two in number. The first of these questions is: Are the offerings made by the Khoja Community of Bombay to the Aga Khan, made to him for his sole use and benefit or for the use and benefit of certain members of his family? (2) Was the Release of the 11th September 1901 made between Shamsudin, Defendant 5, in his own right and as ad-

ministrator

ministrator of the estate of Jungi Shah of the one part, and Defendant 1 of the other, a sham transaction or collusive and fraudulent, and is it binding upon the Plaintiff?

The parties to the suit.

The Plaintiff is the widow of Aga Mooshool Shah, who was a son of Jellal Shah who was a son of Hassan Ali the first Aga Khan (hereinafter referred to as H. A.) The 1st Defendant is the present Aga Khan the 3rd son of Ali Shah the 2nd Aga Khan (hereinafter referred to as A. S.) The 2nd Defendant is Bibi Saheb, widow of Suleman Khan and one

of

of the daughters of H. A. The 3rd Defendant is Bibi Shamsool Mooluk, widow of A. S., otherwise called Lady Ali Shah. The 4th Defendant is Khuddijah Bibi, widow and 2nd wife of Jungi Shah another son of H. A. The 5th Defendant is Aga Shamsudin Shah (hereinafter called Shamsudin), 2nd son of Jungi Shah aforesaid. The 6th Defendant Shahzadih Begum, wife of Defendant 1, is one of the daughters of Jungi Shah by the said Khudijah Bibi, and a sister of the Plaintiff and the said Shamsudin. The 7th Defendant

is

is Aga Sharookh Shah a son of Akbar Shah who was one of the sons of H. A. The 8th Defendant is Aga Farookh Shah another son of the said Akbar Shah. The 9th Defendant is Aga Coochick Shah (hereinafter called Coochick), the brother of Mooshool Shah and Shah Bibi and son of Jellal Shah. Coochick married first a daughter of Shabuddin Shah and after her death her sister. The 10th Defendant is Shah Bibi the widow of Nooroodin Shah the 2nd son of the said A. S. and brother of Defendant 1. The 11th Defendant

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fendant is Malik Taj Begum, sister of Shah Bibi, wife of Zainulabedin Shah and daughter of Jellal Shah. Defendants 12 to 14 inclusive are the two sons and daughter respectively of Moochool Shah by the Plaintiff. See the Pedigree annexed to the Plt & the one hereto in Exhibit 1 this annexed to the Judgment of this judgment.

The contending parties in the suit are on the one hand the Plaintiff, Defendant 2 and Defendants 9 to 14, and on the other hand Defendant 1 and Defendants 3 to 8.

The material paragraphs of the Plaint are paras. 1, 2, 13, 14, 15, 17, 18, 23, 24, 34, 36 and 55, and of the prayers

The Pleadings

(c)

(e), (g), (j) and (K.) I need them at length.

Defendant 1s Written Statement sets forth a large number of defences, the nature of which, however, may be sufficiently gathered from the first 125 issues.

The 5th Defendant Shamsudin in his Written Statement sets forth the circumstances under which the alleged Release of the 11th September 1901 came to be passed.

The 7th and 8th Defendants inter alia say that their father Akbar Shah appropriated

to

(4.)

to himself certain properties belonging to the said H. A. which he treated as his own exclusive property and that ~~his~~ their father never claimed any more property against the estate of the said H. A. nor any of the allowances, and they say they have no right to any of the properties left by the said H. A.

14. The Defendants 9 to ~~12~~ say *inter alia* the offerings received by the successive Aga Khans were ~~not~~ received not for their individual benefit but

but for the benefit of all the members of the family as shown in the Pedigree Ex. A to the Plaint. Para. 3 of their Written Statement sets up the custom they rely upon and I read it at length.

Difficulties on face of Plaint.

It will be seen that upon the face of the Plaint it is difficult, if not impossible, to ascertain the real basis of the Plaintiffs' claim. The Pltff claims $\frac{7}{144}$ of H. A's estate +

Ex; being before me [illegible] Para. 17 of the Plaint first sets out the 9 heirs and heiresses of H. A. Para. 14 says that those 9 heirs and heiresses jointly succeeded to ~~the~~ his estate according to their respective shares according

to

(10) If this is intended to be Mahomedan Law there is no such thing as joint succession under it

to Law. Para. 23 says that after his death the said 9 heirs and heiresses named in para. 17 and their issue continued to live together as an undivided joint family. The words "continued to live" imply that they were living as an undivided joint family during H. A's life.

~~It will be seen, therefore, that~~

It is therefore very difficult to ascertain from the Plaint ~~on~~ by what law or legal principle the succession to the estate of H. A. is to be determined and in my opinion the Mohamedan Law of inheritance and the Hindu Law are mixed up in a way which renders it almost impossible to know what those who drafted the Plaint had in their minds when they ~~did so~~ drew it. ~~It is well known that Khojas are governed~~

In the correspondence through H. 16, see pp. 22 & 25 of Appeal Book, it will also be seen that the Plff. based her claim as having a joint interest with Deft. 1. See also D.H. 6 Edgelow + Co's letter 31-3-04 on behalf of Kuchick to Deft. 1.

by

~~by the Hindu Law of inheritance. See 12 Bom. H. C. Rep. page~~ According to the law of a joint family ~~. That being as the question of succession depends not upon~~ the is not heirship but ~~as~~ survivorship, and that I understand those who drafted the Plaint had in their minds when they say in para. 18 that on the death of the 1st Aga Khan as aforesaid all his said nine heirs and heiresses jointly succeeded to his estate according to their respective shares therein under the law, meaning I apprehend the Mohamedan Law which is referred to before, but then in para. 23 they go on to say that after the death of the said 1st Aga Khan his said three widows, three sons and three

daughters

daughters and their issue continued to live together as an undivided joint family, receiving payments out of the funds thereof in their character as heirs and heiresses. From this I assume, ~~[illegible]~~ that it was intended to say that the Hindu Law of the joint and undivided family was applicable to the case and not the Mohamedan Law under which the succession devolves in severally, and this conclusion of mine is borne out by the Plaintiff's evidence in cross-examination and Mr. Inverarity

rightly

rightly took the Plaintiff in detail through the various members of the joint family so that she should be making no mistake upon this most important part of the case. I therefore read ~~through~~ her cross-examination on this point in extenso.— See pages 43 P.S. of the printed evidence before me. That the Plaintiff, however, discovered afterwards the fatal effect of her evidence is plain because after she had given the above evidence she abandoned that position and said as follows:— on Monday 17.2.08. P. 53 l. 14. "I said to my mother to" ..... "mamma! have you to the" l. 25 P. 53.

Further from 2 of the Petn admits the there was no new departure in the time of H.K. & offerings were made to H.K. as of old & Income went to H.K. Offerings were made by many years to the Income not H.K. therefore how stands of Joshi mother to show in the case of the share H. K. Thakur's the mother not to be mother?

If, therefore, the case is to be governed by Hindu Law, it is obvious that it is impossible upon the record, framed as it is now, for this Court to decree the partition that is sought for, for the simple reason that a large number of persons who are interested in and entitled to share in the property of the joint and undivided family are not on the record, and no application for placing them on the record have been made to me, and this is obviously a fatal defect in the Plaintiff's case.

It undoubtedly was ~~intended~~ open to Defts. at

~~at first~~ to raise ~~various~~ preliminary points in this case, but no application was made to me that they should be decided in the first place, ~~the~~ reason for this being, I apprehend, that the advisers of the 1st Defendant seeing the very grave importance of this case to him ~~upon the merits was unwilling to leave their defence upon technical~~ questions of law but determined to fight the Plaintiff and her supporters on the merits.

I propose now to deal with the first of the two main branches of the case which I have stated above, namely: Who is entitled to the offerings made by

[illegible]

[illegible]

by the followers of the A.K., or in other words, whether the members of the family other than the Aga Khan for the time being have any right or title thereto.

The consideration of this question necessitates my setting forth as shortly as I possibly can the material facts as to the title of the A.K. ~~the real position of the Aga Khan~~ But before ~~I go into this question~~ doing so I wish to clear the ground in respect of one matter upon which a mass of evidence has been given and by which a great deal of the time of the Court has been occupied, and that is: whether the Aga Khan ~~and the Khoja~~ is an Ismaili.

Whether the A.K. is an Ismaili

~~The not question the I cannot deal with~~
~~is then the Act 1 is an unreasonable.~~
~~Perhaps I do so. However I cannot consider how~~
~~this question arose.~~ When Pl's counsel
began to put questions to this I could
not at first judge whether they were
relevant or not. He seems however to
~~this~~ entertained the opinion with which
they were being put in: with a view
to ascertaining the position of Act 1
in the community I, if my memory serves
me, by Declaration: whether to pass 1 &
2 of the Pl't must ~~explain~~ the line etc.
If he succeeded I gave the 2nd & those
passes he must formally submit to
Permit. Then I said this it was in
the expectation & I may say the hope
the objection would be waived on
behalf of Act 1 & then Act 2 was
argued with him that my counsel
questions were irrelevant since have
such objection there has been I

the Act 1 is an unreasonable

[illegible] at one time or another. He said
objection has formally waived &
I did not see any way of avoiding
the question without a formal objection
being raised. After this the witness
has left, I leave to be the
length & expense of this trial was
becoming a formidable matter & some
formal objection has taken on the ground
of this class of questions. By that time
however a considerable amount of evidence
had been given (subject) & when the witness
was examined. We decided he left, thus
objected to this evidence at that stage
being lodged & I instructed he
should have the right to have it all
on record & to put his claim with
the law & bring the questions and
all statements on the record. In
any opinion he was justified in
adopting the line of conduct as
otherwise the claim would have
been lost that it could be lost

While the left I did not spell to the
[illegible] being given to be found that it was
having the strong hand to punish the other
the left in obedience to its authority. The
[illegible] without [illegible] any [illegible]. So I have
said here, if the Sect is opposed
to the left I am having hence an [illegible].
I want it 3.

In support of this
we make in this
[illegible] is 6 I am [illegible]
and I am right in saying
[illegible] the [illegible] of
[illegible] (not in this
[illegible]) is at the
[illegible] of 1929 Pt. I of
the [illegible] in Commission.

It is a [illegible] to [illegible] that the
meaning of the term "[illegible]" is.
It literally is "Tahir-[illegible]" &c.
there the letter in 12 Imams and
& not in 48 Imams. Thus ~~names~~
~~[illegible]~~ are Ali, Hassan,
Hussein, Zainulabadin, Muhammad Baqir,
Jafar Sadak, Musa Kazim, Ali
Rizai, Muhammad Taqi, Ali Naqi,
Hassan Askari & Muhammad Mahdi.
It will be observed that they have
left from the Imamship at the 7th
Imam. For the ~~latter~~ ~~[illegible]~~ in
Imamship another are 7 ~~Ja. Baqir~~ Jafar Sadak
(& not in ~~Jafar Sadak~~ Musa Kazim.

Also all the "[illegible]."

It appears that there have been several sessions among the fathers of the A. Thos. Jaffer Prathan at L. 2335.

Several Sessions

the is a present President of the Council of the Jamaat among the first time was in S. 1933. (A. D. 96/97) when several persons were examinated by the H. L. for filling the membership forms. The next Session was in S. 1935 (A. D. 99/00) when 2 persons were examinated for the same cause. There were 2 Sessions of A. D. 1901. This was the first of the Sessions held on account of the accounts of the Elections & the first that the membership in that year held in Mazagaon ~~Jamaat Khana~~ and reg for the Ithna Jamaat-Khana.

2.00

The Ses DH63 & DH67

see the advertisements which have

DH.66. of them being tried to assist the L.K. in

[illegible] and the occasion of his return to 24

Dowling. The true reason has not been

in the advertisement, says Professor Pearson,

but it is not true they have always been

following the practice further, although the

witness to show I hold the genuine

belief and intend it, I think that the

offence of hypnotism is partaly owing

rather to a temporal than a spiritual

or religious feeling. viz: an inclining

disinclination to pay the various sums

which are due to the L.K. or Hegan

Jamum for the trial being. If these

are ill: understand the witness not

being willing to ~~[illegible]~~ admit this.

A very large body of evidence has

given on the present. witness after

witness has xxd & xxd to the same

and in short language, and on

"Rozelana"

the occasions the ~~[illegible]~~ on

acquaintance of the suffering of Hypnotism

(Hypnotism

In the case of the hypnotism of last week of "Fallon" they spoke of disinclined to acquiesce them-selves. +

+ (Cross exd "Dr." "So to assume" 2.00

has written. Let us ~~after~~ before turn
X^d & X^d^ as to whether the Jury
(or Coroner if it may be so termed)
did or did not form part of the
Prosecution. But in my opinion it
is not necessary to turn to at length
~~into the evidence~~ into the evidence
~~of the witnesses~~ of the Jury on
this matter. There can be no doubt
that the mother of Left 1 & 3 and
of his relatives are the witnesses. The
Learned Counsel admitted 2^d^ he had
been present ~~when~~ on one occasion
when the Jury at the 3^d^ 8th & 12th
January has met but he did not
repeat it (P. 198). As a point
that has been attempted to be made
of the fact of the theft of Left 1 I think
it disappears & more his account
begins P. 214. l. 22 to P. 215. l. 4.

To my mind it is impossible
to believe that Left 1 believes

in a faith the result of which they will
be that he has no higher motive to
his profession of Holy Orders. that he
has no higher motive to main Office
from his fellows than we can induce to
in short to be Jesuits - but it that
he is practising a gross imposture.
I cannot believe that if he really saw
his responsibility he would allow his
fellows to represent in all women
& in these holes in the Church Jesuit
Schools of training & they & Jesuits
[Q H 132] set out to deceive people
a person in which (with the 40
Jesuits are united ~~for the~~
~~Rising~~ and obedience is under them
the name of the Jesuits for the
time being is attached. The Pope and
the church and their interests are
therefore to my that I have
Jesuits
instructed the ~~[illegible]~~ Jesuit
[to a new religion.

Thus Khushal b. 1707. says "My time is of
2 present faith states from Jogi death
a year after. 2 Fanatic followers of
R. K. do state from that time. 7
Cannot say before or after Jogi's death.
2 are religious here been going 15 years
since R. K. was Bhagat at entire
knowing 2 years after Jogi's death.
I have my house is a new invention
of 2 last 12 or 14 years, since 2
present R. K. have of age. This
new invention has come forward of after
Jogi's death. S. K. has interest in
new house in Gujarati - 2 ~~[illegible]~~ ma
was Arabic." Gurmukh Singh Rajan
(p. 245) says Vs. the then not know of
my sect of Shiva the Sikhism of
Somnath was of 7th January. Vs. after
this sect the name have it separated.
I say on Vs. Somnath have received
Jassa Singh. Vs. the behind it Sikh
in new invention since this sect of
Somnath received Jassa Singh on 7
7th January. The then not know

when it has invented.

From this point of view I have no hesitation in holding that Pope has clearly failed to prove that Christ is a man has no hypostasis and that such an assertion is clearly contradictory to from 1 of his own premises – has any explanation on to which has been that it has no state & existence of his own & has. See p. 66. where from 1 of Pt. is referred to & the says "He has not of knowing of the Religions – the says that? I do not say that is theosophism. H. p. this not claim to be direct descendant from Samuel Daniel or of Jesse Sabah, to Daniel has not to Samuel. It not: be theosophism to describe Daniel as Samuel.

of Jesuits are of 12 Jesuits — they are the very sort of thing Jesuits are.
Then I argued of Pitt I think not likely found to be true. Then it seems much out to one probably my attention seems not called to it."

Panch. Tan"

Again a circumstantial account of witches was given as to shadow the followers of the A. Sh. which he permitted to hurt the Khan on their heads at certain times — the witches when that they do hurt the Panch-tan (Sir Ex: D. H. 134). But whether they made a wax image but the Khan in the same way occurred to me to be wholly irrelevant.

Authorities.

In stating my conclusions as to the different sections, the history of the A. Sh. &c &c before I say they are drawn from the authorities given in 12 Dowby H.E. Lately Mr Blochmann's translation of the Ain in Vols V. VI. & VIII Calcutta Imperial Series. & articles of Sir Roseter Tone in Numismatic Magazine Vol XXXIV. 1876. Tuzuk of Jahangir Pt. of Ed: Jarrett. Hayden History of Jahangir 1896 & the Tarikh-i-Rashidi. Ilias Muhammadan Law. Ameer Ali: Muhammadan Law.

~~In the first place I must point~~ out as shortly as possible the history of the Aga Khan and his legal position ~~but before I do so it will be~~ ~~It will I think be best to do so if I now~~ ~~proceed to~~ explain the various words which appear in the course of this case and must appear in the judgment.

"Sunnis" are the orthodox Mussulmans, the people of the Sunna or Tradition. Their "Kulmi" or profession of faith is the simple one: "There is no God but God and Mahomet is the Apostle of God."

"Shias" means either separatists, which is probably the more correct derivation, or persons who are pure from the blood of those members of the family of Ali who early fell victims to the hostility of the Sunni Ommeiades, the Caliphs of Damascus. To the profession of faith of the Sunnis above set out the Shias add

following of Mahomet's words teach.

"Sunnis"

"Imam" means Spiritual Head — Supreme Pontiff.

"Pir" means spiritual head of a Ismaili community.

"Jamat" is a congregation of men or assembly of a religious community.

"Jamat-khana" is the meeting house or place of worship.

"Sheikh" is the Teacher or Instructor.

"Mukhi" is the Treasurer or Accountant.

"Kazi" is the Magistrate.

"Shias"

add: "and Ali, the companion of Mahomet, is the Vicar of God." The elevation of Ali, who, it is well known, was the son-in-law of Mahomet to an almost co-equal position with the Apostle of God himself, may be stated popularly as the great distinctive tenet of the Shias.

"Imam" means Spiritual Chief or as has been said Supreme Pontiff.

"Khoja" means the honourable or worshipful person, and the disciple.

"Murshed" is the spiritual head or hereditary head of the Imami Ismailis.

"Jamat" is the congregation of the people, the assembly in council of all the adult male members of the Khoja Community of the place.

"Jamat-Khana" is the council-hall or guildhall of the Community.

Mukhi

The Shiites are divided into several sections of the Shiites, e.g. of those who believe in

I Imamites

the succession of the 12 Imams.

To be interpreted below

But Imam Ali appeared in a grotto at Sarraman Raa (Sirmanraa) near Hilla in the 12th year of his age (and to have ate Vol 2. p. 11.) & was thence borne on a bell and to Heaven, Imam Lord. He is behind & is still alive and they look forward to his reappearance & reestablish the universal Caliphate.

II Ismailis.

II The Ismailis are of the sons of Jafar Sadik the 6th Imam. In Bombay they comprise Bohras & Khojahs. Both sect was founded in the early part of the 10th century from Kindarism to Islamism. The Khojahs belong to the Nizari subdivision of Ismailis & are followers of "the aga Imam of the Nizari" Thus the current writings are Bombay Khojas spiritual

Stretching on them. The Borahs on the other hand belong to the Western sub-division of the Dai-wad.. Dawat or Grand Prize lines at Zemen. ~~[illegible]~~ amin ali
12.13.

Continued page 23.

Or as stated in Vol I of Travels of Marco Polo, Edition of 1903, pages 140 and 141:- Adherents to the family of Ali as the true successor of the prophet existed from the tragical day of the death of Hossein and among these probably owing to the secrecy with which they were compelled to hold their religion there was always a tendency to all manner of strange and mystical doctrines, as in one direction to the glorification of Ali as a kind of incarnation of the Divinity, in another direction to the development of Pantheism and release from all positive creed and precepts. Of these Alilites, eventually called Shiahs, a chief sect were the Ismailis, who take their name from the seventh Imam, whose return to earth they professed to expect at the end of the world.

Some of the Ismailis apparently were known as Ali Ilahi, the origin of whose name is to be found in a book called the Dabistan by Mullah Mosheim

Abdurrahim Jami quoted by Mr. Colebrook, an extract from which is to be found in the note at page 218 of the Tarikh-i-Rashidi by N. Elias and E. D. Ross, Sampson Low & Co., 1895.

"Khojas" signifies the [illegible] or [illegible] [illegible] of the [illegible].

"Khojas"

~~"Moukhi" is the Treasurer or Steward.~~

"Kamaria" is the accountant.

~~"Wazas" is the Vazir.~~

~~In this case we have~~ to deal with three Aga Khans, namely Hassan Ali, the first, Ali Shah, the second, and Defendant-1, the third. Hassan Ali was the ~~son of one Kalifalah.~~

Belief of Shia Imami Ismailis.

Shia Imami Ismailis hold Ismail, the 7th in descent from Ali, to have been the last of the revealed Imams, and they 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 nuseerd of the Imamate or in Latin idiom the office of Supreme Pontiff is rightfully held by an hereditary succession of unrevealed Imams

the

(24) 37

the lineal descendants of Ali through Ismail

The revealed Imams, according to the Ismailis are these seven: 1 Ali, 2 Hassan, 3 Hoossein, 4 Zeinaledeen (this was that son of Hoossein who survived the massacre of Kerbela), 5 Mohammed Banker, 6 Jaffir Seedeck, 7 Ismail (who died before his father, and is called from his father's name Ismail-bin-Jaffir Seedeck.) + Repeat from the unrevealed Imams.

Revealed Imams

But the unrevealed Imams continue down to Defendant 1 who is the 48th. Their names are ~~as~~

~~following~~ Set out in Ex DH 132 the Doora.

This Exhibit shows the officer thinking of the idea of the Aga incorporating the 48th a Deputation of Ali is to my mind of such interest that I set it out at length. It may be called the Imami Creed. [Then insert the hinter forgs] ——

"Khojia" means the honourable or worshipful person the disciple.

But the Khojas argued the 2nd one viz Hassan merely was a Pir - See the Doora.

2 P.M.

38

~~D. N. 138~~

(Translation (1) of the title page of a printed prayer book in Sindhi and (2) of an extract from the same at pages 5 to 48 translated as read and explained by Jumabhai Ismail, a sworn reader.)

(1)

This book contains Pir Sadruddin's Ode

and

5 evening odes.

and

Three times' prayers.

(2)

Help (us) O Ali.

Say your prayers—Say your prayers—Say you prayers. May God bless you! Take the name of God. May the Lord Ali grant you faith and modesty. O Shah, accept my evening prayer and supplication by virtue of the privilege Thou possesseth, O our Master Aga Sultan Mahomed Shah.

(Then) you are to prostrate. If it is the night prayer, say "My evening and night supplications" and if it is the morning prayer, say "My evening, night and morning supplications."

Then repeat the rosary and prostrate.

Then repeat the following :—

I repent for my sins. I repent for my sins. I am a sinful servant (of Thine), sinful from top to toe. O Shah the Forgiver, forgive me. The Pirs pray, (Thy) servant supplicates. Thou, O True Shah, accepteth the same. (I obey) the Firman (i. e. mandate) of the Shah as communicated by the Pir.

Having said the above, keep the rosary on the ground and repeat the following :—

True declaration—God is Holy. Thanks to God. Praise to God. There is no God but God. God is Great. There is no might or power except

hat of God, the High, the Great, the Merciful, the Magnanimous, the Good, the Great Holy Providence (who is) in the District of Chaldea in Persia, in human form, descended from the seventy seven Patras (ancestors), and who is the forty-eighth Imam (Spiritual Chief), the tenth Naklanki Avatar, our Master Aga Sultan Mahomed Shah the Giver. 5

(Then) you are to prostrate. Then say "Hak Shah" (i. e. O Shah, Thou art true) and repeat (the names of) the ancestors of Vishnu and of the successors of the Shah.

(Names of) Vishnu's ancestors :—

Names of the Lord, that existed in the three Karans (very first ages), 10 the Avatars and their ancestors : —

The illustrious Ahonad (1), Ahonad was followed by Alakh (2), Alakh by Namail (3), Namail by Anil (4), Anil by Sunn (5), Sunn by San (6), San by Nan (7), Nan by Gnan (8), Gnan by Noor (9), Noor by Tej (10), Tej by Jal (11), Jal by Kamal (12), Kamal by Adbudh (13), Adbudh by Jag (14), 15 Jag by Tantva (15), Tantva by Prem-Tantva (16), Prem-Tantva by Adpurush (17). As to what there was before Ahonad in the most ancient ages, the particulars of the same are unknown. Then Adpurush appeared in flesh (in the following order) :—Hav, Kav, Dharam, Keshav, Tanonad, Ootra, Haritak, Parurva, Antatit, Premrukh. Then Machh was born. The illus- 20 trious Machh was succeeded by Manayek, Ajmer, Agarsen, Ichchhaoot, Brespat, Asvamitra, Paoontar, Padvir, and then Korambh was born. (2) The illustrious Korambh was succeeded by Bisiriat Dikhiat, Prajapat, Agarser, Kadim, Doyeh and then Vara was born, (3) the illustrious Vara was succeeded by Keshav, Khatriavas, Assav, Oonas, Khalipat, Gotam, Ant Haritak and 25 then Narsinh was born, (4) the illustrious Narsinh was succeeded by Manayek, Kowchak, Repak, Keshvadhan, Keshvarukh, (and) then Vaiman was born, (5) the illustrious Vaiman was succeeded by Mandhata, Prothmi, Jaishrin, Javlagan and then Farsiram was born, (6) the illustrious Farsiram was succeeded by Rugh, Nugh, Jujiat, Kable, Ajepal, 30 Dasrath and then Ram was born, (7) the illustrious Ram was succeeded by Padam, Jasvadhan, Virpar, Vasudeo, and then Krishnaji Kan was born, (8) the illustrious Kan was succeeded by Parikhat, Janmejai, Sesanand, Satanand, Vinovachhraj and then Budh was born, (9) the illustrious Budh was succeeded by Sish, Sam, Salam, Malkan, Islam, Haran, Saman, 35

Sajan, Aduan, Maod, Nizar, Mazar, Alias, Mudrakh, Khuzaime Kanane, Nazar, Malek, Faher, Luwe, Keb, Murai, Kelab, Kusai, Abdel Munaf, Abu Hasham, Abdul Muttalib, Abu Taleb Vali and then the Shah Mowla Murtaza Ali was born; (10) the successors of the Shah: I say (the descendants of) Abu Talab Vali (were)

1. Our true Lord Shah Ali.
2. Our true Lord Shah Husain.
3. Our true Lord Shah Zainul Abedin.
4. Our true Lord Shah Mahomed Bakar.
5. Our true Lord Shah Jaffer Sadak.
6. Our true Lord Shah Ismail.
7. Our true Lord Shah Mahomed bin Shah Ismail.
8. Our true Lord Shah Vafi Ahmed.
9. Our true Lord Shah Taki Mahomed.
10. Our true Lord Shah Razi Abdulla.
11. Our true Lord Shah Mehdi Mahomed.
12. Our true Lord Shah Kayem.
13. Our true Lord Shah Mansoor
14. Our true Lord Shah Moezz.
15. Our true Lord Shah Aziz.
16. Our true Lord Shah Hakem Abu Ali.
17. Our true Lord Shah Lahir Ali.
18. Our true Lord Shah Mustansirbillah.
19. Our true Lord Shah Nizar.
20. Our true Lord Shah Hadi.
21. Our true Lord Shah Mohtadi.
22. Our true Lord Shah Kaher.
23. Our true Lord Shah Ali Lakaria Salam.
24. Our true Lord Shah Ala Mahomed.

25. Our true Lord Shah Khud Jalaluddin Hassan.

26. Our true Lord Shah Alauddin Mahomed.

27. Our true Lord Shah Ruknuddin Khoor Shah.

28. Our true Lord Shah Shamsudin Mahomed.

29. Our true Lord Shah Kasam. 5

30. Our true Lord Shah Islam Shah.

31. Our true Lord Shah Mahomed bin Islam Shah.

32. Our true Lord Shah Mustansirbillah.

33. Our true Lord Shah Abd Salam.

34. Our true Lord Shah Garib Mirza 10

35. Our true Lord Shah Budr Ali

36. Our true Lord Shah Murad Mirza

37. Our true Lord Shah Zulficar Ali

38. Our true Lord Shah Nuruddin Ali.

39. Our true Lord Shah Sayyad Khalibullah Ali. 15

40. Our true Lord Shah Nizar.

41. Our true Lord Shah Sayyad Ali.

42. Our true Lord Shah Sa Hasan Ali.

43. Our true Lord Shah Kasam Ali.

44. Our true Lord Shah Abdul Hasan Ali. 20

45. Our true Lord Shah Khalilullah Ali.

46. Our true Lord Shah Hasan Ali.

47. Our true Lord Shah Aga Ali Shah.

48. Our true Lord Shah Aga Sultan Mahomed Shah the Giver.

Recognize him the present owner of the Imamat, the Master of the age, the Imam, the guide of the guides, the (Imam) in power, Aga Sultan Mahomed Shah the Giver, the Reliever of innumerable and crores of persons, the present owner of the Imamat. O Shah, accept my supplications in Thy presence by virtue of the privilege Thou possesseth, O our Master Aga Sultan Mahomed Shah. 25 30

P. 26

This Doowa is practically the same as the one in A. A's time D. A. 128 and A. S's time D. A. 129. except the necessary addition of the A. M. for the time being

Conversion of the Khojas to Mohammedanism.

Now Khojas originally were Hindus of the trading class inhabiting the villages and towns of Upper Sind. Their language is Sindi or Kutchi, a cognate dialect, and such ancient religious works as they possess are written in the Sindi character and language. Sind, an early Mohametan conquest, has long had and still has a large Mohametan population, but a considerable portion 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 Mohametanism. It must be taken as established now that they were so converted by Pir Sadrdin about 442 years ago. And according to the traditions of the great body of the Khoja Community Pir Sadrdin came from Khorasan and was an Ismaili Dai or missionary, sent by Shah Islam, one of the ancestors of Aga

Khan

Khan and the form of Mahomedanism which he taught his converts was the Shia Imami Ismaili faith.

In the well known case decided by Sir J. Arnould, 12 Bom. H.C. Rep., 323, that learned Judge sets out the various arguments for holding that Pir Sadrdin was a Dai or missionary of the hereditary Imam of the Ismailis probably Shah Islam and that he converted the first Khojas to the Imami Ismaili form of Mahomedanism. To my mind the arguments he there adduces are such as no attempt has been made on the part of the Plaintiff to shake in the present case.

Now it is admitted in this ~~present~~ case that the followers of the Aga Khan are not necessarily limited to Khojas and we find that his followers are to be discovered in Persia, Arabia, Zanzibar, Sind, Kutch, Bombay, Calcutta, Rangoon and other places

Followers of the Aga Khan

See the evidence of Ref 1. & that of his various witnesses who have lived without his influence

4(27)

places. It has also been proved in this case that for many years past the followers of the Aga Khan had been in the habit of making large voluntary contributions to their Sirkar-Sahib i.e. Lord and Master out of religious feelings to the Imam for the time being of the Ismailis whom they revere as their Hazar Imam ~~shed~~ or ~~their~~ spiritual head. ~~The chief of these contributions is that~~ is called "Dussoon", namely a percentage of the income of the followers, and contributions are sent on the occasion of births, marriages and deaths in the Community, at the New Moons etc., and in ~~recent~~ more recent years these remittances have been made by hundies and the acknowledgment of them made out in the name of the Aga Khan ~~for the time being alone~~ ~~Kuwam~~

I give a list of the hundies with the main names of those to the b. the below.

L.P.R.

known as Talika. Not only this but the evidence in this case shows that the followers of the Aga Khan have for many years past been in the habit of making pilgrimages to Dukhana ~~that~~ i.e. the principal residence of the Imam of the Ismailis for the sake of beholding and doing homage to the Aga Khan their spiritual chief. The evidence in this case shows that all these payments were made under headings such as "Sirkar-Sahil," "Pir Salamat," etc, which though varied in form all indicate one and the same appropriation, an appropriation namely to the Imam of the Ismailis as the Murshed or Spiritual head of the Community. The offerings, it appears from the evidence to have

Pir Sadrudin and Pir Habirudin wrote the Granths which have been put in evidence. The Dasaftar, as gathered from the

Pir Sadrudin.

The Dasaftar, as Sir Joseph Arnould says, is a treatise in ten chapters containing as its name imports the account of ten Avatars or incarnations, each dealt with in a separate chapter. The first nine chapters treat of the nine incarnations of the Hindu god Vishnu. The tenth chapter treats of the incarnation of the most holy Ali. ~~A large number of the~~ I state hereafter the upset of some of the Granths which were put in evidence before me ~~on behalf of~~ as supporting the contention on behalf of Deft: that his followers were enjoined by them to make offerings to him alone.

In my opinion the Dasaftar ~~and the Granths~~ as might be expected

expected are the outcome of an astute and clever brain. The object of the author was to convert the Hindus to Mohamadanism and the way in which he does this is by recounting the various avatars of the god Vishnu until he finally comes to Ali the son-in-law of the Prophet Mohamed. As we see in so many forms of religions, the author adopted the process of evolution. The same process can be traced through the various forms of serpent worship down to the time when the serpent is said to have tempted Eve in the Garden of Eden. The same process of evolution is to be seen in the various religions, the first forms of which spring from the form of the Lingam and the Yoni, and by a process of evolution and improvement ends in the idea of an Immaculate Conception. So, again, amongst the

Hindus

Hindus there is a ceremony, at which I myself was many years ago present, wherein the leaves of the nim-tree were crushed into a powder and handed round to the assembled community of fakirs who were bidden to eat the body of Shiva, a ceremony which by the process of evolution has resulted in what the Christian Church knows as the Holy Communion. In the Gnans we find the doctrines of Mahomet as disclosed in the Koran largely prevalent. The oral evidence in this case affords a striking example of the theory I am advancing. Three witnesses were called before me who belong to what are known as Guptis. They are unquestionably Shiah Imami Ismailis. But they certainly adhere to some of the Hindu practices,

for

for instance they do not circumcize their males and they burn their dead but they are true followers of the Aga Khan; and one could not help being struck with the dramatic aspect of the situation when two of those Guptis said that they had made a Mehmani to the present Aga Khan in the Ritz Hotel in Paris in the shape in the one case of 50 English sovereigns and in the other of French notes of the value of £4 sterling.

During the progress of this case ~~it~~ I confess it struck me as a strange thing that there should be any antagonism between the Sunnis and the Aga Khan and his followers, for in my opinion by the conversion of a large number of Hindus known as Khojas there have been received into the Mohamedan faith a large body of well-to-do, respectable and

physically

physically powerful members of the Community, who, had it not been for their conversion by Pir Sadrudin and Pir Rabirudin, must have remained followers of the Hindu religion, which, of course, is absolutely different from the Mohamedan.

~~"Jamat" means spiritual ship or, in other words, Supreme Religious Pontiff.~~

"Mukhi" is the spiritual head or hereditary head of the Jamat Samaj.

"Jamat" is the congregation of the faith, the assembly is composed of all the adult male members of the religious community of the place.

"Jamat-khana" is the Community house or public hall of the Community.

The offerings to the Pirs are to me matters of no outward "Jamaat Khana" (note to Travels of Ibn Batuta 1903. p 146 & 147.) are in many respects analogous similar to the well-known Peter's Pence which long offered to the P.S.G. for so many years. Hence the worship of a supreme Saint to whom the man in charge of Mohammedanism (or as it might be called Christianity) is the Priest is analogous to the Immaculate or worship of the supreme Saint to Mary the mother of Christ in the West.

Allen page 21.

Historical facts in history of the A. Ks.

Hassan Ali, the first Aga Khan ~~a little~~ [which Defendant 1 tells us ~~[illegible]~~ is not a little bit [illegible] of "this" a bit name than H. A. was a long man] ——— was the son of Khalilulla, who was murdered at a city of Yezd in Persia in A.D. 1817 in one of those brawls which are so ~~[illegible]~~ common in Persia. The then Shah of Persia Futteh Ali Shah severely punished the assailants in the fray and conferred upon Hassan Ali large possessions, the government of the districts of Koom and Mahelati, and the hand of one of his daughters in marriage. This action of the Shah was no doubt prompted by his dread lest he should be held responsible by the Ismailis for the death of their sacred Chief. The next we hear of Hassan Ali is in 1838 when apparently he revolted against the Shah of Persia and seized the government of Kerman where he himself

himself had numerous followers. The reason for his revolt was apparently that a favourite of the Prime Minister of Persia demanded in marriage for his son one of the daughters of Hassan Ali, who would be of course the grand-daughter of the late Shah. The Prime Minister backed up his favourites demand which was indignantly refused. Hassan Ali kept up his revolt till 1840 when overpowered by numbers he with difficulty escaped through the deserts of Beluchistan to Sind, where he was hospitably received. In Sind he found no money difficulties to contend with for the Khojas there had always been his most zealous followers and from them and the other Khojas in the various parts of the East he received ample supplies. He raised a body of light-horse who during the latter stages of the Afghan War in

1841

1841-42 were subsidized by Capt. Rawlinson for service under General Nott in Candahar. For these services and others which he was able to render to Sir Charles Napier in his conquest of Sind in 1843-44 he received a pension of Rs. 3000 per month from the Government of India. In 1845 H.H. came to Bombay where and at Poona he and his son and grandson have been residing.

(The pension H.H. gets flows from the British Government on O.H. 227. Given 18th Aug 1856.)

In 1866 the well known Equity suit came on for trial which is reported in 12 Bom. H.C. Reports, the judgment wherein sets out the history of the Aga Khan and his followers which by the clearness of its arrangement and language has formed the basis of all subsequent enquiries. In that case Sir Joseph Arnould summing up the evidence before him declares it to

to be judicially proved that "Mahomed Hussain Hooseini, otherwise Aga Khan," or, as he is more formally styled when mentioned in official documents by the Indian Government, "His Highness Aga Khan, Mehelati," is the hereditary chief and unrevealed Imam of the Ismailis – the present or living holder of the nursund of the Imamate – claiming descent in direct line from Ali the Vicar of God, through the seventh and (according to the Ismaili creed) the last of the revealed Imams, Ismail, the son of Jaffir Seeduck.

Extent of the Influence of the Aga Khans

His influence is much wider than was supposed when he first arrived in Bombay. In India it probably does not extend much beyond the Khoja Community, who are chiefly settled in the maritime cities of the West, in Sindh, the Punjab, and Cashmere. But the members of Sir Douglas Forsyth's Mission to Yarkand ascertained that considerable communities of Shias who acknowledge "Aga Khan of Bombay" as their spiritual head, and send regular tribute to him through agents in Serinuggar and other

towns

towns of Northern India, are still to be found far north, surrounded by the implacable Sunnis of Turkestan and Afghanistan. These Imamee Ismaili Shias form the whole of the sparse population in many of the valleys leading down from the Pamir, the elevated "Roof of the World", on the banks of the higher Oxus, and its affluents - in Chitral, Gilgit, and in remote valleys between Kafiristan and Badakshan hardly known to us except by name.

In Persia, Khorasan, and Western Afghanistan there appear to be considerable numbers of the Aga's disciples, but they seldom, if they can help it, avow their allegiance to him whilst living under a Sunni government. In the maritime towns of the Persian Gulf and Eastern Arabia, especially under the comparatively tolerant rulers of Oman, the Khojas flourish, frequently having, in some form or another, a claim to protection as British Indian subjects. On the

African

African Coast they are found, ~~[illegible]~~ ~~[illegible]~~, in the same posts where Vasco de Gama found them as far south as Mozambique. It is probable that, to this day, if a traveller wished to visit the Central Lakes in Africa, or the Ruby or Jade mines of Badakshan in Central Asia, he could not do better than procure introduction from the descendants of the "Old Man of the Mountain" to his disciples in those parts.

Hassan Ali died in 1881 when Deft 1 was about 4 years old and was succeeded by his son Ali Shah who had been appointed by him as his Pir or religious Deputy during his lifetime. Ali Shah was the Aga Khan down to the year 1885 when he died, when Deft 1 was 8 years old. Ali Shah during his lifetime by a Firman appointed Defendant 1 the Aga Khan see Exhibits 51 & 52 in Commission T.C.R. But Defendant 1 at the time of his father's death being of tender age the management of the estate and

In the present case the witness do not know [illegible] the age from which [illegible] to the A. K. & [illegible] in Bombay were called [illegible] me. I personally do not [illegible] their minors for to one of [illegible] with their position might be dangerous on the return to [illegible] country of their leaders with [illegible]

and properties was taken up by Lady Ali Shah until the year 1893 1901 when Defendant 1 at the age of 16 years took them up, leaving however, the domestic portion of the management in his mother's hands to a certain extent.

The mode in which the funds of the h. H's Estate.

I now state, that the way in which the h. H lived & kept up their family.

As I have said it has not been proved that the 1st A. K retained any property in Persia and I think I may take it that when he arrived in Bombay he had to rely on his pension from Govt and the offerings of his followers. Gradually he acquired properties and there can be no doubt that he maintained his family and the probably large number of retainers who must have accompanied him from Persia. He gradually acquired immovable properties in Bombay and elsewhere permitted

the members of his family and some of his retainers to reside in his various houses. He also acquired property in Poona where he followed the same practice. As the family increased the requirements of the family increased and the property increased. In addition to that he fed from a common kitchen all the persons living on his properties. Allowances were granted in cash to some of the members of his family out of which they provided themselves or perhaps some were provided by him with horses, carriages and servants. The same system was ~~adopted~~ continued in the time of A.S. and after his death by Lady Aishah on behalf of Deft. 1 and after Deft. 1 entered upon his estate by Deft. 1. I have been unable to discover any evidence to show that these allowances of cash, food and residence proceeded from anything but grace and favour of the Aga Khan. And Exs. 211, 215, 216 & 217 show that Deft. 1 assisted and was begged to assist various members of his family with large sums of money.

~~have this primary destination. It is out of~~ the fund thus raised after consultation with the Wawas, agent of the Imam, that the necessary local public expenses of the various ~~Communities are de-~~ ~~frayed~~ ~~The Plaintiff's case is that the offerings made by the members of the family in aid of the Imam and in the A. K. are in the first instance a gift of the Imam. Now obviously the most important point in the case of the Imam is that with it known, the Plaintiff's case in the bill fails utterly. The last point in this head is that~~ The last of this most important one is the there is no assertion whatever in the Plaint that offerings were made to the Aga Khan for the benefit of the members of the family as well as for himself. Para. 2 of the Plaint says "as such Spiritual Head as aforesaid the 1st Aga Khan was the recipient of large and valuable presents from the Khojas as aforesaid and also from the Ismaili Shias. He also received an allowance of Rs. 3000 a month from the Government of India. All the said emoluments or the investments now representing the same form as the Plaintiff contends parts of the entire estate of the said family wherein she claims to have rights as hereinafter stated."

(that the offerings of the members for the benefit of the family & the A. K. for the A. K. alone.)

The Written Statement of the 2nd Defendant does not set up such

a claim. It simply says she has been receiving allowances as of right.

Defendant 4, the widow of Jungi Shah, in her Written Statement, expressly disclaims any such rights.

It is noticeable we get to Koochick's Written Statement that this point is specifically raised. Para. 2 of that Written Statement says:- The Defendants say that the offerings from time to time received by the successive Aga Khans beginning from Shah Hassan Ali 1st Aga Khan were and are received by them not for their individual benefit but for and on behalf of and for the benefit of all the members of the family as shown in the Pedigree Exhibit A to the plaint. These Defendants say that the whole family is held sacred by the devotees as the family

that

Supplying the Premium to the Tithe Income of the family

There are certain other specific circumstances which were pointed out by Mr. Inverarity in his reply. At page 78 of Bhownagar Commission, Mr. Dadachanji made two admissions (1) that the offerings made by the followers of Aga Khan in the various Jamatkhanas were made by them on the occasions which have already been mentioned by the witnesses who have given their evidence; (2) that these offerings were collected by the Menkhi and the Kamadia and sent to the Hazar Imam in Bombay either through the Pargannah Kamadia or the Kul Kamadia by means of hundies as deposed to by the witnesses. Then at page 110 Mr. Dadachanji says: "My case is that those relations of the Imam to whom the followers paid monies on kissing their hands paid the monies into the Treasury into which the Imam monies lay and the Imam and his relations lived together and enjoyed the benefits in these monies which were mixed up with the Imam's money." So at that time there was no suggestion

gestion that the Aga Khan is not the Hazar Imam. Then the Plaintiff's advisers were going on the theory that the Gnans directed that the payments should be made to the members of the family and they alleged that the meaning of the word Al was progeny, but unfortunately for this theory Vazir Cassum Ismail was called - a man of great dignity and good position - and he explained the expression - see page 104. - "The expressions Al Ali and the Aulad Ali which occur in the Gnans have always been understood by us followers to mean that descendant of Ali who is on the gadi of the Imam." And he quotes the actual gnan which is Ex. D. N. 292 and is to this effect:- "The Al Ali is the son of Shalamshah Raja. As is Ali so is the Imam thus says Kabirudin is what Pir Sadrudin has said. The followers who believe this will get Paradise." Shalamshah

Raja

Raja was the then Imam in the time of Pir Sadrudin. The commission shows Mr. Dadachanji absented himself when this witness was examined and did not turn up to cross-examine him and declined to give any reasons for his conduct.

At the hearing before me the Plaintiff and her supporters were driven to contend that the Ginans are a recent introduction of the Aga Khan.

That commission lasted from the 26th November 1906 to 2nd January 1907 and no question was there put challenging the fact that the Aga Khan was the Hazar Imam. Moreover, no question is put as to whether payments were made to the female members of the family with the exception of payments to the mother of the Imam – see pages 59, 87, 142, 183

183 and 184. As Mr. Inverarity points out this idea of the mother refers to the reference in the old Equity suit to the Mata Salamat, which referred to Hassan Ali's mother, who was appointed a Pir and therefore got offerings as a Pir.

Again at pages 183 and 202, questions are put exactly contrary to the Written Statement of Hoochick. At page 183 the question is this: "If I prove that there has been an old custom before Hassan Ali's time to divide the offerings among the family of the Imam what will you do?" At page 202, the question is: "Do you object to the custom in the Imam's family to divide the offerings among the family?" The answer was: "Yes." According to this case, then, there was an old custom before Hassan Ali's

time

time to divide the offerings. When we turn to the Written Statement of Roochick, we find it stated that the practice has grown up not to divide them.

Then in the 2nd Book - Commission at Rajkote, Calcutta etc. - there again there is no suggestion made that any offerings were made to the ~~family~~ female members of the H. A's ~~Aga Khan's~~ family except his mother. And reliance is placed on the Gnans as being the authority for giving the family a share in the offerings - see page 272. At page 246 you find the first suggestion that nephews of Ali Shah were paid their expenses at Rajkote. Then at page 335 you have the suggestion that the offerings were divided amongst the relatives in a fixed sum for each relative - see page 335. That commission lasted

from

from the 13th January to 3rd April 1907.

In the 3rd Book of commission no question is put challenging the Gnana or challenging the Doowa as having been recent inventions.

Then in the evidence on commission on behalf of the Plaintiff and the Defendants who support her, which lasted from 31st August to 31st October ~~1907~~ 1907, no suggestion was made that the Gnana and Doowa were recent inventions, but everyone who was asked admitted that he knew the Doowa and the Gnana as long as he could remember. Some of them said that they could not say whether the names of the 48 Imams

were

were recited because they were said so low that they could not hear.

An attempt has been made to the effect of the defts. counsel to show that the known injurious behaviour of officers to the members of the family but it is clear that the passage which on (F. to Mr. & Co.) (see p. 143 Sahib's Khan evidence) refers to "abuse" taken in law & not to offences such as those in question. I cite the passage Pertaining to his home Sahib's Khan & the Commentary on it see p. 143 & p. 103.

~~that supplies the Imam and that the~~

Aga Khan	for the time being is the	titular head and representative of

~~the family~~

Upon the first of the 2 main points in this case ~~Upon this point~~ a mass of evidence has been given, which of course I must deal with, and it may I think be divided conveniently into two heads (1) the evidence taken on commissions, (2) the evidence given before me.

Evidence on Commission
Evidence at hearing.

Pltffs' Evidence on Commission.

I propose to deal in the first place with the salient points in the Plaintiffs' evidence on commission. And I may say at once that the Plaintiffs' witnesses were called to prove generally that out of the offerings utensils of the Jamat are bought, furniture is bought, repairs of the Jamatkhana made, expenses of lighting the Jamatkhana made, wages of the servants of the Jamat paid, help is given to the poor persons belonging to the Jamat, and out of that whatever balance is left is sent to the

the Aga Khan and his family.

The first witness of the Plaintiff goes as far as to say that he considers H.H. Aga Khan and his family as his Murshed i.e. spiritual leader. After denying that there are already factions amongst the Khojas in Bhuj he admits that there are two factions amongst them. He says further that he knows some relations of the Aga Khan have filed a suit against him but he does not know what the case is about. He does not know that they claim to have a right to a share in the offerings which his followers make to the Aga Khan. No one spoke to him as to the nature of the claim in suit. He does not understand what ~~is~~ is meant by Ismaili nor what an Imami means. He does not understand what Shia

Ashmachalya

Asnacharya means although he understands what a Shia means. He does not know who the 12 Imams are. When their names are given to him he says he does believe in them. He says that he only regards "the male members as our Moursheds but we do not regard the females as our Moursheds. We regard them only as Bibis of the Moursheds." He concludes by saying that he is a Khoja but he is neither Ismaili nor an Asnacharya. He does not know the distinction between the two.

The 2nd witness Jaffer Mowji does know what is meant by Asnacharya Khojas. They believe in the 12 Imams only. He gives their names:- Ali, Hassan, Hussein, Zenalabedin, Mahomedbakar, Jafar Sadak, Moosa Kasam, Moosa Raza, Mahomed Taki, Alinaki, Hassan Askari and Mahomed Mehdi. He believes only in these

(34.) 10

12 Imams as the true Imams descended from Ali. He does not accept the present Aga Khan as his Huzur Imam. He says he ~~only~~ never heard a Doowa in his life and does not know that the names of the 48 Imams including the present Aga Khan are recited in the Doowa. His evidence is also very unsatisfactory as to there being two factions amongst the Khojas in Bhuj. He admits the Aga Khan is entitled to do with the monies i.e. offerings as he pleases. He cannot quote a single text from the Granis i.e. religious books of the Khoja faith directing that the members of the family ~~be~~ be recognised as Mursheds. Female members cannot be considered as Mursheds as they are merely Bibis.

The

The 2nd witness Bunde Ali denies that there are factions amongst the Khojas in Bhuj. He admits that "when the talikas are received in the Jamatkhana they are saluted and the seal thereon kissed by us," although he does not remember to have saluted or kissed a single talika. These talikas are from the Aga Khan Shaheb in his name. He admits that dozens of Khojas in Bombay and other places believe in the Aga Khan as their Huzur Imam as a Dhani of the Huzur Jamat and such Khojas are known as Shia Imami Ismailis. He does not consider anyone as Imam except the first twelve. The female members of the family he does not consider as Mumsheds. They are merely Bibis.

The 4th witness, Dalla Shiji,

does

does not know that in the Doowa the names of the 48 Imams are recited. He recognizes only one person as the Murshed that is the Aga Khan who shows him the path in religion and he considers him alone as his Murshed. The monies are sent to him for the reason that he is Murshed. The members of the family would be entitled to the maintenance out of the payment remitted to the Aga Khan only if they are Mursheds and not otherwise.

Pir Mahomed Sanyar, witness No. 1 on the Mandvi Commission, says that he regards Coochick as his Murshed. He regards the whole family of the Aga Khan as his Murshed. He regards every member of the Aga Khan's

family

family as his Murshed having the same position as the Aga Khan as Murshed. "We would give the same respect to any other Murshed from the family as we would give to the Aga Khan himself." He says he never kissed the hand of any relation of the Aga Saheb whenever such relation might happen to be with him. But has kissed the hand of Aga Saheb on two or three occasions. Although he knows that 48 names are recited in the Doowa he has not heard nor does he know the names, but he knows that 48 are the names from Huzrat Ali down to the present Aga Khan. He himself believes only in the 12 Imams. He says the Anjachayas believe in the 12 Imams including Moosa Kassam as the 7th and

the Ismailis believe in the Shah Ismail and his descendants as their Mushed. He is not prepared to swear that the Ismaili Khojas do not believe in the Shah Ismail and his successors on the Gadi up to the present Aga Khan as their Imams.

Veersey Dhandhoy, witness No. 2, says that out of the balance of the offerings monies are sent to the Dharamguru for the maintenance of himself and the family, and he gives specific instance of money being paid to Ali Shah for himself and his family. He is a daily labourer earning about Re. 1¼ a day the joint earnings of himself and his son. He has never heard the names of Shah Ismail and his descendants on the Gadi

down

down to the present Aga Khan recited in the Doowa. He would regard all the descendants of our Moursheds down to the present Aga Khan" as his Moursheds. He also says that "the female members of the descendants of Shah Ismail would not be our Moursheds. They are merely their Bibis."

Witness No. 3 Nathoo Virji is neither Shia Ismaili nor Shia Asnacharya. He cannot say what sort of a Shia Khoja he is. He does not understand what is meant by Shia Ismailis nor Shia Asnacharyas. But he believes only in the 12 Imams. He also says that the Bibis of the Moursheds are regarded only as their Bibis. He has never heard the Doowa in which the names of the 48 Imams are

recited

(40.)
recited. He admits that the Khojas of Kutch do not regard Coochick as Dharamguru as they regard the present Aga Khan, and he says as follows:- "The present Aga Khan is on the Gadi. I now say that my previous statement that all our Menusheds including the present Aga Khan are entitled to equal respect and reverence is not correct. I cannot give the name of a single member of Aga Shah Hassan Ali's family who has ever been regarded as Dharamguru by our Jamat or by any other Jamat anywhere else in the same way as they regard the present Aga Khan and his father and grandfather respectively as their Dharamgurus.

As a matter of fact the other members of Aga Shah Hassan Ali's family are not regarded by the Khojas as their Dharamgurus just as they regarded Aga Shah Hassan Ali and Aga Ali Shah as their Dharamgurus and do regard the present Aga Khan as one. These three persons have been on the Gadi."

He also mentions one occasion on which Jumabhai Ismail said that the Aga Saheb was coming to the Mandvi harbour and something should be given to him for the family of Shah Hassan Ali, and another occasion on which he said it is resolved to give the Aga as Nazrana Rs. 125. He cannot explain why on the second occasion no mention is made of the family of Shah Hassan Ali, and I should be disinclined to believe this witness altogether on this point. He says that except the present Aga Khan and Ruchick Shah he does not know the names of any members of the family of Shah Hassan Ali nor has he seen any.

Ladha Rahimtulla is a servant and he says whatever balance of the offerings is left is sent for the food of Defendant 1 for the family of Hassan Ali, and that the money is sent for that family in order that the children may be fed because Hassan

Ali

Ali is our Murshid. It appears, however, that he ~~has~~ earns only Rs. 10 a month. His evidence as to the entries in his books in cross-examination does not strike me as very satisfactory. He considers the present Aga Khan as his Murshed and apparently fences a ~~great~~ great deal on the questions he is asked. Q. Do you consider yourself bound to accept as your Imams such persons as Pir Sadrudin may have directed you to believe in? A. Yes. Even if Pir Sadrudin has directed us to recognize Salam Shah and his descendants on the Gadi as our Imams, I would not recognize Defendant 1 as Imam. My previous statement that I consider myself bound to accept as my Imams such persons as Pir Sadrudin may have directed us to believe in is not correct and is false."

Mahomed

Mahomed Nanji, commission agent and doing business on his own account, similarly says that the balance of the offerings is sent to Bombay for the family of Hassan Ali because he is their Murshed. He says that he was present when the Rs. 125 spoken by Nathu Viji was paid for the family of Hassan Ali and he says that it was said at the meeting that it was for the family of Hassan Ali. But although he says that he follows at present the Khoja Shia Ismaili faith he cannot explain what Shia Ismaili means, and to the question: if those who follow the Shia Ismaili faith believe in Hazrat Ali and those who have succeeded him on the Gadi down to the present Aga Khan as their Imams, do you still consider yourself as a Khoja following the Shia Ismaili faith, he answered "No," from which it would appear as if his views on the subject of his own religion

religion were somewhat obscure to say the least. Then he says he believed only in the 12 Imams. He does not consider himself at present bound to follow the Dowa in which the names of the 48 Imams are recited. He does not regard the Defendant 1 as his Hazar Imam. From this it would appear to me that this witness is a seceder. He further says: "When I said in my examination-in-chief that the balance after consulting the members of the Jamat is sent to Bombay for the family of the Aga Shah Hassan Ali, I stated simply what I had heard and not from my own knowledge. I have never seen since I have been acting as the Kamadia, or at any time before that, any writing in which it was mentioned that our payments were for Aga Shah Hassan Ali's family's maintenance, nor can I produce any such writing in support of my statement. I have not seen

any entry in the books of our Jamat stating that the payments made to the Aga Shah were for the maintenance of Aga Shah Hassan Ali's family." His cross-examination as to the payment of the Rs. 125 to the Aga Saheb tends to throw considerable doubt on my mind upon his evidence on the point. He further says that the amount which each member of Hassan Ali's family would get would not depend upon the nearness of the relationship to the Aga Khan and the males should get the same share as the females provided they are the members of that family. He cannot answer the question: would you prevent the Aga Shah from spending the monies as he likes. The note by the Commissioner at the foot of his examination shows that he is an unsatisfactory witness.

The next witness is Bandeali Dhalabhai

Dhalabhai. In cross-examination he says that he believes only in 12 Imams and not in the present Aga Khan as his Hazar Imam, whereupon his examination promptly concluded, and the Mandvi commission closed.

Rahimtulla Hamir, the first witness on the Mundra commission says as usual that whatever ~~the~~ balance is left is sent to the family of Hassan Ali for their maintenance by the Jamat. He then describes in detail the Memani which his master had given to the Aga Shah, but the first answer he makes in cross-examination is that he follows the Shia Asnashari faith and has been doing so for the last 20 years. Before that he followed the Shia Ismaili faith. At present as an Asnashari he believes

only

only in the 12 Imams. He goes on to say that as a Shia Asnashari he does not believe in Defendant 1 as his Hazar Imam. Those who believe in him as such are known as Shia Imami Ismailis. After he became an Asnashari he ceased making any payments to the Aga Khan and the Jamat Khana. When he was a Shia Ismaili he believed in Aga Ali Shah as his Dharamguru. Then he says: "I believed in him as my Murshed." He did not believe in him as being on the Gadi of Hazrat Ali. He did not believe in him as being on the Gadi of Murshedship. He cannot point out any text from the Granth directing that the Shah Ismailis should recognize the family of Hassan Ali as their Mursheds, and he further says when he said that Hassan Ali's family members were their Murshids

he

he said so simply from what he had heard from other people in his Jamat. He goes on to say that all that he stated in examination-in-chief as to the disposal of the monies by the Jamat was stated on hearsay. His cross-examination on the Memani incident shows that he is not very reliable on the subject.

Ladha Vali is a trader at Mundra. He believes in the 12 Imams as his Mursheds and follows the Asnashari faith. He does not say that the balance of the offerings is given to the family of the Aga Khan. In fact in cross-examination he says that no payments are made out of the collections made at the Masjid for the family of Hassan Ali or for any one else. They are not sent to the family of Hassan Ali because those who attend the Masjid do not regard them as their Mursheds and have nothing to do with them. He does not assist the Plaintiffs' case much.

Ladha Devsi says that the balance of the offerings is sent to the Aga Saheb for himself and his family by which he understands Ali Shah's brother, Aga Jungishah Zenalabedin. He also is an Asnashari and used to regard the Aga Khan as his Dharamguru. He mentions a Memrani given to Aga Saheb but on cross-examination

does

does not give very satisfactory account of it.

Adat Jiraj is an Asnashari. He also says that the balance of the offerings is sent to the family of Hassan Ali, and he says monies used to be sent to Hassan Ali and his family from the talikas which used to be received and which were read out in the Jamatkhana. He says these monies were sent to the Hassan Ali's family as Sayeds but the monies were never sent to them as Mousheds, and it is not correct to say that Hassan Ali and his family are the Mousheds of the Khojas.

Ladha Devji says the offerings were sent to the Bombay Jamat in order that they may be given to Hassan Ali's family. In cross-examination he says that he is an Asnashari and then he makes the astounding statement that during the 12 years that he

attended

attended the Bombay Jamatkhana he never either heard the Doowa which was used to be recited there nor did he know what sort of Doowa it was. He never heard the Ginans which used to be recited there and does not even know that there are Ginans of Pir Sadrudin and Pir Hasan Kadirudin. He says only the male members of the family of a Mukhi would be regarded as Mukhis. The female members would simply be the Bibies of the Mukhis. Hassan Ali never claimed to be an Imam. If he made such a claim it was a false one. He never saw the Bombay Jamat making any payment to any members of Hassan Ali's family and the statement that the Bombay Jamat used to make the payment of the monies remitted to the family of Hassan Ali was made from what he had simply heard from the other Khojas, but he cannot give the name of a single such

such Khoja.

Dalar Dina, witness No. 1 on the Bharapore commission, is a grocer. He says that the balance of the offerings was sent to the Bombay Jamat for maintaining the family of Hassan Ali. He first says he had not seen Hassan Ali. Then he says he had seen him but he does not know when and where. He never heard the Dooa recited in his life. He does not understand what Khoja religion is. He has no idea of what a talika means.

Merji Rahim the Patel of Bharapore and a cultivator says that the balance of offerings is sent to Bombay to Hassan Ali's family. He does not understand what is meant by Shiahi. He believes in the Imams whose names are recited in the Dooa. He regards the families of the 48 Imams from Hazrat Ali to Sultan Mahomed Shah as "Sun Mursheds." He ad-

mits

mits: "When Hassan Ali was alive he was our Sarkar Saheb. On his Gadi succeeded Ali Shah who then became our Sarkar Saheb. Sultan Mahomed Shah succeeded Ali Shah and he then became our Sarkar Saheb." He says that when the words "accept Maulana Sultan Mahomed Shah" used to be recited by the person who led the Doowa at the end of each Sujida we used to make obeisance. He cannot produce any writing, entry or document of any kind whatever to show that the monies remitted by the Jamat are for all the descendants of Hazrat Ali or for the family of Hassan Ali.

Aledina Moledina, Khoja by caste, is an inhabitant of Kera. He says the same as regards the balance of the offerings and says he sends the monies to the family of Hassan Ali knowing them to be "our Mursheds" so that they may maintain themselves. In cross-examination he says he believes at present only in the 12 Imams not in the 48. He considers Shah Ismail as a Sayed, as also all the ancestors of Hassan Ali. He says he may have read the Ginans of Pir Sadrudin but does not remember them. He regarded Hassan Ali as his Murshed because he gave Bodh to his grandfather who regarded him as his Murshed. He says that he heard Kuchick giving Bodh at Kera in March or April 1907. He says that Imam Shah

(58.) 12

Shah gave him Bodh in Bombay in Samvat 1932. He says there can only be one Mourshed. His name is Gadi Varas Aga Sultan Mahomed Shah. He says: "We consider our Mourshed as our Sarkar." He regarded Hassan Ali alone as the Sarkar Saheb. He cannot produce any document to show that ~~so~~ any monies were remitted by the Kera Jamat to Hassan Ali and his family. He may have read the talikas but he does not remember them. From his cross-examination with regard to the Police proceedings against him it is evident he is very hostile witness to Defendant 1.

The next witness Jaltu Gangji

Gangji believes only in the 12 Imams and not in the 48. He goes to the length of saying that although he has joined in the Doowa which is recited by the Khojas in the Khoja Jamatkhana he does not know how many names are recited in the Doowa and he has not heard a single name recited in the Doowa. He does not know how to recite the Doowa. He considers himself a Shia Khoja but not a Shia Imami Ismaili. He says that it is not recorded anywhere that the monies are sent for Hassan Ali's family. He speaks to Defendant 1 having Nazrana placed at his feet when he came to Kera in Samvat 1960. According to him the nearer relations of the

Aga

Aga must get a larger share out of the monies remitted than those who are distantly related.

After this witness Aledina Meoledina was recalled and his evidence shows that the books of the account of the Kera Jamat which he was directed by the Commissioner to produce in Court are not produced.

Abdulla Piradina in business at Kera speaks to the balance of the offerings being sent to Bombay for the family of Hassan Ali. In cross-examination he speaks to factions being in existence in the Jamat at Kera and his having been charged with rioting in the Police Court. He cannot account for the Kera Jamat being required

to

to as the Ismaili Jamat in the last hundies sent by the Kera Jamat except that it must have been by some mistake. He believes only in the 12 Imams. With reference to the Karsazis remitted to Bombay he wrote in the books of account of the Jamat that the monies were remitted to the Aga Khan Saheb in Bombay. He tries to explain why the books of account were not sent before the Commissioner.

Meherali Mahomed is a cultivator at Kera. He says that the balance of the offerings is sent to Hassan Ali's family by which he means those born of him for their expenses. In cross-examination he describes how Roochick came to Kera, made a speech to

the

the Jamat and they placed 200 Kories before him. These monies were paid for Koochick himself. He also believes only in the 12 Imams. He says that the Jamat does not recognize the Defendant as their Hazar Imam.

Haji Kasam Haji Dhala in business at Kera is also an Anabhaia and became one about three years ago. He says except the 12 Imams all the descendants of the Prophet must be treated as Sayads.

Meherali Rahim is the first witness at Anjar and is in business there. He says the balance of the offerings is sent to the Bombay Jamat for the family of Hassan Ali. In cross-examination he says that his religion is

is that of the Musjid i.e. belief only in the 12 Imams, which faith he has been following for the last 12 years. He does not know if Defendant's name used to be recited in the Doowa after he came to the Gadi. From the note taken during his cross-examination he seems to be a most unsatisfactory witness.

Jaffer Hasam of Nagalpore, in business there, says the balance of the offerings was sent to the Bombay Jamat for the family of the Aga Sahebs who are "our Dharamgurus." He is also an Asnashari and his father was before him. He does not know whose names are recited in the Doowa.

Hirji Visram of Simgra, a grocer, does not know what

is done with the payments made in the Jamatkhana. He also is an Asnashari. He believed in the Aga Khan before he became so.

Ladha Pira says that the balance of the offerings is sent to the Bombay Jamat for the family of Hassan Ali who are his Mursheds.

Ladak Ranji of Nagalpore says that the balance of the offerings is sent to Bombay for the Aga Saheb's family for their expenses as Hassan Ali was their Mursheed.

I have gone at length through each of the witnesses on commission called by the Plaintiff and it will be seen from my remarks upon them as I went along that they do not strike one as being of a very satisfactory character, nor are they in as good positions generally as the witnesses called on behalf of the 1st Defendant. Those witnesses were inhabitants of and were examined at Bhownagar, Junagadh, Rajkote, Calcutta, Rangoon, Jamnagar and various parts of Kutch and Karachi and Zanzibar. They are taken from every class of the Community. Looking at the mass of evidence they have given it would be impossible for me to go through each of them as I have done in the case of the Plaintiffs' witnesses. The most important are Essabhoy Dawood witness at 1 on the Bhownagar commission

Defendants' witnesses on Commission.

mission, Issabhai Nanji witness No. 2 on the same commission, Hassambhai Ismailbhai witness No. 20 on the Junagar commission, Hassam Sallay witness No. 79 on the same commission, Kala Ruda witness No. 3 on the Rajkote commission, Nanji Bhallu No. 11 on the same commission, Velji Vasanji No. 15 on the same commission, Goolamhussein Parpia No. 1 on the Calcutta commission, Jiva Jamal No. 10 on the same commission, Mamadbhai Coorji No. 1 on the Rangoon commission, Mahomedbhai Jasraj No. 2 on the same commission, Walibhai Pirani No. 1 on the Nagalpore commission, Pirmahomed Ibrahim No. 11 on the same and Moledina Meghji No. 33 on the same. I have selected these witnesses

Abdulla Latifbhai No. 1, Kaverbai Goolamhussein Valli Ditto, Kazanali No. 13 Ditto. I would special attention evidence at p. 336 Mitha Jana No. 1 in the commission evidence at p. 156 ff. Sayal Mahomed Ibrahim No. 5 specially page end of XX. and Valli witness No. 27

after perusing the whole of the evidence twice.

This witness against the Jamaat is true.

The first and most important point as regards this evidence to my mind is that it is evidence which is strongly against the pecuniary interest of all the witnesses. Very large sums indeed are paid from all these different places to the Aga Khan for the time being. ~~as Dasoon which is 2 annas in the~~ rupee of their income; also on the occasions of marriages and births and deaths in their families; also at the performance of the Jalsupra which is a very curious but interesting ceremony. On these occasions fruits, meat, sweetmeats, vegetables are brought in ~~large quantities in the Jamat-~~

~~[illegible] Mahmudi (an-[illegible] to the Aga Khan)~~

Khana

Khana as free gifts to the Aga Khan. They are then put up for auction and are bid up to sometimes ten times their intrinsic value and the proceeds are paid in for his benefit in the Daftar-Khana. Regular books of all receipts have been kept since the time of Lady Alishah as will appear hereafter.

It may be taken then that the followers of the Aga Khan voluntarily make large offerings to him on all the important occasions in their lives. They call him by various names which betoken his very great spiritual importance in their eyes. He is their Dharmaguru i.e. religious preceptor, their Nagar

Imam

Occasions on which fees are paid to the A. K.

The following are the ceremonies and occasions upon which the A. K. is entitled to receive fees:-

Thalsifra. This takes place after the recital of Ginans is over i. e. three times a day and sometimes twice. The followers or Murids bring from their houses sweetmeat, fruits, cooked and uncooked food for the Hazar Imam. These articles are placed in trays or baches. Then the Mukhi Ramadia puts them up for auction in honour of the Hazar Imam. The first Memani fetches the highest price, the second less and the third is still less. The money is paid on the spot and the person paying it says: "This is the property of the Hazar Imam." After the auction is over the followers come near the Mukhi Ramadia and ask him to invoke blessings on the souls of the deceased persons. For that money is paid. No sum is fixed. The Mukhi then joins his hands with the hand of the donor and says: "Ali Allah

Nacial-

Naiat Murad Kabul Kare" – May Ali (Allah) accept or fulfil these wishes. The money which is bid for the articles is more than the intrinsic value of them. The fruits etc. may be eaten at the Jamatkhana or the houses of the purchasers. More than the intrinsic value of the articles is paid because they are brought as the Mehmani of the Imam.

Again the Khojas drink water mixed with the Karbala dust (Abe Supa) daily and specially at New Moon at the Jamatkhana. Money is paid to the Hazar Imam on that occasion.

Again the Punjebhais or the Khas special Murids of A. K. make payments on the days on which they meet to recite a Majlas of the Gnans and the tenth Chapter of the Dasavtar. Punjebhai = one who joins palm with palm or five bro-

thers

thers or assembly of brothers. Each
Punjebhai has a day allotted to
him e.g. the witness Joomabhoy
was a Wednesday and New Moon
day Punjebhai.

Again there is a box with
a slit in it in the Jamatkhana and
the safe itself has a slit in it into
which payments are made to the
Hazar Imam e.g. the Dassoon or
the 2 annas in the Rupee.

Again on the birth of a
male Rs. 2.-10.-- is paid and of a
female Rs. 1.-6.--

For a marriage Rs. 8 for
"Domani Kori." Rs. 10 is paid for "Mand-
wani Dooua" paid by the bridegroom's
father. The bride's people pay Rs. 2 for
Mandwani Dooua. It is said at
the place where the marriage is
performed. Dooua at the house
is "Naiyat Mumad". At the house
of bride and bridegroom. Dar is Das-
soon — is a percentage on the

Dooua

Dower - 2 annas in the Rupee. The Dower or Dej consists of ornaments and clothes.

In connection with death, the Mukhi Kamadia is sent for and the 10th chapter of the Dasavtar is recited. The Samar Chhanta is performed with reference to death. Some people have it done when they are alive. Money is paid then for the Hazar Imam. After the body is buried other payments are made at the Jamatkhana namely Samar money for the Hazar Imam alone. The object of the Samar payment is that the soul of the deceased may rest in peace and get Sawab. Samar = provision for the journey. (Under. The connection between this and the coin placed in the mouth of deceased Greeks to see them safely across the Styx)

Another payment is called Sirni" (Halwa) (a sweet). When the Hazar

Imam

Imam comes to the Jamatkhana Sirni is placed before him. He touches it and the followers after placing money before him eat the Halwa.

Every New Moon there is a payment called "Chandrakhi", which is taken into account when the Dassoon is paid.

On the 7th day of each month the followers fast for 4 hours from 6 to 10 A.M. and payments are made in respect of the "Moula Ali Roza". Roza = fast.

When the Huzur Imam names a child a fee of Rs.2-10-- is paid for the male and Rs.1-6-- for a female.

There is another ceremony called "Shir Bundi", literally the offering of the head. In this ceremony the follower puts the whole of his property at the disposal

through the Committee of Wakfs in the Jamatkhana

of the Imam. But they magnanimously relieved him from such an excessive sacrifice. They fixed the price at which he is to buy back the whole of his property and the price so fixed is paid to the Imam.

I myself went with the Counsel of some of the parties to the Jamatkhana and saw Thalsupra and Shir Bundi.

He sat on a chair in front of a mirror and in the room in which of A.K. with them he attended to Jamatkhana. The whole hall was full of Khojas seated and then lounging on the ground. In another room the women of the community have attended & they through similar ceremonies. It was a most impressive sight owing to the reverence with which the whole proceedings have been conducted.

I may mention that the Piffs, Counsel & the hirtar to accompany us has been also Kachchi himself but in some Khojas in another - which he cannot tell a otherwise I cannot say - the initiation was Kachchi.

Titles of H. H. A. K.

The following are some of the titles of the Aga Khan:—

Hazar Imam = present Imam.

Hazar Jomejo Dhani = present holder of the mantle.

Hazrat Maulana Dhani = present ~~holder of the appellation of God~~ Lord, the Owner

I.P.R.

Dhani Salamat (Salar), Dhani = Master - may be safe - the Giver.

Pir Salamat Salar - Dhani Pir.

I.P.R. Khudavand = ~~God or~~ Lord.

Shah Pir = Great Lord.

"Gur Pir" = spiritual instructor.

Pir Shah - and others.

[illegible] titles Pir Muhammad [illegible] (p. 424) since "the [illegible] Hazar Imam and [illegible] of my heart & [illegible] of my eyes".

When these names are pronounced

pronounced the followers

bow.

The characteristics of the Hasagils (for remittances sent to Bombay) are described in "the pressure of Khodawand Olamis clamant & entreat" Khodawand memiz Jotw Dist

The letter says "then the Tablets (i.e. documents &c. accompanying remittances to Bombay) but remind we bring the seals because they are the seals of the Hazrat Imam; hence letters then are then be sent to the Imam of the H.H. under our obedience, as they did showing the evidence in Commission see L. 377 (inter alia)

Shall of the H.H. followers as the building of Humanities do their duties gratis & out of respect & regard for him.

When the Aga Khan entered the Court all his followers who were crowded in it rose up and ~~he~~ followed him to give his audience in a chair, to enable them to ~~take~~ resume their seats. Another fact which strikes one upon this point is that practically none of the witnesses on either side knew anything about who the members of the family were. They only knew one or two by name e.g. Jungi Shah and Akbar Shah, and many of them only saw Hurchick Shah on the commission. This fact is important to my mind because knowing the native character as one does after a long period in this country it is to my mind very difficult to suppose that all these persons for many years have been in the habit of contributing monies towards the maintenance of persons whose very names and relationship to the Aga Khan they were wholly ignorant of. But

Fresh para.

Witness says A. K. [illegible] says [illegible]. [illegible] says [illegible].

But in my opinion the documentary evidence adduced on the commission on behalf of 1st Defendant is of greater importance. ~~[illegible]~~ As regards the ~~latter~~ oral evidence of course it can be said that the witnesses for the Plaintiff support the case of the seceders, while the witnesses for Defendant 1 support him, and, therefore, the evidence on both sides must be largely discounted. But no suggestion has been made that the Defendant's Exhibits, on commission, which amount to no less than 133, or any of them, are fabrications or forgeries.

Important as the Exhibits are in my opinion.

I shall refer merely to the exhibits themselves, for to deal with them in detail would take far too much time:- Ex. No. 3, page 4, Ex. No. 4, page 6, Ex. No. 6, page 8, Ex. No. 7, page 10, Ex. No. 8, page 12, Ex. No. 9, page 14, Exs. Nos. 11 & 12, pages 17 & 18, Ex. No. 15, page 21,

a

a birthday gift to the Aga Sultan Mahomed Shah, Lx. No. 17, page 23, Lx. No. 18, page 25, Lx. No. 20, page 27, Lx. No. 21, pages 28 to 33, Lx. No. 22, page 34, Lx. No. 25, page 37, Lxs. 28, 29, pages 41, 42, Lx. No. 30, page 43, Lx. No. 31, page 44, Lx. No. 31 1x2, pages 44, 45, Lx. Nos. 35, 36 x 37, pages 50 to 52, Lx. No. 39, page 54, Lx. No. 48, page 63, Lx. No. 49, page 69, Lx. No. 50, page 72, Lx. No. 54, page 76, Lx. No. 55, page 77, Lx. No. 57, page 88, Lx. No. 62, page 93, Lx. No. 63, page 94, Lxs. Nos. 64 and 65, pages 95 x 96, Lxs. Nos. 72 x 73, pages 103 x 104, Lx. No. 76, page 106, Lxs. Nos. 79 x 80, pages 110 x 111, Lx. No. 83, page 114, Lx. No. 85, page 116, Lx. No. 86, page 117, Lx. No. 89, page 120, Lxs. Nos. 90, 91, pages 121, 122, Lxs. Nos. 92 x 93, pages 123 x 124, Lx. 95, page 126, Lxs. Nos. 97, 98, pages 128, 129, Lx. No. 99, page 130, Lx. No. 100, page 131, Lx. No. 107, page 138, Lx. No. 115, page 153, Lx. No. 116, page 154, Lx. No. 117, page 155, Lx. No. 124 page 164.

Looking

Looking at all these Exhibits in not one of which does the name of any member of the family of any of the Aga Khans for the time being appear, it is to my mind inconceivable that the parties paying these monies should not have made some mention about the members of the family had they intended the monies they paid or any part thereof to go for them. Not only are the followers of the Aga Khan in the habit of paying these large sums of money but we find that in some cases monies were paid to the Aga Khan for the purpose of insuring their goods - see Ex. No. 4, page 6 and Ex. No. 62, page 93. Also as appears from Ex. No. 4 monies were paid to him to avoid the necessity of paying Doctors'

fees

fees and also fees to lawyers, from which it ~~will be seen~~ would seem as though the followers believed that the Aga Khan was capable of ensuring them in respect of their spiritual as well as their material welfare, for there can be no question — and in fact it is admitted by several of the witnesses on behalf of the Plaintiff (before they seceded) — that all the offerings are made in order that the persons making them may get mukti or sawab i.e. salvation in the next world.

dele I.F.R.

~~[illegible] is health [illegible] [illegible] wishes be [illegible] the Aga I mean [illegible] him the world [illegible] him in the [illegible] in the [illegible] fees to lawyers.~~

In the case of this kind the principle to be applied has thus been laid down:

~~This is then how [illegible] [illegible]~~ "For determining whether the performance of any particular rite [illegible] or any particular religion, confers benefits on the members of the Church or denomination, or body, that professes it, the Secular Court must act upon the evidence of or behalf of the members of the community concerned. It can have no other guide than their opinion upon that subject": See FitzGibbon L.J. O'Hanlon v. Logue 1906. I Ir: Rep. Ch. D. p. 279.

It ~~was~~ is wellknown that in matters of this sort the human mind associates an idea of reciprocity, ~~of~~ and a few days ago I came across a note at page 25 of a book written by F. W. Bain "In the great God's Hair" which seemed to me very apropos. It runs as follows:- "Plato's idea that the relation between gods and men is one of commercial reciprocity (ἐμπορική) is precisely that of the Hindus who lay it down in a hundred places as the essence of the "stithi" or established constitutional things", ~~And the same idea underlies the Western notion of charity in the minds of many persons - see Per Palles, C. B., in O'Hanlon v. Logue (2), 1906, Vol. I, Irish Reports, page 247 and 275. It was cited by Mr. Inverarity on the 4th August 1908.~~

I now propose to deal with

[illegible] "Euthyphro". last [illegible]
[illegible]. Cf. Katha. Sarit
[illegible] (last book) where the
[illegible] saying to Shiva "the
[illegible] of gods is always
[illegible] of the world of
[illegible]" Also Kalidasa
Raghuvamsa I. 18: there
[illegible] king is there commended
[illegible] took taxes from his
[illegible] only for their own good
[illegible] the sun draws vapour
[illegible] to return it a thousand
[illegible] fold to earth in
[illegible] shape of rain" [illegible]
[illegible] F. W. Bain [illegible].
[illegible] also refer to the
[illegible] [illegible] "I say
[illegible] for preaching to others [illegible]
[illegible] Heaven where ~~[illegible]~~
[illegible] corrupt nor [illegible]
[illegible] thieves [illegible] break
through nor steal".

[Pitti [illegible] at the hearing.]

with the evidence given before me on this point. As I have already pointed out the suggestion that the members of the family of the Aga Khan are entitled as of right to share in the offerings made to him is one not put forward in the ~~pleadings~~ Plaint; and the evidence on the part of the Plaintiff and her witnesses before me was of a very unsatisfactory character.

At page 28 the Plaintiff says that the family was considered holy and the Khojas made payments or gave presents to the Aga Khan and his descendants and children. At page 57 she says:- "Till I gave my evidence herein I had not alleged in any document whatever that offerings were made to ~~and~~ the members of ~~my~~ the family personally. At the time of Plaint I did not recollect. I did not make

make this allegation in any of my affidavits nor in correspondence." At page 62 she admits that she never said a word to Framji and Dinshaw her solicitors in the about sharing in the offerings. At page 64 she says: "When I first received offerings from the Khojas personally I was I can't say how old but about 10 or 12 years old. I can't give the names of those who gave me offerings personally." - "The offerings I got when so young were not my own property alone. I was not entitled to a share in them. But my parents were entitled to them."

Bibi Saheb says that money and embroidered cloth were given to the ladies of the family and she sometimes received presents from the ladies of the Aga

Khan's

evidence at page 128, line 12 et seq. At page 134 she says that she is the rightful Aga Khan at this moment and not her son Kassum; that she is the rightful head but the Defendant 1 has usurped it – a claim which she admits she never made before she got into the witness box on that day. I would also specially refer to her evidence down to page 137 inclusive. At page 136 she swears: "I never heard of the Khoja Imami Ismailis till this moment. Nor have I heard of Imami Ismaili Khojas. Never up to this moment. I never heard of the Imami Ismaili faith up to this moment. Alishah and Defendant 1 are simply Peshimazes. I have never called them Imams. And nobody

else

else called them so. The family is not sacred because they are Imams but because they are Syeds. The family has never supplied any Imam." At page 137 she says: "I did not tell my attorneys that offerings had been made to me, before my Written Statement was filed or before the witnesses were examined. No suggestion about it is made is made in any of the affidavits." At page 144 she can't give any estimate of the value of the presents given to her.

Kuchick Shah at page 151 describes a Memani at Sialkote in November-December 1896 when Rs. 500 were placed in two saucers before himself and the Aga Khan. At page 152 he says he is not an Aga. He describes a Memani

at

at the Aga Khan's premises in the lifetime of Alisha and several in the time of Defendant 1. He describes another at page 153. He describes the Kissing of hands of all the family at page 154. At page 172 he says that Hassan Ali's children are entitled to more of the offerings than his brothers. At page 191 he admits that he made a mistake in saying that at Sialkote 300 Khojas kissed his hand. He meant followers. He made a mistake in saying that 300 Khojas men and women presented him with money for he admits there were no Khoja followers in Sialkote. At page 197 he says that before he was examined in Court he never mentioned the Dast-bussi or Kissing of hand and presents made to him at Dizabad near Meshed.

Malek

Malek Taj Begum describes the giving of presents to the members of the family male and female and kissing of their hands at a marriage about 13 years ago in Bombay. She says she has seen male members receiving presents from Khojas. She has seen her own husband receiving presents from the Khojas at Poona, and presents made to her brothers and all the members of the family and to Jungishah. At page 252 she says that the ladies are entitled to share in the offerings because they have got children who are descendants of Hassan Ali. At page 257 she says that she heard from Defendant 1 when she was a mere child that all the properties belonged to the family, that Ali Shah

assured other members of the family in her presence to the same effect. At page 258 she says that Defendant 1 assured her to the same effect at a conversation which took place about her husband's body being sent by train to Bombay. At his shrine there. At page 260 she says: "Khojas used to give me presents when I went to marriages at 7 years old. I say as a fact I got presents from the Khojas when I was 7 years old because I was a member of the family. They were money presents. I have forgotten the amounts. The Khojas give ~~money~~ money presents to the children of the family because they are holy." At page 261 she can't say how much she used to receive, whether it was thousands or hundreds or hundred or tens or a few annas per annum.

The

The only woman she can name as giving her money and an embroidered sheet was the wife of Kamaria Haji but she does not know that Kamaria Haji and his wife had lost their only son before that date and that the wife was not going out then.

Gulam Hussein Ahu Mburaj says that he used to make presents to the Aga Khan and the members of his family. Money presents were put ~~[illegible]~~ in the ~~saucer~~ saucer placed before the Aga Khan and each of the other members before their feet. He has seen the hands of the members of the family kissed several times. In cross-examination he can't remember how many saucers were placed. He can't swear that more than one saucer was placed. At-

page 302 he says: "There is no difference between the present Aga Khan and any other Syed. There are many thousands of Syeds in the world. There is no difference between the Aga Khan and any of those. I consider them all equal - they are descendants from Fatima. There was no difference between Alishah and the descendants of Sayeds in the world. I give the same ~~answer~~ answer as to Hassan Ali. I do not believe that Defendant 1 or Alishah or Hassan Ali are descended from Ismail at all. I believe they were Syeds because they said so. I am not doubtful whether they are Syeds. In Hassan Ali's time I believed that he was no better than other Syeds. He was no more to me than any other Syed. So as to Alishah. I take no more interest in him and his family than I do in that of any other Syed. This has been so ever since I can remember."

Karmalli

Kamalli Haji Bhoga says inter alia that presents were made to members of the family and their hands kissed because they were considered as holy. In cross-examination he says that he is the Secretary to the Khoja Ithnasharia Jamat and a member. At page 315 he will not swear that the monies paid at the Thalsupra are not absolute property of the Aga Khan for the time being.

Both these last witnesses are so unsatisfactory in the way they gave their evidence that I had to make a special note in each case of that fact.

Rahimtula Gangji purported to produce certain entries of Memani to Akbar Shah. He said that he was not present

when

when they were given. He also produced certain entries purporting to show that Akbar Shah had blessed some account books. But his cross-examination with regard to these books and entries throws a considerable amount of suspicion upon them.

Fazulbhoy Joomalbhoy Laljee in the commencement of his evidence says there is no difference between the faith of a Khoja Ismaili and an Atnasharia, and he said to me that the Atnasharias believed in 12 Imams. Khoja Ismailis believe the same and never believed anything else. And again he says at page 345 that he really believes the first Aga Khan was an Atnasharia. His statements strike me as so extraordinary that I do not feel disposed to attach much importance to ~~anything~~ ~~he will have~~ ~~that he may have say~~ to

Mahomed

Mahomed Fakira, page 369, says he may have made presents to the Aga Khan on Idd days and big holidays and he did so to those members of his family who were present. He does not remember who they were. The present was made in the Jamat-Khana. He may have made the presents at the Wadi. He does not remember. In cross-examination he can't produce any entry of the payment made by him and does not remember whether the last time he made present was 20 or 30 years ago.

As against this we have the evidence of Lady Alishah, Defendant 1, Shamsudin, and the other witnesses who support their case upon this point.

As I intimated on Saturday the 11th April 1908 - see page 353 - that I was then prepared to hold that

the

the payments made by the Khojas are for the benefit of the Aga Khan alone and not for the benefit of his family, I do not propose to discuss the evidence in support of Defendant 1's case on this point in detail. But I must refer to the following exhibits which have been put in during the progress of his case, because like those which were put in during the commission they are unimpeached documentary evidence which strongly supports the view that I have expressed:—

D. A. 133, D. A. 156, D. A. 168, D. A. 169, D. A. 170, D. A. 171, D. A. 172, D. A. 173, D. A. 175, D. A. 176, D. A. 177 to D. A. 189, D. A. 194, D. A. 195, D. A. 196, D. A. 197, D. A. 202, D. A. 203, D. A. 204, D. A. 207, D. A. 208, D. A. 209, D. A. 210.

I have no hesitation in finding, therefore, that the offerings made by his followers to the A. R. for the time being are intended by them to be for his own personal use and benefit, and that those offerings are made to him from a feeling of deep veneration and reverence, the object of them being that while on the one hand he is to take them for himself, they on the other are to reap the benefit of them whether it be of a temporal or a spiritual character. Looking at the evidence given before me, were I to hold otherwise I should be dealing a blow at the faith

of

of ~~them~~ this large community scattered over all parts of the East, the results of which would be incalculable and for which the evidence before me would not afford any justification whatever.

Effect of Exhibits.

I must now ~~propose~~ to refer to the various Exhibits which have been put in from the Quans which go to maintain the 1st Defendant's contention that his recognition by his followers originates from those texts. Exhibits D. H. 265 to D. H. 270 tell the followers to recognize the Imam Islam Shah the 30th Imam at the time of Pir Sadrudin. See further Exhibits D. H. 271, D. H. 272. The text Ex. D. H. 273 is the text which shows that Imam Islam Shah is descended from Islam Ismail son of Jaffer Sidick. The following texts direct the followers to recognize the Imam who succeeds Ali. D. H. 274, D. H. 277, D. H. 278 to D. H. 280 direct the followers to worship the Imam for the time being ~~[illegible]~~ mentioning his name D. H. 281 and D. H. 282 direct them

to

to worship the Imam and no one else. D. A. 283 directs payment of Dasoon and Shir Bundi. Also D. A. 284 and D. A. 285. D. A. 287 promises benefits in the next world by payments in this. D. A. 288 promises paradise to those who who believe in the Imam. D. A. 287 is the text under which the followers make Samar payment just before death. D. A. 290 refers to the Panchtan. —

——— Very old copies purporting to be about 400 years old of the Granth have been produced — see D. A. 294, D. A. 296. These Exhibits have not been impugned and of course strongly support the case of Defendants.

[illegible]

133

(95.)

~~Those proceed~~ to deal with the various charges of fraud, murder, concealment of books and property etc. alleged by the Plaintiff and those who support her.

The main charges against Deft 1.

Para. 4 of the Plaint charges that Defendant 1 has sold off several properties therein mentioned belonging to the family estate and invested the sale proceeds thereof as well as other monies belonging to the family estate in the purchase of divers properties now standing in the names of his nominees. It has been proved to my satisfaction that this statement is entirely untrue. No evidence whatever has been given on the part of the Plaintiff to show that either Hassan Ali or the two succeeding Aga Khans ever owned properties in Persia and elsewhere mentioned in that paragraph. See also para. 56 of the Plaint. No question was put to the Plaintiff in her examination on this point and her cross-examination shows she had not got a single instance of making away with family property when she filed her suit - see pages 37, 38.

Para

(96)

Para. 55 of the Plaint says that Defendants 9 to 14 allege that the ptd Aga Khan left a Will which has been suppressed by Defendant 1. Those Defendants in their Written Statement say they have no knowledge of this alleged Will. In the evidence, however, the Plaintiff denies that she was told of the Will by these Defendants but they say they told her. Of course if the Will had existed it would have disposed of the Plaintiffs' case but not an atom of evidence is given as to the Will ever having existed.

Alleged Suppression of the Will.

I now deal with the charge against Defendant 1 in respect of the murder of Jungi Shah and his son. The Plaintiff was at Jeddah at the time of the murder of Jungi Shah and his son and describes it in her evidence-in-chief.- See page 24. - The Plaint, para 35, says that in or about the year 1898 disputes began to arise in the family and have continued

Alleged complicity in the murder of Jungi Shah & his son.

up to the present time. She was interrogated about this – Interrogatory 31 – and in answer to that she said: "In 1898 disputes began to arise in the family in consequence of the murder of Hasham Shah." She was further interrogated, D. 14. 27 – further answer to Interrogatory 31 – and after dwelling at length on Hasham Sha's murder she introduces the murder of Jungi Shah at the end of that answer as follows:– "About this time my husband sent a petition to the Viceroy for investigation into the incident of the murder of my father Jungi Shah and my brother Sha Abas at Jeddah in 1896. The Aga Khan came to know of this petition and showed his resentment thereat." Pages 24 and 25 of her evidence-in-chief show how she intended to insinuate that Defendant 1 and his mother stifled the inquiry into these murders, and her Counsel declined to say whether he suggested or insinuated that Defendant 1 instigated these murders. Her Counsel said

It is material here to mention that Jungi Shah & his son were murdered in 1896 two years before the disputes here mentioned to have began.

said that he was only leading the evidence to show how the ill-feeling arose, and on that ground the evidence was held to be relevant. The malicious animus of the Plaintiff was apparent when she said that her father and brother were killed by two "Fidaiis" Khojas who are devotees of the Aga Khan and obey him. How she knew they were Fidaiis Khojas she did not tell us. As I have said the murder of these two men occurred at Jeddah. Defendant 1 was in Bombay. He went to meet the body of Jungi Shah at Karachi and brought it down to Bombay. The evidence is uncontradicted that he was much distressed at these murders. Shortly afterwards he married his present wife the daughter of Jungi Shah. Jungi Sha's family was present on the occasion, and all were on the best of terms. The marriage was celebrated in the usual way and the children of the family were dressed in uniform and played an amateur band which was got up for the occasion. ~~See the entry D.A. 245, 28th Chaitra 1923 and see further entries~~

~~D. H. 246 to D. H. 248.~~ If a petition was sent to the Viceroy, as is stated, the original or certainly a copy of it must have been procurable, and the Plaintiff admits, page 36, that the Aga Khan's name was not so much as mentioned in the petition. Bibi Saheb in her evidence says they got possession at Jeddah of the murderers' blankets and shirts but says they brought nothing back to Bombay. Malek Taj, page 235, ~~in examination~~ says that she saw the Plaintiff had a blanket in her hand at Jeddah. She tied it up with other articles belonging to herself, and then she goes on to describe how the Plaintiff told her that she had given the blanket to Cassim Musa and he took it away with him. In cross-examination she says: "The colour of the blanket was black. It looked black to me – no other colour. It was in Plaintiff's hands. I saw it at a distance and saw no other colour.

I

I believe there was a picture of a lion on it. I don't remember the colour of the lion whether it was black or not. I remember a black blanket with a lion on it after 12 years — as a person remembers things. ~~People remember certain things~~ I have never seen the blanket since that morning. Plaintiff got the blanket I don't know from whom."

In my opinion the suggestions and insinuations made against Defendant 1 with reference to the murder of Jungi Shah and his son are absolutely without a shadow of foundation and ought never to have been made.

I now deal with the charge against Defendant 1 in respect of Hasan Sha's murder. This first appears in the Plaintiffs' further answer to Interrogatory 31 — D.H. 27 — where she sets out her case as to this and suggests that the Aga Khan was desirous of shielding the murderer Jiwa Juma. The Plaintiff

Plaintiff, in her examination-in-chief, ~~page 24~~ gives her account of it at page 25, where the Plaintiff's Counsel would not give any answer to Mr. Inverarity's question whether it is suggested that the Aga Khan had anything to do with Hasham Shah's murder. Plaintiff's Counsel evidently did not fancy this suggestion much as at page 88 he expressly said he was not going to ask Bibi Saheb anything about Hasham Shah. At the time Hasham Shah was murdered Defendant 1 was in Europe and his mother was in Arabia. The telegrams that Defendant 1 is said to have sent showing that he was anxious to shield Jiva Juma have not been produced. I cannot attribute much importance to Mrs. Kenny's evidence, whose memory is evidently not very clear in the matter. The jury recommended Jiva Juma to mercy which looks as if they believed the confession of Jiva which has been put in as A.26. Defendant 1 only knew him

him by sight and Lady Ali did not know him at all. The letters, D. A. 57 and D. A. 58, the former undated and the latter of 11-9-98, written by Defendant 1 to Kenny, ~~and also D. A. 59 of 17-11-98~~, show that Defendant 1 was much upset by this murder. See also Kenny's evidence pages 229 and 230. I cannot possibly believe that Defendant 1 threatened that the fate of the murdered man might befall his brother Cassam Shah as the Plaintiff swears he did. On the contrary the evidence shows that Defendant 1 has provided for Cassam Shah and supplied him with funds to enable him to hold a commission in the Cadet Corps.

The letter dated 57 to Kenny & 17-11-98 [illegible] Defendant 1 was much [illegible] Shah [illegible] ~~I should not have [illegible] Kenny's evidence [illegible] the Plaintiff's [illegible] memory is not [illegible]~~

I find his charge wholly unfounded.

As to the charge that Deft 1 has made money with my [illegible] I leave it to be noted this [illegible] it is [illegible] in my opinion to discuss the written [illegible] [illegible] [illegible] to that [illegible] Ali Shah & Deft 1 have made in the [illegible] office. The [illegible] of the [illegible] were [illegible] at Bombay is clearly proved.

[illegible]

The next charge involves the other main question in this suit which of course is of very great importance, namely, whether the Release of the 11th September 1901 was a sham or a false and fraudulent document, concealed by Defendants 1 to 5. This is a matter with regard to which I must obviously go into detail at considerable extent.

Whether the Release of 11th Sept: 1901 was a sham or false & fraudulent.

As to its being a "sham" it is difficult to say it was sham I find as a fact that Sitaram took about a lac of rupees from Ganpatrao & it to Jagir Shri with & B Gopal finish in its varantin.

Whether it was fraudulent I propose to discuss.

It is clear I think that on the death of Hassan Ali somewhat of what Mr. Justice Batchelor in his judgment on the Rule has called a "scramble" took place, and I find it proved that on that event his son Akbar Shah took possession of one bungalow at Bandra and a garden at Bund River, Poona; his other son Jungi Shah took possession of a bungalow at Mount Road, the Piroo Lane property and the property known as Hamam-Khana at Babula Tank Road; Ali Shah took possession of (1) Property situate at Bellasis Road used as a Commission stable, (2) Property situate at Babula Tank Road opposite J. J. Hospital, (3) Property situate at Bhendy Bazar, (4) One bungalow at Love Lane, (5) One bungalow at Love Lane, (6) One bungalow at Love Lane, (7) One property at Nesbit Lane, (8) One bungalow at Love Lane, (9) One bungalow at Bangalore, (10) One house at Karachi, (11) one bungalow at Connaught Road (Poona), (12) one bungalow at Civil Lines (Poona), (13) one bungalow at Lothian Road (Poona). In addition to the immoveable property which Akbar

What I assume in I that of H. A. a "scramble"

(proved)

Then list 13 items in [illegible] in H.S. [illegible] it is a mistake [illegible] the Karachi [illegible] the [illegible] a list of J. Ali Shah [illegible] altogether about [illegible]. [illegible] I [illegible] [illegible]

Akbar Shah took possession as above, he also took possession of a large quantity of jewellery and cash the property of his late father, and in this he was assisted by Haji Baig who was the favourite wife of Hassan Ali and the mother of Akbar Shah. Ali Shah was not at that time in Bombay. The respective immoveable properties taken possession of by the three sons as aforesaid were kept by them and continued in their exclusive possession respectively. It has been clearly proved that Akbar Shah after his father's death advanced very large sums of money on mortgages amounting to over a lakh of Rupees — see Mr. Kelly's evidence, & Exhibits and . It is also proved that he bought a large quantity of Government paper — see Exhibit 304. It is also proved that he took possession of the gold Racing cups which his father's horses had won, and Ruchick admitted that one certainly of those cups had come into his possession before he saw the point of the question which was being put to him

[illegible] Shah [illegible] for that [illegible] of H. his [illegible]
him in cross-examination. We have in
evidence Ex. DH85 the Will of Jungi Shah
whereby inter alia he purports to dis-
[illegible]
pose of the Chawl near the Mogal
Mosque in favour of Lady Hajia Bibi, as
to the Hamam (bathroom) which is near
the abovementioned Mosque in favour of
Lady Shazada Begum, as to the large
bungalow which is situated on the
road to Hassanabad in favour of
Zenalabedin Shah and Shamsadin
Shah and Shah Abbas.

The Plaintiff by D. H. 11 swore
that the properties at Piroo Lane, Mount
Road and Hamamkhana did not form
part of Hassan Ali's estate at the time
of his death, that the Mount Road
properties were purchased by Jungi
out of his own savings and income
and that the Hamamkhana was
built by him, but ~~at~~ at page 52 of
her evidence she says that as to the big
bungalow at Mount Road she does
not ~~do~~ know whether her father was
given it by Hassan Ali or whether her
father bought it out of his own pocket-
money. She says: "I say out of my common
sense that my father bought it out
of

of his own money; no one told me. In my affidavit I say nothing as to it being bought out of my father's property. Man is liable to err. Before to-day I have never suggested that this property was given to Jungi Shah by his father that I remember. I forgot about it. I made four affidavits on the Rule."

Now, there is no doubt that Jungi Shah during Hassan Ali's lifetime did manage his father's estate (see Bibi Saheb's evidence, page 106) and there is no doubt that this Mount Road property was in the name of Jungi Shah. But there is documentary evidence as to this property for it was bought for Rs. 60 000 when Jungi Shah was 26 years of age - see D. A. 84 letter of 27-6-74 Dallas & Lynch to the Collector and the Conveyance A13 of 17-11-74 which is the Conveyance from Khalao Makanji to Jungi Shah who curiously enough is therein described and referred to as the son of the Aga Khan.

As to the Hamamkhana, Bibi Saheb at page 104 says: "The Hamam-

Khana property was built before I was born. It has been there since I can remember. I have not seen it, only heard about it. I heard it was in the hands of my brother Jungi, I don't know anything more. In Hassan Ali's life it was in possession of Jungi. Jungi told me so — no one else. He casually said that it was in his possession when he was talking to a servant. I don't know how long ago he said this. No one else present. I don't know how Jungi got the Hamamkhana."

As I have pointed out the Plaintiff in D. H. 11 swore that the Hamamkhana was built by Jungi. It appears that the Hamamkhana was built on the corner of the Khoja burial ground — see the Plan D. H. ~~96~~ 2.112. One thing is certainly plain from Shah Bibi's evidence and that is that she in 1907 thought that the big bungalow in Mount Road, the Piroo Lane and the Hamamkhana properties belonged to Hassan Ali because she admits that her attorneys wrote

wrote that she had an interest in those properties – see Ex. D. H. 45. When that letter was written she thought the three properties belonged to Hassan Ali. Malek Taj in her evidence at page 250 says Jungi Shah had bought these three properties with his own money and that he was in possession of them since Hassan Ali's life. She admits that she has no claim to it but says that her children have, although she says that when D. H. 45 was written she intended to make a claim to these three properties for the sake of her children.

As regards the Piroo Lane property, the Plaintiff at page 56 says: "The Piroo Lane property was acquired, since I remember it was in my father's possession. I don't recollect when it was acquired. I can't say my father bought it or it was given him by his father. I don't know it was bought at all events before 1861 A. D. I can't say it is at corner of Parel Road and Jail Road. It is called Jail or Imambara Road." Bibi Saheb says it was bought but she does not know when. She heard it said that it belonged

to

to Jungi. She does not recollect who told her or who was present nor when she was told. She was told before the death of Jungi but she can't say how long before. She can't remember whether it was before or after Hassan Ali's death. She does not know to whom Piroo Lane property belonged." But the Plan D. H. 99 and the draft Deed D. H. 100 describe the Southern boundary of the property in that Deed as bounded on the South by the property of Shah Hassan Ali Mahomed Hussain alias Aga Khan, which shows that it was known as Aga Khan's property before the 30th of October 1861. That this Deed was admissible for the purpose is I think clear from I. L. R. 23 Bom. page 63. From the Municipal Book Exhibit D. H. 117, it appears that all the property about this Piroo Lane was in the name of Mahomed Shabudin Pilamker and in ~~1881~~ 1881, D. H. 114, the Piroo Lane stood in Aga Khan's name and the

Collector's

Collector's books show that a small piece of it was never taken out of Pilamkui's name.

In my opinion Mr. Inverarity was fully justified in saying that he has proved that these three properties belonged to Hassan Ali's estate and were properly taken into account at the time of the Release.

The direct evidence as to the preparation and the execution of the Release is to be found in the evidence of Shamsudin, Defendant 1 and Mr. Kola. I refer to these gentlemen's evidence at length, and the correspondence relating to it which took place in September 1901 is Exhibit A 1 - between Shamsudin and Defendant 1's attorneys.

On the 11th of September 1901 the Release was executed. That document recites (1) the death

Shamsudin tries to induce Plaintiff to Relinquish.

Shamsudin says that about the end of June 1901 he thought to divide his father's property amongst his heirs. He went and saw the Plaintiff about it and she asked him what he was going to give to Zenalabedin's children. He told her that Zenalabedin having predeceased their father his children were not entitled to anything by law. She asked for some provision for them. He said he was willing to give them a share if she would be satisfied by taking the Piroo Lane property as her share and the various sums she had got from him (Shamsudin) through her husband Meu-chool after Jungi's death - see Ex. D. H. 140.- Shamsudin was not to ask for any account of these monies and she was to get Piroo Lane property. She said she would agree if he first gave a share to Zenalabedin's children. But he declined as he would be a loser if after that all the heirs including the Plaintiff asked for their full share. He said if she executed a document in the form of a release to Jungi's estate he would give a share

to

to Zenalabedin's children in consideration of her getting Piroo Lane and having got other monies. She asked him to bring the sort of document he wanted her to execute and show it to her. Thereupon the letters D. H. 141, D. H. 142 and D. H. 144 passed between him and the attorneys P. G. S. & Moos. Immediately after getting D. H. 144 he went to the Plaintiff on the same day with H. 15 and D. H. 143. He found her at Abalek Taj Begum's house. (I read his evidence at page 111, line 26, down to line 14, page 112.)

Looking at the cross-examination of the Plaintiff by the Advocate General, pages 73, and 74, and comparing it with the evidence of Shamsudin, which I have just referred to, together with paras. 12 and 13 of Shamsudin's affidavit, pages 154 & 155 of the printed Appeal Book, I am inclined to give greater credence to Shamsudin's story of this interview than to that given by the Plaintiff and Kuchiek. I am also satisfied that this interview took place as Shamsudin says in the month of July and not in August as the Plaintiff

An attempt was made to show Mr. Schmerstein that it was to cheat the Pff of having been by H. B. the theft was one of the Price Lewis letter with the P/Mk at the end of it in the month of August 1901. namely to the Pff & Sheriff - the latter in giving it gave the time as about the of the Lunchtime Matters. But I am satisfied that the interview in question between Schmerstein & the Pff took place in June 1901 & before Schmerstein had any other that L. A. K. had spoken to him any letter to Jaggi estate. The letters D.H. 141 dated 30.6.01. & D.H. 142 dated 2.7.01. were written by Price & L to Schmerstein: Then there is a theft charge of the Price Lewis letter D.H. 143. then there is D.H. 144 &c.: Schmerstein & theft charge came out to Schmerstein by his letter on 23.7.01. He got it on 24.7.01. at Penn & went at once to see the Pff.

Now there is a book letter of R. K. was

Pshaw &c. At the time it seems to me it has not occurred to Shamadin to set anything out of Apt 1.

I think there is no doubt that the Ryots are anxious to set aside something for the children of Jamalabadin. By the letter of 20th June &c his attorney Shamadin takes for a Pakam &c & there is fear of the Ryots & to keep the Pair Lands apart &c & but the only suggestion Shamadin makes for the Land of Ryots the whole letter & Pair Lands apart if the widow & joint a share &c Jamalabadin children

Plaintiff and Koochick endeavour to show and was before Shamsudin had any idea that the Aga Khan ~~had agreed to give any property~~ would. I now refer to Shamsudin's interview with Defendant 1 at the end of July and I think it is so better to give ~~his exact~~ the letter words in the way he gave them in his evidence from page 112, line 20, down to page 116, line 20.

Defendant's evidence

Defendant 1 says that about the end of July 1901 when he was at his house near Poona, Shamsudin came there and said *inter alia* that he wanted to distribute his father's properties amongst his father's heirs, of whom the Aga Khan's wife happened to be one, that Shamsudin gave him some idea of the value of his father's property and said that his idea was to give the Plaintiff the house in Pico Lane and to Defendant 1's wife the Hunnam-Khana, specially as those two ladies were enjoying at that time the rents of those two properties. Then Shamsudin suggested that Defendant

estate the property at Mazagon which was occupied by Jungi's family. Defendant 1 was somewhat surprized at this and asked why should he. Whereupon Shamsudin said that after Hassan Ali's death Ali Shah and Akbar Shah had appropriated more than Jungi had. Defendant 1 told Shamsudin that he knew perfectly well that eight years before to the knowledge of Jungi and Akbar and everybody all the portions of Aga Khan's property appropriated by Ali Shah in Bombay had been transferred to Defendant 1's name and that any claim that Jungi might have had was long barred, and that even supposing the amounts which the Defendant 1 had paid to Jungi out of favour and bounty were taken into consideration Jungi had long ago been repaid by Ali Shah and Defendant 1. To this Shamsudin, he says, replied that he appealed to his good nature and

affection and suggested that the three houses at Mazagon and a sum in cash which was not then named should be given to Jungi's estate. Defendant 1 then goes on to say how he consulted his attorney Sayani, after which he told Shamsudin he would not discuss the matter until he was properly constituted ~~an attorney~~ administrator of Jungi's estate. After letters of administration were applied for and granted to Shamsudin [A.2.43] he came to see Defendant 1 again in Bombay about four weeks after the first interview. The estate manager was consulted as to the value of the property appropriated by Ali Shah alone and he said about eight lakhs of rupees. Shamsudin said that the value of the property his father had appropriated was 90 000 rupees, and he made up the share of Jungi's estate up to $2\frac{1}{4}$ lakhs. It was then arranged that the three houses occupied by

Jungi's

and I should give up for Jungi's estate the property at Mazagon which was occupied by Jungi's family. Defendant 1 was somewhat surprized at this and asked why should he. Whereupon Shamsudin said that after Hassan Ali's death Ali Shah and Akbar Shah had appropriated more than Jungi had. Defendant 1 told Shamsudin that he knew perfectly well that eight years before to the knowledge of Jungi and Akbar and everybody all the portions of Aga Khan's property appropriated by Ali Shah in Bombay had been transferred to Defendant 1's name and that any claim that Jungi might have had was long barred, and that even supposing the amounts which the Defendant 1 had paid to Jungi out of pawour and bounty were taken into consideration Jungi had long ago been repaid by Ali Shah and Defendant 1. To this Shamsudin, he says, replied that he appealed to his good nature and

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Jungi's

Jungi's family and a sum of Rs. 40000 should be given by Aga Khan to Jungi's estate and such a Release should be passed as Sayani should prepare; and he left the preparation of the Release entirely to the Advocate General and his attorney Sayani. He goes on to say that the reason of the Mount Road property and the Hamamkhana was not mentioned in the Schedule to the Release was that Sayani said that the Mount Road property happened to stand in Jungi's name and it might legally affect the title if it were included, and as to the Hamam-Khana it happened to be built on the Khoja burial ground and as it was actually in the possession of Defendant 15's wife Sayani said it should be omitted. The Release was drafted and settled by the Advocate General and Shamsudin had his own attorney Kola.

Ali-

~~At the execution~~ Defendant 1 paid Shamsudin a cheque of Rs. 40000 in the presence of Kola and Sayani which has been debited to his account, and Defendant 1 estimates the value of the property conveyed to Shamsudin by the Release at a lakh of rupees. The properties were transferred from his name to the name of Shamsudin in the Municipal books, and Shamsudin has paid the rates and taxes since the Release.

Mr. Kola's evidence

But the evidence does not depend on these two witnesses alone for Mr. Kola, an attorney of this Court, who acted as Shamsudin's attorney with reference to the Release, has given evidence before me, and the way in which Mr. Kola did give his evidence impressed me most favourably, and I do not hesitate to say that I believe every word that he said. ~~I read the material portion of his evidence~~

~~evidence from pages 145 to 154 of the said~~

He says that in September 1901 Sham-
andin brought to him a draft Re-
lease, of which D. H. 145 is his office
copy, and said that Sayani had
advised him to come to him and
that Shamandin was in a great
hurry. Mr. Kola wrote his first
letter on 10-9-901, the 2nd letter
in ~~D~~ H. 1 to which he got a reply
the same day the 3rd letter in H. 1,
appointing the time for a meeting on that day
at Sayani's office. Before going
there, he describes, how he went
through the draft Release with
Shamandin, and as to the various
recitals in the Release his evidence
entirely corroborates the case of
Defendant 1. He then goes on to
describe the alterations in H. 6
the draft copy, and ~~he says that~~
and what was done with regard
to them, and he says that Sayani
told

told him that the conveyance of Mount Road property had already been taken in Jungi's name and as the legal estate was already in Jungi it would be improper to take a conveyance of it from Aga Khan. As to the Hamamkhana, he understood Sayani to urge an objection on the religious ground — as it was a religious property he did not think it desirable to insert it. And he describes how the Advocate General inserted certain words — see D. A. 165 — to which he was compelled to assent. After he saw Sayani, he saw Shamsudin the next day the 11th September and told him what had taken place between him and Sayani. He said that this time the arrangement that had been come to on the facts given to him was highly beneficial to Jungi's estate. The impression Sham-

sudin gave him was that he was acting in the interest of the estate as he was very anxious to carry out the arrangement as soon as possible. He then goes on to say how he saw the Release executed and a cheque for Rs. 40000 handed by Defendant 1 to Shamsudin. Nothing occurred to lead him to believe the Release was a sham document not to be acted on. He goes on to say that the only thing that struck him was the hurry on the part of Shamsudin. But in cross-examination he says after ~~the reason~~ the reason Shamsudin gave him it did not strike him as extraordinary, the reason for the hurry being as appears in the correspondence Shamsudin was desirous to leave Bombay. Mr. Kola gives another reason for the hurry and that was that

the

the arrangement was so beneficial that no time should be left for the Aga Khan to change his mind for he understood Shamsudin to say that the Aga Khan might change his mind at any time, for what was being given was as a matter of favour. Even if a gift the Aga Khan might go back on it.

The Rahman

On the 11th Sept: 1901 The Rahman has executed. That document with the date of

death of Hassan Ali in 1881 leaving three widows, three sons and three daughters and properties in Bombay, Poona, Bangalore and Karachi, (2) that Ali Shah entered into possession of the properties described in Schedule A thereto all except the property in B thereto, that is the Piroo Lane which Jungi Shah entered into possession of, (3) the death of Ali Shah on the 17th of August 1885, (4) the management of Defendant 1's mother of the properties in A (by an evident error the property in B is not excluded here), (5) entry into possession by Defendant 1 of the said properties, (6) the transfer into Defendant 1's name of all the properties in A, (7) sole possession by Defendant 1 of the said properties, (8) the death of Bibi Fajmah, Jungi's sister, and his mother, leaving Jungi as one of their heirs, (9) exclusive possession by Jungi of the property in B since the death of Hassan Ali, (10) entry

into

into possession by Shamsudin of the property B, (11) application by Shamsudin for Letters of Administration to Jungi's estate on the 28th August 1901, (12) contention by Defendant 1 that neither Jungi nor his estate has any claims on the properties described in Schedule A, or against the estate of Hassan Ali because it was barred, (13) acknowledgment thereof by Shamsudin, (14) acknowledgment by Shamsudin that all payments, allowance, food and residence allowed to the different members of the family of Hassan Ali, including Jungi Shah, were a matter of grace and favour and not as a matter of right by reason of any custom or usage, (15) agreement by Defendant 1 to convey to Shamsudin as such administrator the property described in Schedule C being part of the property 3rdly described in Schedule A and to pay to him the sum of Rs. 40000. For the purposes of Stamp duty the property in C taken at Rupees one lakh. The Conveyance witnesses that Defendant 1

which was granted?

1 grants to Shamsudin the property in C being part of the property 3rdly described in A, that for that consideration and the sum of Rs. 40000 Shamsudin as such administrator and also in his own right as one of the heirs of Jungi Shah releases and discharges Defendant 1 and his estate etc. and the estate and effects of the said Ali Shah and Hassan Ali including the properties described in Schedule A save ~~and~~ that portion of the property described in A as is conveyed to Shamsudin from all ~~claim~~ claims and demands of the estate of Jungi either as one of the heirs of Hassan Ali or as derivatively interested in such estate through his said sister or mother. This release to operate as a full and complete discharge in respect of any and every possible right, claim or demand of the estate of Jungi Shah deceased whether past, present, derivative or contingent

to

to upon and against the estate of the said Hassan Ali deceased and the said Ali Shah deceased and the Aga Khan and his estates and effects, and lastly the Aga Khan releases, conveys and assures unto Shamsudin all the right, title and interest of Aga Khan in and to all the lands etc. in Schedule B.

[illegible]

To my mind looking at the evidence before me, it is impossible to say that this Release was a sham — was fraudulently concocted between Defendant-1 and Shamsudin. There was certainly no concealment about it. It was settled by the Advocate General, and I have been wholly at a loss to discover the grounds upon which it is sought to be impugned. It was acquiesced in by the Plaintiff down to the time when she filed her Plaint herein. She claim against Shamsudin, is clearly barred. Owing to the Defendant-1's absence from

[illegible]

[illegible]

[illegible]

[illegible]

Bombay

Bombay which must be excluded from the period of limitation I do not think I could hold it barred as against him. No authority has been cited upon this novel point, namely, where two persons are charged with fraud and the suit is barred against one of them whether it will lie against the other whose absence from Bombay takes him out of the statute. It is not necessary, however, for me to decide this novel point because I am of opinion that upon the merits the Plaintiff has got no claim. suit either not barred or shunned in.

Admission in para 15 of Plaint.

Para. 15 of the Plaint expressly says inter alia that allowances were given to and received by the said several members of the family as a portion or on account of what they have been, are, or would be entitled to receive as heirs.

The following statement shows the amount of allowances received by Jungi Shah and his estate:—

Amount

STATEMENT of allowances to Jangis estate.

Amount received by Jangisha as allowance from 1881 (May) upto 1894 (May) at the rate of Rs. 677 a month (13 years upto the time of the death of his mother Mariam Khanum) ---------- Rs. 105612 -

Amount received by Jangi as allowance from May 1894 upto his death in May 1896 (2 years) at the rate of Rs. 777 per month ---------- Rs. 18548

Equivalent in value of food and other requisites to Jangishah for 15 years as admitted by - Hajibibi in answer to interrogatory No at Rs. 2000/- ---------- Rs.360000-

Amount received by Shamsudin as allowance from January 1896 to June 1896 at the rate of - Rs. 200 a month ---------- Rs. 1200-

Amount received by Shamsudin as allowance from July 1896 to March 1897 at the rate of Rs. 300 a month ---------- Rs. 2700-

Amount received by Shamsudin as allowance from April 1897 upto August 1901 at the rate of Rs. 777 a month ---------- Rs. 41181-

Amount received by the widow of Jangisha as allowance from 1896 upto 1901 ---------- Rs. 4800-

Equivalent in money value of foof and other requisites supplied to Shamsudin from 1896 upto 1901 at the rate of Rs. 1500 a month- Rs. 90000

Carried over Rupees. 6,24,041

(~~120~~) 170

Brought over ---------- Rs. 6,24041

Equivalent in value of food and other requisites supplied to Hajibi at the rate of Rs. 1200 a - month from 1896 upto 1901 as admitted by her in answer to interrogatory No ---------- Rs. 72,000/

Rupees.6,96,041-

N. B. This does not take into account what had been received by Zanalabedeen as allowance and food and other requisites. Nor does it take into account the sums spent on the repairs of the buildings in the letter left by H. H. which in the event of a further hearing should be taken into account.

According

If in the other hand it happens that he died before the year 1901 then H. A. died in 1901. (121.)
2 that 2 yr Release more than 2 years after.

71

According to this it appears to me that Jungi Shah's estate has been largely overpaid. I cannot find evidence to justify me in holding that Hassan Ali's estate after deducting what was appropriated by Akbar Shah and Jungi Shah amounted to more than eight lakhs of Rupees at the outset. It is a most remarkable fact that the Plaintiff gave absolutely no evidence on this point although in the Plaint she says that his property was worth ~~twenty~~ two crores. I see no reason to disbelieve the evidence of Mr. Merwanji upon the value of the immoveable properties in 1901.

Jungi Shah's estate has been overpaid

2.P.R.

The reason for not including the Mount Road and the Hamamkhana property in the Release is clearly stated in the evidence of Mr. Rola and Shamsudin Shah, viz. that the Mount Road

Road property already stood in the name of Jungi Shah. The Hamamkhana property had for a long time been in the possession of Defendant 1's wife one of the daughters of Jungi and it was deemed undesirable to cloud the title as to those two properties by mentioning them in the Release.

The portions of Mr. Ramji's bill of costs, which in my opinion were admissible, show that the Plaintiff was fully acquainted with what was being done with regard to the Release. That she knew that the entries in the bill of costs must prejudice her is apparent from para. 6 of D.A. 2 the Plaintiff's affidavit which she made on the application to prevent Ramji and Dinshah acting as Defendant 1's attorneys in partnership with Payne & Co. The entries of the 12th and

and 14th March 1902 - D. N. 25, pages 21 and 22 - show that Kuchick was well aware of all that was being done. Plaintiff's husband did not die till April 1903 and he assisted her throughout. As to the bill of costs, it is to be observed that at page 73 the Plaintiff denies every material statement therein, but in her re-examination, pages 79 and 80, she admits that the entries are true and said that she was confused before lunch. And also in re-examination letter N. 17 of the 14th August 1902 is put in where the Plaintiff says inter alia: "I do not ask for my share in my grandfather's property at present." See also her attorneys' letter of 9th September 1901 - the last letter in Exhibit N 7.

Koodick were neither the heirs of Jungi nor of Hassan Ali, and he saw no reason why he should make such a present. He told her that he could not consider such a suggestion and she left. D. H. 25 the entry in the Bill of Costs dated the 9th April 1902 shows that Moos had an interview with Jungi on this matter which Jungi or Moos told Defendant 1 q. Defendant 1 declined to give Poona property or anything more and told Moos and Shamandin so.

Defendant 1 goes on to say that the Plaintiff never suggested at her interview that the Release was a sham and a fraud, or that it was a matter of right and that she was entitled to it. Till she filed this suit she never suggested that the Release was a fraud.

C.

The conclusion that I have come to is that Defendant 1 treated the family of Jungi Shah in a generous and liberal spirit, that they got considerably more from him than he could have been held bound to transfer to them, and that had it not been for the attempt made to get something further out of him for the benefit of Koochick and Moochool no attempt would have been made to set the Release aside, and it is specially to be remembered ~~that~~ that all the other heirs of Jungi Shah, who represent $\frac{25}{32}$ths of his estate, support the Release.

I must now shortly deal with the other charges of fraud which the Plaintiff has made against Defendant-1.

other charges v. Deft 1

With reference to para. 56 of the Plaint at page ~~46~~ 38 she says she charges Defendant-1 with having put moveable property in the names of strangers in Europe. "I mean shares. I don't know their names — many persons — can't give names." "I don't know that any share bought by him in Europe is registered in his own name." She can't mention the other properties of great value then in referred to.

When cross-examined as to para. 4 of the Plaint, where it is said: "Defendant has sold many properties," &c., she says, page 38; "I heard he sold a property of 1st Aga Khan's estate to Haji Ahamed Cassim. I don't know where the property is situate. In the course of conversation with some acquaintances I heard about this.

I was told this 6 to 24 months ago, since I filed my Plaint. I cant remember now any other property. I have got no copy of the Conveyance from the Registrar's Office yet."

Again as to para. 56 of the Plaint at page 37 she says:- Line 9 down to page 38, line 10 (I read that in extenso).

Then as regards the Jamat-Khanas, no doubt Hassan Ali in his answer in the Equity Suit claimed considerable powers of management over them but he certainly did not claim them as his private property - see para. 1 of his answer therein. And neither Ali Shah nor Defendant 1 has ever claimed the Jamat-Khanas as their private property.

In H 21 Deft 1 clearly states his position in C v Jamatkhana

Again as regards the Khoja burial ground, that has never been claimed by any Aga Khan as his private property although no

no doubt they have claimed to exercise a veto as to who should be buried there.

Bibi Saheb claims no share in the Jamat Khanas or the burial ground, and to my mind it is obvious that they could not be taken into account as is sought to be done by the Plaintiff.

Again as regards the Pallonji's Hotel, that was settled ~~—~~ on Wakf on 12th January 1857 – see A. 29 – long before the Plaintiff was born. Bibi Saheb expressly ~~declines~~ disclaims any share in this property which was settled on Wakf – see page 110, line 21. It was alleged that the Aga Khan had applied the rents of this property to the benefits of the family. No evidence whatever was given in support of it and Defendant 1 swore that he

he spent more on this property than the rents of it amounted to. And it is to be noticed that at page 54 of her evidence the Plaintiff admits that she did not mention the Pallonji's Hotel in her affidavit as having been kept out of the release nor the Jamatkhana nor the burial ground.

Again the Plaintiff at page 54 charges Defendant 1 with fraud in not including Payne & Co's office building in the property of Hassan Ali. She goes on to say: "I don't know who told me but I ~~H~~ heard so. It was bought I don't know when. I have not enquired." D. H. 102 of 11-12-82 is the conveyance to Ali Shah & after the death of Hassan Ali, which shows that this is indeed a reckless charge of fraud.

As to the property at Kerbela, Kazmin and Samara, with regard to which she charges Defendant 1 with fraud at page 54, I read her evidence from page 54, line 23, down to page 56, line 20.

Jaffer

Jaffer Cassum gives the details as to the ~~charges of the~~ other properties. viz:

(Enlargement)

that the Chandna Hotel was built after the Lil Theatre. & A. S. in 1882 & 1884. then the Right Hotel was built in A. Lil Hotel & A. S. C.S. in 1886 for Rs 21000. the other Brothers & Company of the Chandni Hotel which was Lil Show started 30th June 1880.

It must be borne in mind that

E

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The Plaintiff's witnesses were all agreed that provided that the members of the family were duly and properly provided for, all the properties bought by Kallibulla, Hassan Ali, Ali Shah or Defendant 1 out of the balance of the offerings were their own properties, and they claimed no share in them — See page 54, line 2, the Plaintiff, pages 67 and 69, page 122, line 20, Bibi Sahab, page 202 the bottom and page 203, Koochick. The attempt has been made to reconcile this statement by saying that the Pltff's present claim is to be shown in H. Ali's estate. For at the time of the institution of H. A. & C. S. there was no reason to complain if a member of a family and brought suit in all respects.

I should add here that the attempt that has been made to set up the Pltff's title to the Pltff's being only that he is the eldest in family of Shamsuddin it must be borne in mind that it is not a matter of law. Even if that were a proper thing it has been said that there was but 1.

[illegible] the income that [illegible] with his income of H. 212 [illegible] for [illegible] 1-93 [illegible] and Bibi [illegible] was in no manner to be a [illegible] was entitled to [illegible] of a family [illegible] the larger share."

As to allowances food residence &c.

The next question that I have to consider arises on paras. 13 and 14 of the Plaint, issues 26, 27, 28, 29, 30, 31, 32 and 33, and in para. 3 of Koochick's Written Statement the custom is relied upon which is there set out (I read that para.)

Here I may at once say that I think all of the evidence that was given as to [illegible] a whole custom was [illegible] not established. I think it is not certain, nor continuous, nor uniform, nor reasonable, lacks a definite [illegible] & not obtained as followed as a right. See L.R. 26 I.A. 66 where it is said "How can there [illegible] to the [illegible] [illegible] have [illegible] any one [illegible] a [illegible] [illegible] [illegible] ?" p. 69.

A very large quantity of evidence has been given on the questions of residence and the allowances, food, horses and carriages, and wedding and funeral expenses.

In the first place, as regards residence, in my opinion, the evidence given by Lady Ali Shah, who displayed an extraordinary memory when giving her evidence, to my mind outweighs that given on behalf of the Plaintiff. At the commencement of her evidence she

she describes in which portions of the property various members of the family were living. She also describes how other persons who were not relations of Hassan Ali lived in the various blocks. It is of course not necessary to follow in detail the various changes that were made with regard to these various blocks in the way of residence. She goes on to show what the system adopted was with regard to Hassan Ali's property at Poona. Looking at the evidence on both sides as to the residence in the Poona property, I find that the bungalows there in Hassan Ali's time were in the charge of Hassan Ali's Karbhari and the keys of them when unoccupied were kept by him; that in Ali Shah's time he settled who should occupy the various portions of the Poona houses

and

and that his Raibhari was in charge of the bungalows and kept the Keys when they were empty. His name was Moulla Sana; that both Ali Shah and Hassan Ali paid the taxes and repaired all the bungalows in Poona and Bombay; that on the death of Ali Shah the same Raibhari Moulla Sana during her management looked after the bungalows in the same way; and that she managed the Bombay properties in the same way as Ali Shah had done.

Defendant 1 speaks to the same arrangement after he entered into possession of the estate.

If, therefore, the bungalows in Bombay and Poona were the property of the successive Aga Khans, I see no reason to disbelieve that their permission would be

be asked by the various members of the family as to what portions of those bungalows they should occupy, and I see no reason whatever to suppose that at any time any member of the family claimed this right of residence adversely to any of the Aga Khans; and it is to be noted that the Plaintiff and her witnesses do not claim any right in the properties or any portions thereof themselves, but a right of residence as it were a floating right of residence over the whole of them. I find that it is not proved that every male member of the family on attaining majority and every female member thereof on attaining majority or on marriage has

has resided rent-free in some house or houses appertaining to the said family estate as in para. 13 of the Plaint set forth. On the contrary, there are numbers of the members of the family who have not had residence on the property at all. The Plaintiff herself never had any residence but only through her husband Moochoot Shah. It is not necessary to set out the specific instances of those members who have never resided on the property nor the specific instances which show that members of the family did not get the right of residence on attaining majority and female members on attaining majority or marrying, because to my mind nothing approaching a regular practice or custom such as is alleged in the

Plaint-

Plaint or Roochick's Written Statement has been proved.

In the same way with regard to the monthly allowances. There can be no doubt in my opinion looking at the evidence with regard to Nusser Shah that in his case he was deprived of his allowance in consequence of his own behaviour. It is not suggested that he took any steps to enforce his right to it. Here again Lady Ali Shah's evidence pages, 21 & 26, gives in great detail the actual cash allowances that were given, and inter alia she denies that there was a fixed scale by which Hassan Ali's sons and daughters got allowances. She denies that his sons got a fixed allowance of Rs. 1000 a month, each

Dy. Rs. 9999 is list of persons receiving allowances the letter to them. Rs. 84250 is list of persons getting allowances.

? L.R.R.

each of his wives Rs. 300 and his daughters Rs. 200 a month.

Then as regards food, there is no doubt that both in Poona and Bombay the members of the family staying in those respective places were provided with food from the common Kitchen, but this practice does not seem to have been confined to the members of the family alone but to such retainers or servants as the Aga Khans might wish should have the benefit of it.

As regards carriages and horses, the claim put forth on the part of the Plaintiff certainly seems an extraordinary one, for we are told that a member of the family would be entitled, as far as I can make out, to as many horses and carriages as he or she chose. Then we were also told that if any one of them demanded a Motor Car it-

it ought to ~~to~~ be supplied to him.

As regards wedding expenses, in which case again the Plaintiff claimed on behalf of the members of the family that they should be entitled to as much money as they wanted for their marriages. She says, page 45, that when she married five marriages took place and the expenditure was two lakhs of rupees from what she heard. In re-examination she gave the names of other persons then married. But Lady Ali Shah says the outside sum spent — on the five marriages was about a lakh or less, and she denies that the Plaintiff could have demanded two or three lakhs as presents and her sisters the same each, and that each of Akbar Shah's sons could have demanded 6 to 8 lakhs of presents, and that a grandson of an Aga Khan whose father

was dead was entitled to Rs. 20000 to Rs. 50000 as of right as a wedding present. She also denies Koochick's statement that Rs. 40000 could be demanded as of right. (See Koochick, page 178).

On this point it appears to me that the Plaintiff and those who support her have formed enormously exaggerated opinions of the ~~worth~~ wealth of the Aga Khans as they ~~it~~ did in estimating their properties at two crores of Rupees.

The conclusion, then, that I have come to on this part of the case is that all the Aga Khans had been men of exceptionally generous disposition. They have maintained large numbers of the members of their family in a lavish manner

as

as also numbers of their relatives and servants, and in my opinion they have done this as a matter of grace and favour. No claim whatever was put forward to any such right prior to the disputes in this case. No mention of such a claim is made in the Will of Jungi Shah or in any other document.

On the questions raised by the issues I have above referred to, therefore, in my opinion Defendant 1 is entitled to succeed.

It is I think doubtful that I should make some observations on the character of the final witnesses. The Rajah & Pff Kunchik & Gurbak Tej Bysane should be called as witnesses in any thing they could. If I were to argue the matter I would not on their forces as they are known from hearsay but just in such observations with which facts I am acquainted (let in) from the file. But as I am not to record the evidence of Pff & Gurbak Tej it is for me to be careful of interpretation & understanding it is. I think second time to have Gurbak Tej Bysane, his Lr Kunchik & have in any way an unsatisfactory witness.

Challenge of witnesses.

He gave his evidence hastily in an embarrassed way - hasty in a

It is necessary for me to explain the circumstances under which the business of the Office of the Office was withdrawn from J. Brown. At the beginning of the year to my retirement it was suggested to the Office business that I should not try the business as I was about to travel in Ireland & S. Africa. For I should explain that in that respect I was in a different position from all the other partners in Bentley. I said I had exchanged letters with J. A. K. & had their terms with him & had asked him to think & he had not been able to decide. This circumstance decided me to allow all the possible latitude I could to the Office & the Office the opportunity in letting their business go on. For it seemed to me as most unlikely that the business might retrograde from the ~~legal~~ and disorganization

the business of the Office withdrawn from the

& hold

might - & we the spirit we ~~[illegible]~~ change
its grace. This conjecture I would
now be inferred to on the same prin-
ciple that. Among the Xns of the witnesses
on the Commission questions were ma-
turely put & those against which they
protested on the ground that their
religious liberty was being offended.
Among the progress of the trial it
was suggested & one that I would on
questions were put & the witnesses in
this court were there to write the
business & those particular in the
more proper there wd: probably be
an interest of liberty between the
Commissioners connection in Bermuda.
Since the Act I was being X'ed for
a question was put & I
think was checked in - to my mind

times but calculated to cause excitement
& animosity. There was really no cause
to hurt the feelings of Capt I in any such
terms as he had already received it
in the measure of Portugal. There was
the strongest no cause to hurt it in so
terms in it: it was hurt. I feel that
this note to Q. should be sent XXing
Capt I but he wishes the matter to
continue as at first. but Capt I cannot
it. I then intimated Mr Q. my wishes
for action here to be hurt I also shew
the letter. The next question has
to the same point & I at once detailed
to hurt to be cleared. The hurt was
then handed with Buchanan - in
fact more handed than I had seen
mr it in any case. mr Clarendon but the
hurt has big cleared I asked
Lord Ld Capt I & Pff to have up
to me & explained to them my
wishes be acting the hurt to be
cleared. They retired to the
room & after the Ct Lord have

counsel Pipp's counsel ~~to the Court for~~
~~to Pipp the appellee~~ he said yet under
I think he had instructions not to proceed
with it had. His instructions were not to
proceed with it unless it was not
fully reported as Pipp's case was. &
yet his client fully understood & instructed
of this step. Therefore had I caused
him to depart the reporter Pipp's case
with there. This intention was there but
influenced me in the opinion I had
formed many days before the actual sign
that they were "sitting for a fall".
In any opinion point of view may
have in which most correct statement
(e.g. minister a stone bridge Judge
was that if & this should, the court
is entitled & when the court is to
the evidence in
element or in I authority there, they have
if fulfilled in the trial proceeding in
that & have religious or political
disputes the Judge is entitled
if not bound & endeavour the
general duty of the function of charity
& let the evidence be fulfilled.

I find on the issues as follows:-

1. Whether the offerings and presents received by the 1st Aga Khan and each of his ancestors since A.D. 1770 and earlier from the Khojas in Bombay and elsewhere and also from Ismaili Shias or the investments now representing the same form part of the entire estate of the 1st Aga Khan's own family as alleged in para. 2 of the plaint.

No.

2. Whether the offerings and presents made to the 1st and 2nd Aga Khans respectively were not the absolute property of each of the said Aga Khans respectively and whether the Plaintiff is entitled to any interest in such offerings and presents as alleged by her in the plaint.

Yes (the first part) and No (the latter part.)

3. Whether there are any investments now representing the offerings and presents received by the 1st Aga Khan's predecessors who were

Spiritual

Spiritual heads of the Shiah Imami Ismailis as stated in para. 2 of the plaint.

No evidence. - No.

4. Whether the 1st Aga Khan received an allowance of Rs. 3000 per month from the Government of India as such Spiritual head of the Shiah Imami Ismailis as alleged in para. 2 of the plaint.

No.

5. Whether the said allowance of Rs. 3000 was not received by the 1st Aga Khan for his services to the British Government in or about the Christian years 1843-44.

Yes.

6. Whether the said allowance to the 1st Aga Khan formed part of the entire estate of the 1st Aga Khan's own family as alleged in para. 2 of the plaint.

No.

7. Whether the Plaintiff has any rights in the presents and offerings or in the investments now representing the

the same as claimed in para. 2 of the plaint.

No.

8. Whether the Plaintiff has any rights in the said allowance from Government or in the investments now representing the same as claimed in para. 2 of the plaint.

No.

9. Whether the 1st Aga Khan ~~after~~ in the year 1845 ~~purchased any estates~~ possessed extensive estates in Persia as alleged in para. 3 of the plaint.

No.

10. Whether the 1st Aga Khan after 1845 purchased any estates in British India with the aid of monies derived from the income of his extensive estates in Persia as alleged in para. 3 of the Plaint.

No.

11. Whether the 1st Defendant ever got possession or is now in possession of any estates in Persia which belonged to the 1st Aga Khan as aforesaid.

No.

12. Whether the 2nd Aga Khan continued the same policy as alleged in para. 4 of the plaint.

No.

13. Whether the 2nd Aga Khan ever bought any properties in British India with the aid of the income of the 1st Aga Khan's extensive estates in Persia as alleged in para. 4 of the plaint.

No.

14. Whether the 1st Defendant ever got possession of or is now in possession of any properties such as are mentioned in the 13th issue.

No.

15. Whether the 1st Defendant as Titular head of the 1st Aga Khan's own family receives offerings and presents and an allowance from Government as alleged in para. 4 of the plaint.

No.

16. Whether the offerings and presents that the 1st Defendant receives from his followers are not given to and received by him as the Hazar Imam and in consequence of the veneration and devotion of the Shiah Imami Ismailis to his person.

Yes.

17. Whether the offerings and presents mentioned in the last issue are not given to and received by him as his own absolute private property.

Yes.

18. Whether the allowance of Rs. 1000 per month received by him from the British Government

is not given to him in recognition of the 1st Aga Khan's services to the British Government for his own use absolutely.

Yes.

19. Whether the allowance received by the 2nd Aga Khan from the British Government was not his own absolute property and whether the same was not granted to the 2nd Aga Khan in recognition of the services aforesaid of the 1st Aga Khan.

Yes.

20. Whether the 1st Defendant as ~~titular~~ Titular head of the family holds and manages immoveable property and cash securities outstandings and other moveable property of the estimated value of Rs. 2,00,00,000 (two crores) as alleged in para. 4 of the plaint.

No.

21. Whether the 1st Defendant holds and manages property of the 1st Aga Khan's own family in the different places mentioned in para. 4 of the plaint or any of them.

No.

22. Whether the 1st Defendant has from time to time sold off several properties belonging to the 1st Aga Khan's own family and invested the sale proceeds and other monies of the said family in the purchase of diverse properties now standing in the names of the 1st Defendant's nominees as alleged in para. 4 of the plaint and in particular whether the 1st Defendant has sold the property mentioned in answer to interrogatory No. 15 administered to the Plaintiff in this suit.

No.

23. Whether the 1st Defendant has purchased the properties in

in the name of nominees as stated by the Plaintiff in her answer to the 16th interrogatory administered to her in this suit.

No.

24. Whether the 1st Defendant is in possession of the properties mentioned in the Plaintiff's answer to the said interrogatory.

No.

25. Whether the properties mentioned in the Plaintiff's answer to the said 15th and 16th interrogatories form part of the estate of the 1st Aga Khan's own family as alleged in para. 4 of the Plaint.

No.

26. Whether during the lifetime of the 1st Aga Khan every male member of the family on attaining majority and every female member thereof on attaining majority or marrying resided rent free in some house or houses pertaining to the 1st Aga Khan's own family and through the Titular head and manager for the time being of the said family and out-

of

of the funds of the said family estate received monthly allowances and the salaries of servants and wedding presents in the event of marriage and was provided with servants, carriages, horses, furniture and other requisites and comforts by virtue of the fact that they were heirs and heiresses jointly entitled as of indefeasible rights under the Mahomedan Law of Inheritance to definite parts or shares in the said family estate as alleged in paras. 13 and 14 of the plaint.

No.

27. Whether the claim based on the said allegation set out in the last issue is not bad in Law on the face of it.

Yes. Allegation as heirs and heiresses jointly absurd.

28. Whether since the death of the 1st Aga Khan every male member of the family on attaining majority

majority and every female member thereof on attaining majority or marrying has resided rent-free in some house or houses pertaining to the said family estate and through the Titular Head or Manager for the time being of the said family and out of the funds of the said family estate has received personal monthly allowances and the salaries of servants and wedding presents in the event of marriage and was provided with food, servants, carriages, horses, furniture and other requisites by virtue of the fact that they were heirs and heiresses jointly entitled as of indefeasible right under the Mahomedan Law of Inheritance to definite parts or shares of and in the family estate as alleged in paras. 13 and 14 of the plaint.

No.

29. Whether the residence allowances requisites and comforts mentioned in paras. 13, 14 and 15

of the plaint were given to and received by the recipients thereof as a portion or on account of what they were entitled to receive as heirs according to their respective parts or shares under the Mahomedan Law of Inheritance of and in the family estate as alleged in para. 15 of the plaint.

Ans.

30. Whether it is not the fact that the 1st Aga Khan during his lifetime in Bombay provided residence for, gave allowances to and made provision for the maintenance and comfort of his own descendants, the husbands of his descendants, relations near and remote, or some of them and also for the families of persons not related to him by blood under the circumstances set forth in paras. 51 and 52 of the 1st Defendants' Written Statement as a matter of bounty only.

Yes.

31. Whether the 2nd Aga Khan did not continue the practice of his

his father in providing for and maintaining a number of relatives near and remote and strangers in blood to him as a matter of bounty only as alleged in para. 52 of the 1st Defendant's Written Statement.

Yes.

32. Whether the 1st Defendant and the 3rd Defendant for him during his minority did not continue the said practice as a matter of bounty only as alleged in para 52 of the 1st Defendant's Written Statement.

Yes.

33. Whether the 1st Defendant is not entitled to vary, decrease, increase, or altogether stop his bounty aforesaid to any person to whom the same has been accorded whenever he chooses.

Yes.

34. Whether the claim which is said never to have been questioned in para. 16 of the plaint was ever made before the plaintiff made the same in this suit or shortly prior ~~to~~ thereto.

No.

35. Whether there was any joint succession to the estate of the 1st Aga Khan as alleged in para. 18 of the Plaint.

No.

36. Whether the 2nd Aga Khan managed the estate left by the said 1st Aga Khan till his death as alleged in para. 18 of the plaint.

No. Part only, Jungi and Akbar took part.

37. Whether the facts in connection with what happened to the 1st Aga Khan's estate on his death

death are not correctly set forth in paras. 24, 25, 26 and 27 of the 1st Defendant's Written Statement.

Yes.

38. Whether Aga Jungi Shah by virtue of his right as an heir since he came of age in the lifetime of the 1st Aga Khan occupied a house at Poona Connaught Road and a house at Love Lane Bombay and received from the family estate about Rs. 800 a month as personal allowance together with salaries of servants, carriages, horses, food, furniture and other requisites and comforts and his funeral expenses as alleged in para. 19 of the plaint.

No.

39. Whether it is not the fact that the said Jungishah occupied the said immoveable properties which belonged to the 1st Aga Khan in the 1st Aga Khan's lifetime by the permission of the

1st

1st Aga Khan.

Yes.

40. Whether it is not the fact that the monthly allowance paid to and other ~~other~~ benefits enjoyed by the said Jungishah during the 1st Aga Khan's lifetime were enjoyed by him from the bounty of the 1st Aga Khan and not otherwise.

Yes.

41. Whether the money payments, allowances and requisites and comforts which Jungi Shah enjoyed were not continued to him by the 2nd Aga Khan and afterwards by the 1st Defendant's mother during the 1st Defendant's minority and by the 1st Defendant since he attained majority and were enjoyed by the said Jungishah as a matter of bounty only and not otherwise.

Yes.

42. Whether Zainalabadin Shah received monthly personal allowance besides residence, servants, salaries, horses, carriages, food and wedding expenses and presents and his personal expenses by virtue of his right as an heir as alleged in para. 20 of the plaint.

No.

43. Whether whatever Zainalabadin Shah received as alleged in para. 20 of the plaint was not received by him as a matter of bounty only and not otherwise.

Yes.

44. Whether on the death of the 1st Aga Khan his three widows, three sons, and three daughters and their issues continued to live together as an undivided joint family as alleged in para. 23. of the plaint.

Ans.

45. Whether the said three widows, three sons, and three daughters and their issues were jointly in enjoyment of the entire family estate according to their respective undivided shares therein as alleged in para. 23 of the plaint and whether after the death of any of the widows, sons and daughters his or her heirs continued to live as an undivided joint family with the survivor and their issues and jointly to enjoy the family estate as alleged in para. 23 of the plaint.

No.

46. Whether the allegations made in para. 23 of the plaint are not wholly inconsistent with the allegations in the plaint made in the previous paras. thereof and in para. 24 of the plaint.

Yes.

47. Whether the 1st Defendant's mother during the 1st Defendant's minority managed the joint

family

family estate from 17th August 1885 till the year 1893 as alleged in para. 28 of the plaint.

No.

48. Whether the 1st Defendant's mother did not manage the estate she managed as Manager for the 1st Defendant and on his account exclusively.

Yes.

49. Whether the Plaintiff is entitled to $\frac{7}{144}$ share in the entire property in the possession of the 1st Defendant as alleged in para. 34 of the plaint.

No.

50. Whether the transaction evidenced by the Indenture of the 11th day of September 1901 mentioned in para. 36 of the plaint is not a <u>bona fide</u> valid transaction in the nature of a family arrangement and binding on the plaintiff.

Yes.

51. Whether the 5th Defendant as administrator of the estate of Jungislah had legally no right to execute the said Indenture of the 11th day of September 1901 as alleged in para. 39 of the Plaint.

Section 90 of the Probate and Administration Act does not apply - not giving up anything.

52. Whether the transaction evidenced by the said Indenture of the 11th day of September 1901 was a sham transaction and never intended to be acted upon as alleged in para. 39 of the Plaint.

No.

53. Whether the 1st Defendant has not paid in cash to the 5th Defendant Rs. 40000 mentioned in the said release of the 11th day of September 1901, and executed a conveyance to the 5th Defendant of properties worth one lac of Rupees mentioned in the said Indenture.

Yes.

54. Whether the Plaintiff has received any portion of the said Rs. 40,000 from the 5th Defendant.

Yes. Rs. 10,000.

55. Whether the transaction evidenced by the said Indenture of the 11th day of September 1901 and the said Indenture was collusive and fraudulent as alleged in para. 39 of the plaint.

No.

56. Whether the application for Letters of Administration to the estate of Jungi Shah and the execution and registration of the said Indenture of the 11th day of September 1901 were constituent parts of a scheme conceived and carried out by the 1st Defendant in collusion with the 5th Defendant with the object of fraudulently depriving the plaintiff and other members of the family of their rights as joint heirs and heiresses and co-sharers in the said family estate under Maho-

medan

medan Law as alleged in para. 41 of the plaint.

No.

57. Whether the recitals in the said Indenture of the 11th day of September 1901 challenged by para. 43 of the plaint were not true in fact and in law and if not correct were not bona fide believed to be true and correct by the parties to the said Indenture, or in the alternative were believed to be such as could not be proved to be not true and incorrect.

Yes.

58. Whether the recitals challenged in para. 43 of the plaint and those mentioned in para. 44 of the plaint are false and were concoctions of the 1st Defendant and the 5th Defendant acting in collusion as alleged in para. 44 of the plaint.

No.

59. Whether the property described in Schedule B to the said Indenture of the 11th day of September 1901 belonged to the separate estate of Aga Jungishah and never belonged to the estate of the 1st Aga Khan as alleged in para. 45 of the plaint.

Ans.

60. Whether the said property described in Schedule B to the said Indenture did not belong to the 1st Aga Khan at the time of his death.

Yes.

61. Whether there were not two other properties one at Mount Road and the other at Baboola Tank known as the Hamam Khana in the possession of Jungishah's heirs & some of them, portions of the 1st Aga Khan's estate, which were not mentioned in the said Indenture for good reasons but the existence of which was well known to the parties to the said Indenture. ~~and the Plaintiff~~ ?

Yes.

62.

62. Whether the property at Mount Road was purchased by the said Jungishah out of his own savings and income as alleged by the Plaintiff in this suit.

No.

63. Whether the Hamamkhana property was built by the said Jungishah with his own moneys as alleged by the plaintiff in this suit.

No.

64. Whether the share of Jungishah's estate in the estate which was surrendered by the said release was worth more than 40 lacs of Rupees as alleged in para. 37 of the plaint.

No.

65. Whether the 5th Defendant as administrator aforesaid did not get more by the arrangement evidenced by the said Indenture than he was at all likely to get by filing a

a suit against the 1st Defendant.

~~No.~~ Yes.

Yes?

66. Whether the arrangement evidenced by the said Indenture was not a very wise and beneficial arrangement in the interests of those entitled beneficially to the estate of Jungishah and whether the parties beneficially interested therein to the extent of $\frac{25}{32}$nds thereof do not approve of and support the said arrangement.

Yes.

67. Whether the said Jungishah and his estate and the persons beneficially interested in the estate have not as a matter of fact received if the allegations in the plaint are correct much more than what Jungisha's estate is entitled to as a share in the 1st Aga Khan's estate.

Yes.

68. Whether the claim of Jungi Shah's estate against the said estate of the 1st Aga Khan was not barred by limitation at the date of the said Indenture.

Yes.

69. Whether the Plaintiff's suit to set aside the said Indenture of the 11th day of September 1901 and to have it declared not binding on her is not barred by limitation.

Yes as far as Shamsudin is concerned - not as far as Defendant 1 is concerned.

70. Whether in any event the plaintiff is entitled to maintain this suit so far as it is based on her being one of the heirs of Jungishah as long as the said release is not set aside.

No.

71. Whether even if the release is set aside the plaintiff can maintain this suit against the 1st Defendant to recover any property as one of the heirs of Jungishah.

No.

72. Whether when the arrangement evidenced by the Indenture of the 11th day of September 1901 was come to, property was not included in the list of properties treated as the 1st Aga Khan's estate which in fact did not belong to the said estate and in which the said Jungishah's estate had no share.

Yes. Karachi property and Ali Shah's.

73. Whether on the occasion aforesaid property was not included in the list of properties

treated

treated as the 1st Aga Khan's estate which although belonging to that estate had had large sums expended in buildings upon them and otherwise by the 2nd Aga Khan and the 1st Defendant without any allowance being made for such expenditure.

Yes.

74. Whether if the said Indenture is set aside and the estate of the 1st Aga Khan partitioned amongst his heirs such property which did not in fact belong to his estate should not be excluded and due allowance made for the expenditure upon such property by the 2nd Aga Khan and the 1st Defendant as well as that made upon property mentioned in issue 73.

Yes in that event.

75. Whether if the said Indenture

is

is set aside and the estate of the 1st Aga Khan partitioned amongst his heirs the three properties appropriated by Jungishah after the death of the 1st Aga Khan should not be brought into hotchpotch on such partition as also the property conveyed by the first defendant to the 5th defendant under the said Indenture and whether in such event the estate of Jungishah is not bound to return to the 1st Defendant the sum of Rs. 40,000 paid under the release to the Administrator of that estate together with interest thereon at 9 per cent. per annum or such other rate of interest as may be just at annual rests from the date of the said indenture.

Yes.

76. Whether the 5th Defendant has continued since the 11th September 1901 to receive payments and benefits mentioned in para 38 of the plaint as one of the heirs entitled under the Mahomedan Law entitled to share in the family estate as alleged in the said 38th para.

No.

77. Whether the payments and benefits received by the 5th Defendant from the 1st Defendant as alleged in para. 38 of the plaint have not been paid, conferred and received from the bounty of the 1st Defendant and not otherwise.

Yes.

78. Whether the contentions mentioned in para 42 of the plaint are sustainable.

No.

79. Whether the Indenture of the 26th day of September 1901 mentioned in para. 46 of the plaint was not a <u>bona fide</u> valid transaction in the nature of a family

arrangement

arrangement and whether the recitals in the said indenture alleged to be false are not true recitals.

Yes. ~~No evidence about it.~~

80. Whether the circumstances under which the said indenture of the 26th day of September 1901 was entered into or the allegations made in para. 50 of the plaint have any relevancy in this suit and if they have any relevancy what is it and what are the circumstances under which the said indenture was executed and is the plaintiff's information and belief mentioned in para. 50 of the plaint correct.

No.

81. Whether the Plaintiff from the year 1880 received Rs. 375 per month as personal allowance (1) from the 1st Aga Khan (2) from the 2nd Aga Khan (3) from the 1st Defendant as alleged in para. 51 of the plaint.

No. It was her husband who received it.

82. Whether the salaries of the plaintiff's syces and servants were paid and the other benefits mentioned in the said para. 51 conferred on her since 1880 as alleged in para. 51 of the plaint.

No.

83. Whether it is not the fact that no personal allowance was ever made to the plaintiff at any time and that the residence and other benefits which she has enjoyed were conferred on her said husband out of the bounty of the ~~said~~ 1st and 2nd Aga Khans and that she jointly enjoyed them with him as his wife up to the time of the death of her husband.

Yes.

84. Whether it is not the fact that the food and other requisites supplied to the plaintiff after the death of her husband

were

were given to her by the 1st Defendant out of bounty.

Yes.

85. Whether the matters alleged in para. 52 and 53 of the plaint if true give the plaintiff any cause of action against the first defendant.

No.

86. Whether the 1st Aga Khan left a will which has been suppressed by the 1st Defendant as alleged in para. 55 of the plaint to have been stated to the plaintiff by the Defendants 9 to 14.

No.

87. Whether the 1st Defendant with a view to defraud other members of the family has placed large portions of the family estate in the

names

names of strangers and concealed other portions of great value as alleged in para. 56 of the plaint.

No.

88. Whether the 1st Defendant has drawn vast sums of money from the family estate quite out of proportion to his share in the family estate and far in excess of his requirements and has misappropriated and expended the same just as he liked and speculated with the same and applied the same in discharging his own personal debts and for special purposes for which he had no right to call on the family purse including betting heavily and recklessly on the turf as alleged in para. 56 of the plaint.

No evidence. Stood over till the other issues had been decided.

89. Whether the ~~plaintiff ought~~ 1st Defendant ~~to be allowed~~ has alienated portions of the family estate for his own benefit and caused heavy loss to the estate by gross and reckless mismanagement, extravagance and waste and not recovering property he ought to have recovered as alleged in para. 56 of the plaint.

No evidence - stood over.

90. Whether the plaintiff ought to be allowed to give any evidence or cross-examine any witnesses on issues 88 and 89 until she has proved that the property the 1st Defendant has been dealing with, is not his own and that the Plaintiff has some interest therein.

Stood over.

91. Whether the trial of issues 88 and 89 should not be postponed until after the other issues

in the case have been determined.

Yes.

92. Whether the Plaintiff is entitled to the sum of Rs. 9,000 and interest claimed in para 58 of the plaint or any part thereof.

No.

93. Whether the Plaintiff is entitled to what she claims in para. 59 of the plaint.

No.

94. Whether the 1st Defendant is a "Titular head" of a family in the sense it is believed it is alleged in the plaint, viz. that of a mere agent of the family to receive monies on their behalf.

No.

95. Whether the 2nd Aga

Khan

Khan did not leave property of his own acquisition to which his heirs are entitled.

Yes.

96. Whether the prayer C to the plaint is supported or justified by any allegations made in the plaint and if not whether the plaintiff can in any event obtain a decree in terms of the said prayer.

No.

97. Whether the prayer C to the plaint ought not to be struck out or altogether disregarded.

Not necessary.

98. Whether the expenditure for the benefit of relations near and remote and for strangers in blood has not

as

as a matter of fact been paid out of the voluntary offerings made to the Aga Khan for the time being as alleged in para. 53 of the 1st Defendant's Written Statement.

Yes.

99. Whether the allegations made in para. 53, 54 and 56 of the 1st Defendant's Written Statement are not true.

Yes.

100. Whether the lineal and collateral relatives of the 1st Aga Khan are all shown in the Genealogical Table annexed to the plaint and marked A.

No.

101. Whether the persons named in list No. 1 to the

1st

1st Defendant's Written Statement are not persons who by reason of relationship to the 1st Aga Khan by blood or marriage should have been inserted in the said table Ex. A to the plaint.

Yes.

102. Whether the counterclaims of the 1st Defendant set forth in para. 56 of the 1st Defendant's Written Statement ought not to be decreed in favour of the 1st Defendant in the events contemplated in that para.

Not necessary.

103. Whether this Court has any jurisdiction to determine the title to or to partition or otherwise pass any decree affecting immoveable property outside the local limits

limits of the jurisdiction of this Court, viz, the Town and Island of Bombay.

Not necessary.

104. Whether the father of Defendants 7 and 8 Akbarshah did not appropriate to his own exclusive use to the entire exclusion of the other heirs of the 1st Aga Khan the immoveable properties in para. 5 of the Written Statement of Defendant 7.

Yes.

105. Whether Akbarshah and his mother did not appropriate to their exclusive uses the immoveable property mentioned in the said para of the 7th Defendant's Written Statement

Statement.

Yes.

106. Whether Akbar Shah did not deal with the said immovable properties as his own.

Yes.

107. Whether the claims of the heirs of the 1st Aga Khan and those claiming under them are not barred by limitation in respect of the said properties in 5 of the Defendant's Written Statement.

Yes.

108. Whether the offerings received from time to time by the successive Aga Khans beginning from Shah Hassanali were not and are not received by

by them for and on behalf of and benefit of all the members of the family of Shah Hassan Ali and not for their individual benefit.

No.

109. Whether the whole of the said family is not held sacred by the devotees as the family that supplies the Imam and whether the Aga Khan for the time being is not the Titular Head and representative of the family.

No.

110. Whether all the members of the family of Shah Hassan Ali including Defendants 9 to 14 are not jointly entitled to the offerings received from time to time and the properties acquired by means of

of such offerings.

No.

111. Whether instead of dividing the said offerings and the properties among the persons so entitled to them a custom to the effect mentioned in para 3 of these Defendants' Written Statements has not grown up in the family.

No.

112. Whether the rights and interests of these Defendants in the properties and offerings subject of this suit should not be ascertained and declared.

No. Their rights are none.

113.

113. Whether the payment and provision to and for these defendants in future of the residence, allowances etc., in accordance with the custom as aforesaid should ~~not~~ not be secured and the arrears of such allowances be decreed.

No.

114. Whether in the alternative these Defendants should not be given their shares on the basis of former allowances and provisions in the said properties and offerings

No.

115. Whether this Defendant (No. 2) is entitled to share in the properties and offerings

The

the subject matter of this suit.

No.

116. Whether Defendant-2 has always during the life of Hassanali Shah as well as since his death been receiving as of right from the family estate and offerings allowances aggregating in all to Rs. 200 p.m. besides salaries of servants, food, horses, carriages and other comforts.

No.

117. Whether in any event she is not entitled to have the said allowances and other requisites secured to her for the future during her life.

No.

118.

118. General issue.

119. Whether Defendant 2 is not entitled to a share in the properties left by the 1st Aga Khan as one of his heirs.

Not necessary in this suit.

120. Whether in the event of plaintiff failing in this suit in her claim to share in the 1st Aga Khan's estate issue 119 can be determined in this suit.

Not necessary.

121. If it can, whether Defendant 2's claim as one of 1st Aga Khan's heirs is not barred by limitation.

Not-

Not necessary.

122. Whether as a matter of fact defendant 2 has not received since the death of 1st Atga Khan for more than her share according to Mahomedan Law in the said estate come to 1st Defendant's hands.

Not necessary.

123. Whether Defendant 2 (in the event aforesaid) has any claim as against Defendant 1 in respect of the property of 1st Atga Khan which never came into his possession.

No.

124. Whether Defendant 2 can claim against Defendant 1 any interest she might

might have had in the properties moveable and immoveable of 1st Aga Khan's estate taken possession of by Akbarshah and Jungishah.

No.

125. Whether Plaintiff is entitled to portion of the Khoja burial ground.

No.

126. Whether the Hasanabad Mausoleum and the vaults underneath and the precincts thereof are not the private property of the heirs of Ali Shah.

Yes. See A. 33 and D. A. 224 and 225.

127. Whether any member of the family is entitled

as

of right to be buried in Hasanabad.

Deft 1.

No. not with the permission of the ~~A. th to the tomb~~

128. Whether the Hasanabad Mausoleum and premises ought to be partitioned among the heirs of Hasanali or among the family of Hasanali.

No.

The result is that the suit is dismissed. Plaintiff to pay the costs of the defendants and support the defendants in the ~~costs of the suit~~.

As to the costs of the suit.

I now deal with the costs of the suit. I am of opinion that one separate set of costs should be allowed (a) to Defendants 1, 3, 4 & 5 and 8 respectively and (b) one separate set to Defendant 5 (4 & 6) & 7 & 8 jointly.

The persons liable to pay these costs are Plaintiff and Defendants 2, 9 and 10. I do not think I should make Defendants 11 to 14 liable for them or any part of them. Costs are pressed for against Defendant 2.

The above costs which of course will include costs reserved if any and the costs of the commission including the costs of the attendance of Mr. Moos throughout will be payable by the Defendants above mentioned

mentioned jointly and severally. Whether in the event of Defendants 5 not recovering his costs, he can recover them from Jungi-shah's estate is a question I cannot decide in this case.

I cannot conclude this fragment without expressing the admiration I felt during the course of it at the manner in which it has been conducted & the impartiality shewn in spite of feeling and prejudice. Well deserving the thanks of the whole of the [illegible] not merely in single points but throughout an interesting portion of the annals of this city.

In this conduct of the house he has most skillfully supported & has proved those xxx of the Office holders as a Commission of xxx of the Office holders has been a striking feature of the case and in my opinion he richly deserves the honourable employment which he may be now having his reward in full.

In this fragment I have to add a humble opinion a hope which may be based ~~hope~~ feelings of religious animosity in the community & hatred among other members of the family and of

trust that the result of this case
may be that Jesuitical & illegal
proceedings of such a character may this appear
from the minutes of the members of the
parish as well as from those of
the large & important committee.