

(102)
Collector's books show that a small
piece of it was never taken out of
Pitambur's name.

In my opinion Mr. Invarity
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 Re-
lease.

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 141 - between Shamsu-~~
~~din and Defendant 1's attorneys.~~

~~On the 17th of September~~
~~1901 the Release was executed.~~
~~That document recites (1) the~~
death

Shamsudin
in hand
to Rahim

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 Shamschool 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

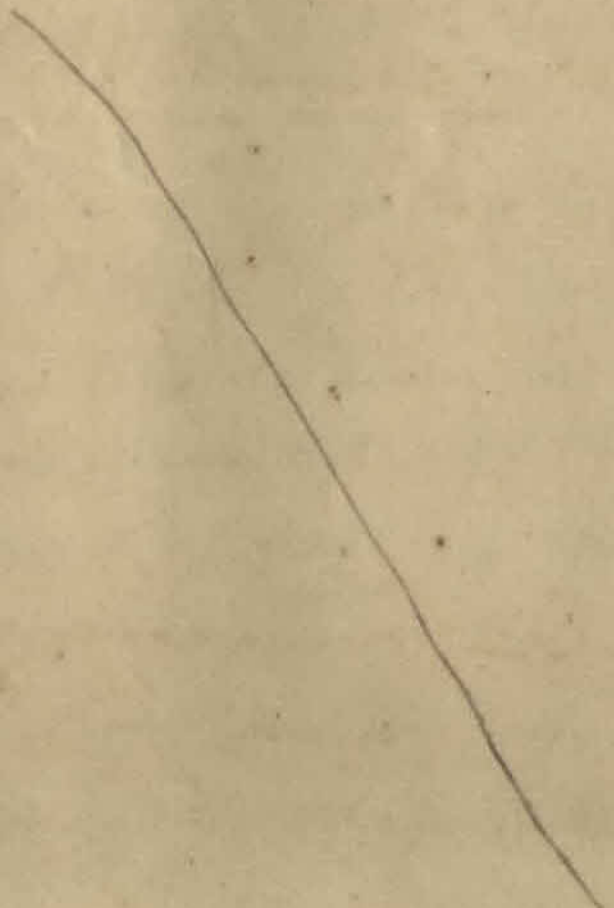
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to Zinat-Abidin's children in consideration
of her getting Piroo Lane and having
got other monies. She asked him to
bring the sort of document he wanted
her to execute and show it to her.
Thereupon the letters D. H. 141, D. H. 142
and D. H. 144 passed between him
and the attorneys P. G. S. & Moos. Imme-
diately 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-examina-
tion 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 affi-
davit, 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 Kuchick. I am also
~~satisfied that this interview took place~~
~~as Shamsudin says in the month~~
~~of July and not in August as the~~
D. H. 144

An attempt was made to show that Shumastin
 had to do to show the Puff of landing here
 by H. 15 the staff was one of the Puff down
 with the Puff at the end of it
 in the month of August 1901. According to the
 Puff of Shumastin - the latter in person of said
 the time in about that of the Puff
 Puff also. But I am satisfied that
 the intention in question that Shumastin
 of the Puff took place in June 1901 & before
 Shumastin had any other that of A. K.
 house upon to him by ^{Jamies} Puff & Jamies
 estate. The latter D. H. 141 dated 30.6.01.
 & D. H. 142 dated 2.7.01. were written by
 Puff & L. to Shumastin. There then is
 of Puff down of the Puff down Puff
 D. H. 143. Then there is D. H. 144 which
 shows Puff of Puff down was sent to
 Shumastin by his father on 23.7.01.
 He got it on 24.7.01. at Puff & met at once
 to in the Puff.
 There then is book of A. K. was

When to. At the time it came to me
it had not passed to I should like to get
copying out of it.

I think there is no doubt that the Puff
series to get in these countries for the
children of Jerusalem. By the letter of
to the June, to his other I should like to
be a Puff to be shown in person of the
Puff & to know the Puff from the Puff
to be. I think it is possible I should like
within the Puff & Puff the Puff
to be & Puff from the Puff if the Puff
to give a show to Jerusalem children



Plaintiff and Koochick endeavour to show and was before Shamsudin had any idea that the Aga Khan ^{would} ~~had~~ agreed to give away property. I now refer to Shamsudin's interview with Defendant 1 at the end of July and I think it is ~~no~~ better to give ^{the latter's} his exact words in the way he gave them in his evidence from page 112, line 20, down to page 116, line 20.

Defendant 1'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 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 Puro Lane and to Defendant 1's wife the Humam-Khana, specially as those two ladies were enjoying at that time the rents of those two properties. Then Shamsudin suggested that - Defend-
ant-

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

affection and suggested that the three houses at Meazagon 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 ^{Administrator} ~~an attorney~~ of Jungi's estate. After Letters of Administration were applied for and granted to Shamsudin, 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

?

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ant-1 should give up for Jungi's
estate the property at Meeragou
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's death
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Jung's family and a sum of
Rs. 40000 should be given by Atga
Dhan to Jung'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 Ha-
mamkhana was not mentioned
in the Schedule to the Release was
that Sayani said that the Mount
Road property happened to stand
in Jung'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 1's wife Sayani said
it should be omitted. The Release
was drafted and settled by the
Advocate General and Shamsu-
din had his own attorney Kola.

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

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~~evidence from pages 145 to 151.~~
He says that in September 1901 Sham-
undin 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 Shamundin 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
Shamundin, 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

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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 Hamambhand, 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. N. 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 fact given to him was highly beneficial to Jungi's estate. The impression Shamsudin

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ordin 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. 40,000 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

The arrangement was so beneficial that no time should be left for the Aga Khan to change his mind for he understood Sham-sudin 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 Akhbar in the 11th Sept: 1901 The Akhbar has reported that summit with the death of

[Faint, mostly illegible handwritten text]

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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 Tajmah, 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

(114) 164

into possession by Shamsudin of the
property B, (11) application by Shamsu-
din for Letters of Administration to
Jung'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) acknow-
ledgment thereof by Shamsudin, (14) acknow-
ledgment by Shamsudin that all pay-
ments, 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 3^{rdly} described in Sched-
ule A and to pay to him the sum
of Rs. 40000. For the purposes of
Stamp duty the property in C
taken at Rupes one lakh. The
Conveyance witnesses that Defendant

which was
granted?

I grant to Shamsudin the property
 in C being part of the property 3rdly
 described in A, that for that con-
 sideration and the sum of Rs. 40000
 Shamsudin as such administrator
 and also in his own right as
 one of the heirs of Jungi Shah re-
 leases 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 con-
 veyed to Shamsudin from all
~~actions~~ 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 Aja Khan and his estates and effects, and lastly the Aja Khan releases, conveys and assures unto Shamsudin all the right, title and interest of Aja Khan in and to all the lands etc. in Schedule B.

As to the will I think it material to show that the land was in the name of the mother & that had not been & that this is not.

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 Plaintiff herein. Her claim against Shamsudin, is clearly barred, owing to the Defendant's absence from

On the 21st Dec 1902
She has the right of being more certain in what it means but the use of her on this point of fact.

Plaintiff's claim against Shamsudin barred.

Bombay

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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. ^{against either of them} _{W. H. S. Shumsher.}

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

Plaintiff in the name of Plaintiff.

STATEMENT of allowances to Jangis estate.

Amount received by Jangisha as allowance from 1881 (May) upto 1894 (May) at the rate of Rs. 877 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 food and other requisites supplied to Shamsudin from 1896 upto 1901 at the rate of Rs. 1500 a month----- Rs. 90000

Carried over Rupees. 8,24,041

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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 1898 upto 1901 as admitted by her in

answer to interrogatory No -----Rs. 72,000/

Rupees. 6,98,041-

N. B. This does not take into account what had been received by Zanalabedeem as allowance and food and other requisites.

It does not take into account the amount of Rs. 1000/- paid by Hajibi to the Government in the year 1898 for the purchase of land in the name of Hajibi. In the long time spent on the repairs of Hajibi's house in the name of Hajibi, the amount of Rs. 1000/- should be taken into account.

Accounting

... in the other hand it appears from the ...
... from 1801 than A. & ... to 1901. (121.)
... of ... Release more than 20 years ...

Jungji Shah's
estate has been
overpaid

According to this it appears to me that Jungji 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 Jungji 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 Pleint she says that his property was worth ^{two} twenty crores. I see no reason to disbelieve the evidence of Mr. Meerwanji upon the value of the immovable properties in 1901.

The reason for not including the Mount Road and the Hamankhana property in the Release is clearly stated in the evidence of Mr. Bala and Sham-sudin Shah, viz. that the Mount Road

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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. Framji'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.N. 2 the Plaintiff's affidavit which she made on the application to prevent Framji and Dinshah acting as Defendant 1's attorneys in partnership with Payne & Co. The entries of the 12th and

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and 14th March 1902 - D. N. 25, pages
21 and 22 - show that Kurchick
was well aware of all that was
being done. Plaintiff's husband ~~was~~ ^{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
her cross-examination. And also in re-exami-
nation 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

147.

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Koochick were neither the heirs of
Jungji 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. N.
25 the entry in the Bill of Costs
dated the 9th April 1902 shows
that Moos had an interview with
Jungji on this matter which
Moos told Defendant 1. De-
fendant 1 declined to give Poona
property or anything more and
told Moos and Shamundri 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.

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 Koschick and Mochool 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 $\frac{25}{32}$ of his estate, support the Release.

Other charges }
 v. Def 1

I must now shortly deal with the other charges of fraud which the Plaintiff has made against Defendant 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 there in referred to.

When cross-examined as to para. 4 of the Plaint, where it is said: "Defendant has sold many properties," etc., she says, page 38; "I heard he sold a property of 1st Hajji Khan's estate to Hajji Aba-homed Cassum. I don't know where the property is situated. In the course of conversation with some acquaintances I heard about this."

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I was told this 6 to 24 months ago, since I filed my Plaint. I can't-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 italics}).

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 list 1 clearly set out his position as to Jamat-Khanas

Again as regards the Khoja burial ground, that has never been claimed by any of the Khan as his private property although

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

Bibi Sahib claims no
share in the Jamat Khana
or the burial ground, and to
my mind it is obvious that they
could not be taken into ac-
count as is sought to be
done by the Plaintiff.

Again as regards the Pal-
lonji's Hotel, that was settled
— on Wakf on 12th January
1857 - see N. 29 - long before
the Plaintiff was born. Bibi Sahib
expressly ~~disclaims~~ 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 I swore that
he

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he spent more on this ^{way} 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 men-
tion the Pallouji's Hotel in her affidavit
as having been kept out of the re-
lease 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 ~~th~~ heard so. It
was bought I don't know when. I have
not inquired." D. A. 102 of 11-12-82
is the conveyance to Ali Shah ~~4~~
after the death of Hassan Ali, which
shows that this is indeed a reckless
charge of fraud.

As to the property at Kербela,
Raymin 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 Cassim gives the details as to the ~~changes~~ of the other properties. viz:

(Kubergum)

that the ~~land~~ ~~was~~ ~~in~~ ~~light~~
of the H. L. ~~rights~~. of A. S. in 1882
& 1884. the the Right ~~was~~
light in A. L. ~~rights~~ of A. S.
in 1888 for Rs 2000. He also
purchase of ~~land~~ of the ~~land~~
which was ~~in~~ ~~light~~ ~~of~~ ~~the~~
S. 15 June 1880.

E

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 Kallihulla, 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

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54, line 2, the Plaintiff, pages 67 and 69, page 122, line 20, Bibi Sahab, page 202 the bottom and page 203, Koochick. In attempt

has been made to reconcile the statements submitted with the Pappi's account which has to be shown in H. Li's estate. For at all

events during the lifetime of H. A. & G. S.

there has no manner to comprehend it.

of number of & being more out

that permitted to in all respects.

I would add here that in attempt that has been made to set on the Pappi's in the Pappi's by way that was by in the Pappi's in form of share which is not matter of law. but it is a thing of law to be tried the other part 1.

all the income that was put into his name in 1872... 1-93... and B... no amount... was held by... of P... the large share.

No to allow success
from minimum &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 Rooschick's Written State-
ment the custom is relied upon
which is there set out (I read
that para.)

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

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

at here I say, at once my the I think
of the witnesses that my memory is
able to recall but some were
not recalled. I find it
the incident, was historical,
perhaps, was somewhat
but mind & habits were
evident & not detailed in
followed in court. Lord
L.R. 36 P. 4. 55 shall
is said "How can the
memory to do this while
evidence has permitted my own
to a short time from at
to will?" p. 87.

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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

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and that his Raibhari was in charge of the bungalows and kept the keys when they were empty. His name was Maula Sanda, 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 Maula Sanda 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.

Dependant 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

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be asked by the various members
of the family as to what portions
of those bungalows they should oc-
cupy, and I see no reason what-
ever to suppose that at any time
any member of the family claimed
this right of residence adversely
to any of the Atga Khans; and
it is to be noted that the
Plaintiff and her witnesses do
not claim any right in the pro-
perties or any portions thereof
themselves, but a right of re-
sidence 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

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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 Aksoochool 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-

¹⁴Plaint or Doochick'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 Stusser 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. 10000 a month, each

DH
Pg. 24 & 25
list of names and
getting allowances etc
written to them.
In 2425000 & list
of names & their
allowances.

2 L.A.

each of his wives Rs. 300 and ¹⁵⁰ 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 *Amir* 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 ~~was~~ 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 Abga Khan whose father

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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 ^{wealth} worth of the Aga Khans
as they ~~at~~ 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 dis-
position. They have maintained
large numbers of the members
of their family in a lavish manner
as

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as also numbers of their retainers
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 en-
titled to succeed.

It is I think thinkable that I should
 make some observations on the ^{the} ~~the~~
 of the ~~the~~ witnesses. ~~these~~ & Puff
 Henschel & Gushk Tj Bygon about
 me to take witness in any way
 they could. If however as regards the
 fact I hold out on their faces
 as they are bound from hand to
 put in such ~~the~~ witness with
 what pains I can obtain ^{it in} ~~the~~
 full. But one has only to
 read the witness of Puff & Gushk
 Tj to see how little of interest
 & instructive it is. I had read
 them to some Gushk Tj Bygon
 as to Henschel he has in any
 way an unsatisfactory witness.

Handwritten note on the left margin:
 Henschel & Gushk Tj
 Bygon.

He gave his witness ~~partly~~ in an
 unimpaired way - partly in a

It is necessary for me to explain the ¹⁴⁴circumstances
concerning the removal of Poff & ¹⁴⁵the
opposition has advised him to leave, but
the beginning of the case to my satisfaction
it was suggested to the Poff's counsel

the counsel
of the Poff's
opposition has
been the

that I should act by the case as I
was that he himself a friend of A. K's.

For I myself advised that in that respect
I was in the different position probably
than all the other judges in Kentucky.

I said I had exchanged letters with
J. A. K. & had since since with him
& had to have time to think & to
have not been able to come. This

in short determined me to allow all
the process but which I hold to the

Poff & the Poff's the opposition has
in putting their case before me - for
it seems not to me as not me.

Wish that he himself might
attend here the local and jurisdiction

^{4 build}
might be made against me ^{showing} ~~but~~
its breach. This signature of mine
was sufficient to ~~in~~ the same
as that. Showing the ~~no~~ of the witnesses
on the Commission's part has been
fully set to them against which they
protested on the ground that their
objections being ~~in~~ ~~the~~ ~~case~~.

Showing the progress of the trial it
was anticipated to see that if similar
questions were set to the witnesses in
this Court would there be with the
knowledge to them published in the
new papers that will probably be
an extract of both the ~~other~~ ~~the~~
Innocent Committee in Poverty.

When the MC I was by ~~the~~ ~~the~~
and to your other was ~~set~~ ~~to~~ ~~him~~
which he has ~~set~~ ~~in~~ to my mind.

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I was not calculated to know anything
of our party. There was really no need
to send the picture to Dept 1 in any order
times as he had already received it
in the measure of Portings. There was
the habit of our school to send it in 2
times in all: it was sent. I finished
this note to I know of the same thing
Dept 1 but he insisted on putting in
picture as at first. And Dept 1 received
it. I then indicated the of our
formation was to be sent I shall show
the best. The next picture was
on the same point of I at our school
I sent to the church. The best was
then handled with such an order - in
fact more handled than I had ever
seen it in my life. ^{was shown} That the
best was long shown I asked
Council for Dept 1 & Piff to have it
to me & explain to them my
views on getting the best of the
Council. They returned to the
party & after the C.C. had been

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Annex Pappi ~~document~~ ~~to the~~ ~~document~~ for
of Pappi ~~the~~ ~~supporter~~ he said it would
I think he had instructions not to proceed
with it. His instructions were not to
proceed with it but if it was not
fully reported on Pappi's case then &
to be done - fully outlined & important
of this story. Therefore he & Council
L & Pappi the supporter Pappi's house
with them. This letter on their part
concerned me in the opinion I had
known many things before the actual viz
that they were "sitting on a bomb".

In my opinion just as there may
have in which might occur that with
(e.g. ^{himself} ^{and} ^a ^{thin} ^{line} ^{of} ^{justice})
has had to do this ~~document~~ the ~~document~~
is intended to make the ~~document~~ to be
clear as in ^{the} ^{written} ⁱⁿ ^{the} ^{document} ^{by} ^{him}
if published in the ~~document~~ ^{document} is
that to be done ~~document~~ ^{document} ^{document}
the ~~document~~ ^{document} ^{document} is intended
if not ~~document~~ ^{document} ^{document} the

General body of the ~~document~~ & ~~document~~
to be the ~~document~~ to ~~document~~