

after perusing the whole of the evidence twice

This witness is against his believing intent.

The first and most important point as regards this witness 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 atya Khan for the time being.

~~Outside (plainly)~~  
~~to) Akhmadini (an-~~  
~~tribution to given to~~  
~~atya Khan)~~

~~is 2 annas in the shape of their income; also on the occasions of marriages and births and deaths in their families; also at the performance of the Tal-supra which is a very curious but interesting ceremony. On these occasions fruits, meat, sweet-meats, vegetables are brought in large quantities in the Jamat-~~

Khand

Khana as free gifts to the Aga  
 Khan. They are then put up for  
 auction and are bid up to some  
 times ten times their intrinsic  
 value and the proceeds are paid  
 in for his benefit in the Daftar  
 Khana. Regular books of all re-  
 ceipts 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 Hazrat

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:-

**Thalsupra.** This takes place after the recital of *Qmans* 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 on benches. Then the *Munkhi Ramadia* puts them up for auction in honour of the *Hazar Imam*. The first *Muamari* 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 *Munkhi Ramadia* and ask him to invoke blessings on the souls of the deceased persons. For that money is paid. No sum is fixed. The *Munkhi* then joins his hands with the hand of the donor and says: "Ali Allah  
Kairat"

stariat Murad Kabulkare" - 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 bought  
 as the Mehmani of the Imam.

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

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

there is an assembly of brothers. Each of  
Punjebhai has a day allotted to  
him e.g. the witness Joomaboy  
was on Wednesday and stew Moon  
day Punjebhai.

Again there is a box with  
a slit in it in the jamatkhanah and  
the safe itself has a slit in it into  
which payments are made to the  
Hazar Imam e.g. the Dasseon or  
the Lannas 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 the  
"Domani Kori." Rs. 10 is paid for "Mand-  
wani Doowa" paid by the bridegroom's  
father. The bride's people pay Rs. 2 for  
Mandwani Doowa. It is said at  
the place where the marriage is  
performed. Doowa at the house  
is "Tairat Mowad". At the house  
of bride and bridegroom. Sar is Das-  
soon - is a percentage on the  
Doowa

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Lower - Sammas in the Rupee. The  
Lower or *Lej* consists of ornaments  
and clothes.

In connection with death, the  
*Mankhi Namada* is sent for and  
the 10<sup>th</sup> chapter of the *Dasaavat* is  
recited. The *Samar Chhanta* is per-  
formed 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 *Jamathkhana* 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. (Quere.  
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  
*Sami* (Halwa) (a sweet). When the *Hazar*  
Imam

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Imam comes to the Jamatkhand  
Sini 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 Dassoos is paid.

On the 7<sup>th</sup> 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 o'li Roza." Roza=  
fast.

When the Hazar Imam  
names a child a fee of Rs. 2-10-0  
is paid for the male and Rs. 1-6-0  
for a female.

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

through the Committee of Affairs in the Jamalkhana  
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  
Council of some of the parties  
to the Jamalkhana and saw  
Thalsufra and Shir Burdi.

He sat on chairs in front of a <sup>small</sup> <sup>house</sup>  
and there on which a K. city <sup>was</sup>  
he attacks the Jamalkhana - the whole  
place was full of <sup>people</sup> <sup>gathered</sup> <sup>at</sup>  
times <sup>standing</sup> on the ground. In another room  
the <sup>common</sup> of the <sup>community</sup> <sup>was</sup> <sup>gathered</sup> <sup>in</sup> <sup>large</sup> <sup>numbers</sup>  
though <sup>some</sup> <sup>of</sup> <sup>the</sup> <sup>members</sup> - It was a <sup>great</sup>  
business in <sup>right</sup> <sup>being</sup> <sup>to</sup> <sup>the</sup> <sup>reference</sup> <sup>with</sup>  
which the whole proceedings <sup>have</sup> <sup>been</sup> <sup>directed</sup>.

I am <sup>not</sup> <sup>in</sup> <sup>the</sup> <sup>position</sup> <sup>of</sup> <sup>the</sup> <sup>Pepp</sup> <sup>&</sup> <sup>was</sup>  
directed to be <sup>company</sup> <sup>as</sup> <sup>was</sup> <sup>the</sup> <sup>child</sup>  
himself but for some <sup>reason</sup> <sup>or</sup> <sup>another</sup> - <sup>but</sup>  
the <sup>direct</sup> <sup>at</sup> <sup>a</sup> <sup>distance</sup> I <sup>cannot</sup> <sup>say</sup> - the  
direct <sup>at</sup> <sup>the</sup> <sup>child</sup>.



Titles of A. K. The following are some of the titles of the Aga Khan. -

Hazar Imam = present Imam.

Hazar Jomejo Dhami = present holder of the mantle.

Hazrat Maulana Dhami = present holder of the <sup>title, the honor</sup> appellation of God.

L.P. 12

Dhami Salamati (Datar), Dhami = Master - may be safe - the Giver.

Pir Salamati Datar - Dhami

Pir.

L.P. 12

Khudawand = God or Lord.

Shah Pir = Great Lord.

"Gur Pir" = spiritual instructor.

Pir Shah - and others.

When these names are pronounced

in 1850 Pir Muhammad  
Dhami (p. 428) said "He  
is Hazrat Imam and  
father of my heart & in  
place of my eyes".



When the Aga Khan entered the Court  
 all his followers, who were crowded  
 in it, rose up and <sup>I allowed him to</sup> gave his or-  
 der in a chair, to enable them to  
<sup>resume</sup> take their seats. Another fact which  
 strikes me 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 Hus-  
 chick Shah on the commission. This  
 fact is important to my mind  
 because knowing the native cha-  
 racter 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 / ...

22 A. K.  
 2 v ...  
 4 v ...

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But in my opinion the documentary evidence adduced on the commission on behalf of 1<sup>st</sup> Defendant is of greater importance. ~~How~~ <sup>not with</sup> ~~the~~ <sup>the</sup> ~~latter~~ of course it can be said that the witnesses for the Plaintiff support the case of the seceders, while the witnesses for Defendant 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 here  
of the Exhibits  
in the Commission.

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, Ex. Nos. 11 & 12, pages 17 & 18, Ex. No. 15, page 21,

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a birthday gift to the Ağa Sultan  
Abrahamed Shah, Ex. n<sup>o</sup> 17, page 23, Ex.  
n<sup>o</sup> 18, page 25; Ex. n<sup>o</sup> 20, page 27, Ex.  
n<sup>o</sup> 21, pages 28 to 33, Ex. n<sup>o</sup> 22, page  
34, Ex. n<sup>o</sup> 25, page 37, Exs. 28, 29,  
pages 41, 42, Ex. n<sup>o</sup> 30, page 43, Ex.  
n<sup>o</sup> 31, page 44, Ex. n<sup>o</sup> 31<sup>1</sup> & 2, pages  
44, 45; Ex. n<sup>o</sup>s 35, 36 & 37, pages 50 to  
52, Ex. n<sup>o</sup> 39, page 54, Ex. n<sup>o</sup> 48, page  
63, Ex. n<sup>o</sup> 49, page 69, Ex. n<sup>o</sup> 50, page  
72, Ex. n<sup>o</sup> 54, page 76, Ex. n<sup>o</sup> 55, page  
77, Ex. n<sup>o</sup> 57, page 88, Ex. n<sup>o</sup> 62, page  
93, Ex. n<sup>o</sup> 63, page 94, Exs. n<sup>o</sup>s 64 and  
65, pages 95 & 96, Exs. n<sup>o</sup>s 72 & 73, pages  
103 & 104, Ex. n<sup>o</sup> 76, page 106, Exs. n<sup>o</sup>s 79  
& 80, pages 110 & 111, Ex. n<sup>o</sup> 83, page 114,  
Ex. n<sup>o</sup> 85, page 116, Ex. n<sup>o</sup> 86, page 117,  
Ex. n<sup>o</sup> 89, page 120, Exs. n<sup>o</sup>s 90, 91, pages  
121, 122; Exs. n<sup>o</sup>s 92 & 93, pages 123 &  
124, Ex. 95, page 126, Exs. n<sup>o</sup>s 97, 98,  
pages 128, 129, Ex. n<sup>o</sup> 99, page 130, Ex. n<sup>o</sup>  
100, page 131, Ex. n<sup>o</sup> 107, page 138, Ex.  
n<sup>o</sup> 115, page 153, Ex. n<sup>o</sup> 116, page 154,  
Ex. n<sup>o</sup> 117, page 155; Ex. n<sup>o</sup> 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 Agha 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 Agha Khan ~~now~~ in the habit of paying these large sums of money but we find that in some cases monies were paid to the Agha 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~~ <sup>would seem</sup> 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

deh I.P.R.

is possible to in some  
the 24th 1 wishes he  
to the 17th 1 man  
over him who could  
would him in the  
- practice him in the  
out 19th in the  
start fees to lawyer

offerings are made in order that the persons making them may get *markti* or *sawab* i.e. salvation in the next world.

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

~~This is the form of action of the plaintiff  
at Commission Court "In determining  
whether or performance of my part when the  
wishes my particular religion, and benefits to  
members of the Church or denomination, a body, the  
purpose of, I should not most acts upon  
with them of or behalf of or members of or  
Commission - content. It has been so  
other words from that subject": Per  
Fitz Jibson L.J. O'Harlow v. Dixon  
1906. I 2: P. 26. 2. p. 279.~~

It <sup>is</sup> ~~was~~ well known that in matters of this sort the human mind associates an idea of reciprocity <sup>and</sup> of 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 skin" 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 (ἐμπόριον) is precisely that of the Hindus who lay down <sup>it</sup> in <sup>h</sup> hundred places as the essence of <sup>the</sup> "stethi" or established constitutional things." And the same idea

underlies the Western notion of charity in the minds of many persons - see Sir Pallas, 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 4<sup>th</sup> August 1908.

I now propose to deal with

~~Plato's~~  
"Puthyphoro" last  
C. B. Katha Sany  
first book) then the  
"Pithira" the  
of gods is always  
of the world of  
the Hindu  
I. 18. then  
thing is being considered  
He takes from his  
parts out for their own good  
to give the more respect  
to return it to them.  
to look to look in  
of "Nami" by  
F. W. Bain  
who refer to the  
test "I say  
to be necessary to have  
Hindu what  
the out  
"I say"

Plato's idea of the  
Hindu



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 <sup>plea</sup> pleadings, and the evidence on the part of the Plaintiff and her witnesses <sup>before me</sup> is 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 <sup>the</sup> my family personally. At the time of Plaintiff I did not recollect. I did not make

117 (98.)  
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 <sup>then</sup> solicitors in ~~and~~

about sharing in the offerings. At

page 64 she says: "When I first re-  
ceived offerings from the Khojas per-  
sonally 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 offer-

ings 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 Sahab says that

money and embroidered cloth were

given to the ladies of the family

and she sometimes received pre-

sents from the ladies of the Aga

Khan's

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evidence at page 128, line 12 et  
seq. At page 134 she says that  
she is the rightful Aqa Khaw 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 re-  
fer 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 Kho-  
jas. 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

(81) 20

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 <sup>about it</sup> 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 swear 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 Alish'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 Durt-bussi or Kissing of hand and presents made to him at Dizabad near Meshed.

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

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assured other members of the family  
in her presence to the same effect.  
At page 258 she says that De-  
fendant-1 assured her to the  
same effect at a conversation  
which took place about her  
husband's body being sent by  
train to Bombay <sup>At 1 km distance from</sup> 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~~ <sup>money</sup> 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 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 Abu Buraj says that he used to make presents to the Aga Khan and the members of his family. Money presents were put ~~down~~ in the ~~saucers~~ saucers 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



125 (86)  
page 302 he says: "There is no difference  
between the present Aga Khan and  
any other Syed. There are many thou-  
sands 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 De-  
pendant-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 Ansharia Jamat and a member. At page 315 he will not swear that the monies paid at the Thalwara 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.

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

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 shows a considerable amount of suspicion upon them.

Fazulbhoj Jomalbhoj Lalji in the commencement of his evidence says there is no difference between the faith of a Khoja Ismaili and an Anasharia, and he said to me that the Anasharias 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 Anasharia. His statements strike me as so extraordinary that I do not feel disposed to attach <sup>his</sup> much importance to ~~anything~~ <sup>anything</sup> ~~that he may say~~.

believed?

Mahomed

Meahomed Fakira, page 369,  
 says he may have made presents  
 to the Aga Khan on odd days  
 and big holidays and he did  
 so to those members of his fa-  
 mily 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, Shamardin, and  
 the other witnesses who support their  
 case upon this point.

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

129. (70.)

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

I have no hesitation in judging, therefore, that the offerings made by his followers to the A. K. for the time being are intended by them to be for his own personal use and benefit, <sup>and that</sup> ~~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

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of ~~these~~ 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 justifications whatever.

<sup>3-4</sup> <sup>must</sup> <sup>being</sup> <sup>this</sup> <sup>subject</sup> 7, (93)

I now propose to refer to the various Exhibits which have been put in from the Quans which go to maintain the 1<sup>st</sup>. 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 30<sup>th</sup> Imam at the time of Pir Sadrudin. See further Exhibits D. H. 271, D. H. 272. The text 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 <sup>mentioning his name</sup> ~~mentioned as Imam~~ D. H. 281 and D. H. 282 direct them to

Effect of the  
writing of the





I have now dealt with the last main point in the case and have dealt with the other points one above mentioned I have (95)

~~Compelled~~ I have proceeded to deal with the various charges of fraud, murder, concealment of books and property etc. alleged by

The main charges under  
p. 1. 1.

the Plaintiff and those who support her. For although the case finally not only about the law of the land but also the fact that she has been guilty of some of the charges that I did not state. Para. 4 of the Plaintiff-charges that

Frank Jones.

Nothing may be said  
in fact.

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 Agra Khans ever owned properties in Persia and elsewhere mentioned in that paragraph. See also

is highly improbable, taking into the witness's testimony that H. A. the Plaintiff must have known that he would be allowed to read & inspect his own papers.

para. 56 of the Plaintiff's 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. 38 of her witness  
admits that she had  
the papers in her possession  
on 11.12.18 and she  
did not give them to the Plaintiff  
until she actually  
saw the names of the persons in  
the names of the Plaintiff and  
she had been brought  
to the witness's attention.

Para 38 of her witness's testimony, but she had already found that there is no evidence that she had been brought to the witness's attention. Para 38 of her witness's testimony, but she had already found that there is no evidence that she had been brought to the witness's attention.

(26.)

Para. 55 of the Plaintiff says that Defendants 9 to 14 allege that the 1st 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 Plaintiff's case but not an atom of evidence is given as to the Will ever having existed.

Alleged Suppression of Will by him.

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 Plaintiff, para 35, says that in or about the year 1898 disputes began to arise in the family and have continued

Alleged complicity in 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, Q. 14 & 27, further answer to Interrogatory 31 - and after dwelling at length on Hasham Shah'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 Abbas 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

is material here to mention  
 Jungi Shah & his son  
 murdered in 1896 was  
 before the disputes  
 with to have begun.

(95.)  
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 "Fidai" Khajis  
who are devotees of the Aga Khan  
and obey him. <sup>How she knows the name Fidai Khajis she has not told us.</sup> As I have said the  
murder of these two men occurred  
at Jeddah. Defendant 1 was in Bom-  
bay. 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 pre-  
sent wife the daughter of Jungi Shah.  
Jungi Shah's family was present on  
the occasion, and all were on the  
best of terms. The marriage was ce-  
lebrated 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.N. 245,  
28<sup>th</sup> Chaita 1923 and see further entries

13 (99.)

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 Sahib in her evidence says they got possession at Jeddah of the murderers' blankets and shirts but says they brought nothing back to Bombay. Mealek 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 Mrossa 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 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 shadow of foundation and ought never to have been made.

Program is finished  
of the committee is to  
the new committee  
with Pappi's effort  
opposite side of  
staying & someone  
she had instructed  
her to hand  
(the 2.3.4.5)  
D.H. 2.3.4.5

I now deal with the charge against Defendant 1 in respect of Hasdam 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 Agha Khan was desirous of shielding the murderer Jiva Junda. The Plaintiff

Alleged length  
the answer of Hasdam Sha

She also then  
by an another person  
with on with  
he would say  
hist. part & murder

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 Agha  
 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 Sahib anything  
 about Hasham Shah. At the time  
 Hasham Shah was murdered De-  
 fendant 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 import-  
 ance 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. N. 57 and D. N. 58, the former undated and the latter of 11-9-98, written by Defendant 1 to Kenny, ~~and also~~ D. N. 59 of 17-11-98, show that De-

The letter is 57 to Kenny of 17-11-98 about 24/9 was made Shah Didi's letter from newspaper full - the rest I don't know. Kenny's letter did not mention the 24/9 was his money is not there.

pendant 1 was much upset by this murder. <sup>see also Kenny's evidence pages 229 and 230.</sup> 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.

I find his charge wholly unavailing. As to the charge the Dfnc 1 has made very little account but I hold it to be entirely unavailing. It is however in my opinion to be dismissed. The evidence relating thereto beyond referring generally to what has been said above, I have more in the affidavits. The <sup>Some</sup> names of the 24/9 had, were heard at B. M. is clearly proved.

(charge the ...)

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 11<sup>th</sup> September  
 1901 was a sham or a false  
 and fraudulent document,  
 concocted by Defendants  
 1 to 5. This is a matter with re-  
 gard to which I must obviously  
 go into detail at <sup>the</sup> considerable  
 extent.

Whether the Release  
 of 11<sup>th</sup> Sept: 1901  
 was a sham or  
 fraudulent

As to its being a "sham" it is sufficient  
 to say it was shown I find in a fact  
 that the latter part about a line of reference  
 has to compare it to the original which is  
 in the hands of the British Government.

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 Pathebor 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 Nestil 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

What happened on 3 days of H. R. a "scramble"

March

There are 13 items in the list in the U.S. I have the papers for 11 of them it is in mistake when the Hon. Mr. Justice Pathebor has taken a list of 13 items together about 1000. I have the papers for 11 of them it is in mistake when the Hon. Mr. Justice Pathebor has taken a list of 13 items together about 1000.

to the immoveable property which Akbar

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 Barg 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 immovable 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 <sup>the exhibits</sup> 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 Kuchick 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

When I have been asked why I have not shown more for that 744 (107)  
him in cross-examination. We have in  
evidence Ex. DH 15 The Will of Jungi Shah  
whereby inter alia he purports to dis-  
~~tribute the land of the property under dispute among his~~  
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  
Zunabedin Shah and Shamsudin  
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 ~~she~~ at page 52 of  
her evidence she says <sup>that</sup> 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. Mehan is liable to err. Before today 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 Sahib'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. N. 844 letter of 27-6-74 Dallas & Lynch to the Collector and the Conveyance #13 of 17-11-74 which is the Conveyance from Khataw Meakanji to Jungi Shah who curiously enough is therein described and referred to as the son of the Aga Khan.

As to the Hamamkhana, Bibi Sahib 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 of his 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. N. 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. N. 96. 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

(110.)  
wrote that she had an interest in those  
properties - see Ex. D. N. 45. When  
that letter was written she thought  
the three properties belonged to Hassan  
Ali. Mealek 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. N. 45 was written she intended  
to make a claim to these three pro-  
perties for the sake of her children.

As regards the Purodane property,  
the Plaintiff at page 56 says: "The Purodane  
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 - before 1861 A. D. I can't  
say it is at corner of Parel Road and  
Jail Road. It is called Jail or Inam-  
hara Road." Bibi Sahab says it was  
bought but she does not know when.  
She heard it said that it belonged  
to



142 (111)

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. N. 99 and the draft Deed D. N. 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 Aqa Khan, which shows that it was known as Aqa Khan's property before the 30<sup>th</sup> of October 1861. That this Deed was admissible for the purpose is I think clear from J. L. R. 23 Bom. page 63. From the Municipal Book Exhibit D. N. 117, it appears that all the property about this Piroo Lane was in the name of Mahomed Shabudin Pilamker and in ~~1881~~ 1881, D. N. 114, the Piroo Lane stood in Aqa Khan's name and the Collector's