

HOWARD
"AGA KHAN CASE"



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The following account of the various branches of the Shia School of Islam—especially that of the Ismaeeli-Ismaeilis—and their practices was given by Mr. Howard, of the Bombay Bar, in the course of a learned address by him in the High Court, Bombay, in June last, as one of the Counsel for the defence in the "Aga Khan Case." This was an Equity Suit, in which a minority of the Bombay Khojahs sought to obtain a Decree of the Court, removing His Highness Aga Khan from his position and authority as spiritual head and hereditary "Pir" or "Saint" of the Khojah tribe or caste. The contention by the debitors and Plaintiffs was, that the Khojah community had from their conversion from Hinduism in the 12th century of the Christian Era, been Mohammedans of the Suni School; and that the pretensions of His Highness were false and illegal. And that his allegation that the Khojahs were Sunis, and that from the death of his father he had always been recognised as their spiritual Chief, was false; and that the theory of his being such Chief was repugnant to the doctrine of orthodox Moslems.

Mr. Howard, as one of the Counsel for the Aga and the majority of the Khojah community (following the Advocate-General, who argued on general grounds), addressed himself to the historical part of the case; he showed that the Khojahs were at the outset converted by a Shia, and not by a Suni, and that they had always been Shias, (though outwardly Sunis). In an elaborate argument he touched on the history of the different branches of the Shia School, especially that of the Ismaeilis—the descendants of the old tribe of "Assassins," of whom Aga Khan is the present head.

The best authorities on the subject of the Mohammedan religion were quoted in the course of the argument, and as a work of reference on the point this address will be found very useful. The view taken by Mr. Howard was also that of the learned Judge, Sir Joseph Arnould, before whom the suit was heard, for in November last, when his Lordship delivered his very elaborate and learned judgment in the case, a decree was given for the Aga and his co-defendants on all the issues.

The contents of the following pages is the transcript of verbatim notes of the speech, revised for the press by Mr. Howard.

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H. WYNFORD BARNOW,
Short-hand Writer.



1838, and one in 1848; but on both these occasions the schismatical Jamat Khana was afterwards shut up, and a reconciliation effected. On the present occasion there has been no reconciliation and no re-admission of the seceders, the only exemption which the party of the Plaintiffs maintain with the estate being, that they still bury their dead in the Khojah cemetery: and that on funeral occasions they perform the usual prayers in the Musjid which stands therein. The Plaintiffs are thus out of possession of the Jamat property by their own voluntary act.

And what is it that this *vol d'eleant*, wise, intelligent and wealthy and orthodox, fraction of seceders of the Khojah community lays claim to? Practically, what they seek from the Court is this: That the other party, that is, the majority now in possession, and with them, the religious leader, whom they owe and all acknowledge as the hereditary *Pir* of the sect from ancient times, should be turned out, and excluded from all shares and interest in the estate property, and from all voice in the management thereof. The Plaintiffs do not pray that the Court will restore them to their position in the estate, although Mr. Anstey had the intrepidity to suggest, that one of the objects of the suit was to heal the dissensions and divisions of the community. They do not ask that the estate property shall be divided, and no aliquot part of it assigned to them; but they pray, that those whom they oppose, and all who hold their opinions, shall be totally deprived of any participation in the estate property and management. The Bill, drawn by Mr. Anstey, alleges, (following therein the Bill of 1840) that the Khojahs were originally converted from Hinduism by a Suni Missionary, and that, until lately, they were Mahomedans of the Suni sect. In the fifth paragraph of the prayer they pray, "That no person, not being a member of the sect, or having ceased to be a member of the same (and, in particular, no person professing Shia opinions, in matters of religion or religious discipline) is entitled unto, or ought to have any share or interest therein, in any voice in the management thereof."

THE JUDGE: "All who are not Sunis, that is—"

MR. HOWARD: "Yes, my Lord. In the 14th paragraph of the Bill (they state the Suni profession with more emphasis and detail. They say there—'all the said trust estate was so acquired, before any of the doctrines, or any portion of the discipline of the Shia School of Islam was introduced into, and taught unto the Khojah sect, and whilst all

the Mahomedan doctrine and discipline of, or revived or acknowledged by the said sect, was derived from, and in conformity with, the teaching of the said Suni School. And it hath always been, and is, a principal and fundamental condition of the tenure by which the said trust estate is held; that the application thereof shall always be for the promotion of the faith and discipline of Islam, according to the Suni School; and not according to the Shia School thereof: the latter having been always regarded by the founders, donors, and executors, and by the said Khojah sect at large, as altogether interdicted and heretical, and still being so regarded by the said sect (except, such only as have, in the course of the last year and in manner hereafter appearing, been induced to secede to the same)." Recollecting that this was the uncompromising prayer of the Plaintiffs, I must say it was with astonishment, which increased on each occasion, that I heard my learned friend, Mr. Seoble—who I think made use of the argument no less than fifteen times—say, that by Act XXI of 1840, no Khojah could be deprived of his interest in the property of the estate on account of having changed his religion. Whatever the value of that argument may be, and I don't think it is worth much at all events it is easy to see that it really operates against the Plaintiffs. My learned friend's case is that it is the Defendants, not the Plaintiffs, who have changed their religion; and according to his view of the law, that portion of the prayer which prays for the expulsion of those Khojahs who have adopted the Shia religion must, of necessity, be dismissed by the Court as contrary to the spirit of the Religious Disabilities Act. But the Advocate General has already disposed of it, by showing, that the Act has nothing to do with questions about estate property; and I merely refer to the matter, because this is one sign among several, that my learned friends have not yet come to an understanding as to what their case is to be.

Now, as to the prayer, that the majority in possession may be turned out of the estate, I will only say, that a very strong case must be made out to induce the Court to interfere. Of course, I admit, that it could be clearly shown that the estate property was established, as we find some trusts in England established, for the promotion of certain defined doctrines and objects, and that the Defendants' estate had held such doctrines, as were intended to be promoted, then, I would grant the Plaintiffs, though ever so small a majority, would have the power to turn the majority out."

JAY JUDGE: That would be so, where the trust was unmistakably clear.

MR. HOSKIN: Yes, your Lordship will require to be satisfied beyond all doubt that there is a clear trust, before you can decide against the majority in possession. A community, like that of the Khojahs, is formed on the principles which regulate a club: it is a voluntary association of persons, holding the same religious opinions. It may be compared to the political clubs at home: for instance, the Reform Club is entirely an association of persons holding Liberal opinions, whilst the Carlton is composed of Conservatives. Such establishments have necessarily the power to expel members of opposite opinions. Your Lordship will recollect that Mr. Glastone was compelled to leave the Carlton on account of a Liberal vote he had given. Lord Westbury, too, was turned out of the Conservative Club for giving Liberal votes. Such expulsions are voted by the majority, and I repeat, it must be very clearly made out, that in this Khojah community, the Plaintiffs, being a minority, have the right, by virtue of their adherence to the old Khojah religion, to oust the Defendants, before the Court will interfere to help them to do so.

As to the way in which the case against the principal Defendant has been conducted, I much regret the tone of my learned friends. Your Lordship remembers that Aga Khan has been called by a number of bad names, some of them palpably untrue, and insulting, as "false prophet" and the like, and some of them, such as by injury, and that in a way which, however common before a petty Jury, is happily very unusual in a Court of Equity. I much regret that Counsel should have thought it proper to cast scorn and ridicule on the titles of Imam, Mursiid, and Pir, which are revered by these people and for ages have been borne by Aga Khan and his ancestors: it has given much pain unnecessarily. His position of Pir was inherited, and not assumed, by him. By the Khojahs and other Ismaelites the Aga is looked upon and revered as the living representative of the Imam Ali, the Saint whom they most revere; and it is not the Aga's fault that he is so revered. It is not reasonable to suppose an Asiatic should of his own accord reject the honors paid to him, as to a long line of ancestors before him, by the followers of the familiar doctrines.

And what is the relief, as against him, that is prayed for? Why, that he shall be deprived of all the benefits he derives from his sacred

rank, that he shall be turned out of the Junnat Kilnass of the Khojahs, and restrained from exercising the power and enjoying the position of head of the Khojah caste. In his opening speech, Mr. Anstey directed that the prayer of the Plaintiffs was of the most comprehensive kind, and undoubtedly it is most "comprehensive," as much as, as to pass the limits of my comprehension. In the 7th paragraph of the Prayer, the Plaintiffs pray that:—"The Defendant Mahomed Hussain Hossain is otherwise called Aga Khan;"—I may here say in reference to the several names borne by the Defendant, which formed one of the grounds for Mr. Anstey's numerous sneers, that "Aga" and "Khan" are titles; "Mahomed Hussain" are his personal names; and "Hossain" means that he is descended from the Imam Hossain, the son of Ali and Fatima. To suggest, therefore (which has been done), that in using these different names and titles, Aga Khan has been skulking about under a number of aliases, is an offensive and gratuitous insult. He is admitted by Mr. Anstey and Mr. Sedley to be a Syed, that is, a descendant of Ali, and his genealogy is ancient and splendid. He is the representative of a long line of religious Chiefs, and only one link is even suspected in the line of succession. The prayer against him is that he may be restrained, by the order and injunction of this Honorable Court, from interfering or claiming to interfere, or setting up or maintaining any claim to interfere, in the management of the said trust premises, or generally of the affairs of the said Khojah sect, or in the control or visitation of such management, or in the election or appointment of any Mukhti or Kassar, or other trustee, or officer thereof, and also from excommunicating or expelling from the said sect, or depriving of any of the rights or privileges mentioned, or endeavoring or pretending so to excommunicate, expel or debar, or denouncing or threatening, any member of the said sect, or any person or persons, or on the pretence that such member hath resisted or shall have resisted or opposed that Defendant, or any of them; and also from depriving, or endeavoring to deprive, or any member of the said sect, or any person or persons, of any of the rights or privileges mentioned, or from interfering with the said sect, or any person or persons, in the exercise of any of the rights or privileges mentioned.

using without the express consent of the said Jamat, any of the said trust monies by, or for, himself, that Debentur, or any of his family, followers, or adherents, and from officiating therein, or to oblige it, or celebrate any marriage, or contracts of Khojas, which ought, according to their said usages or traditions, to be celebrated before the Kazees of Bombay, or from seeking or demanding or (save only for a sufficient consideration or else upon the free and unsolicited offer of the giver thereof) accepting, or receiving, from any Khojah, any money or property, under the name of oblation, tax, gifts, alms, presents, or otherwise in his, the Defendant's, alleged spiritual and temporal capacities aforesaid, or any or either of them; and that the other Defendants, other than, and except the said Kazees of Bombay, Haidhay El-ahim, Dharameey Ferozshah, and Feroze Jorjee, may be in like manner restrained from concurring with, or aiding or assisting or adhering to the said defendant, in or attempting to give any effect or obedience unto any such interferences, excommunications, expulsions, deprivations, hindrances, impediments, denunciations, threatnings, evasions or matters last aforesaid, on the part of him, the Defendant, or of his said servants."

Now as regards the opposite party, this prayer means nothing they pay the Aze neither tribute nor obedience, but the trial, for this Court to interfere between him and his dearest wife would be the same thing as for the Court of Chancery interfere between an Abbot and his Monks that is wholly inadvisable. As long as the Aze remains the master of his own house and the Court does not interfere with him, there is no objection to his paying tribute to the Khojas of Bombay, though this is a matter which the Court has no jurisdiction to interfere with.

attempt will be made to get rid that responsibility. Mr Anstey, in his opening speech, committed his clients to a still more unequivocal profession of Suni faith than that made in the 15th paragraph of the Bill, and which I read just now. He said that the Shea practices and opinions of the old Khojah party are entirely new, and due to the Aga's intrigues since his arrival in Bombay. Your Lordship will remember that the main issue between the parties put by Mr. Anstey in these words: If the Court is of opinion that the Khojahs are Sunis, and that these institutions (the Khojah Jamat Khana, &c.) are charitable institutions of a Suni character, your Lordship will hold, that so far as the subject matter of this suit, and the objects and purposes of it are concerned, that neither the Sheas, Ismailies, or Imamians, are Mohama-hans at all; just as in the case of a similar suit on behalf of Sheas, whom your Lordship was satisfied were Mohama-hans, in the sense of the term "Sheas;" your Lordship would hold, that the Sunis, seeking a part of a charity founded by Sheas, were *quoad* the suit, no Mohama-hans at all. That passage is open to verbal, and even substantial criticism, but I accept it as a statement of the issue really in dispute.

The JUDGE: That was in reference to the 15th paragraph of the Bill, which alleges that no Shea has any right to the benefits of the property?

MR. HOWARD: Yes, my Lord. That is another part of his speech my learned friend said: "The Relations and their party claim to be Moslems of the Suni faith, and descendants of Habash converted to the Suni faith; and to be bound only in conformity, not in religion, or law. Here is a plain case." Afterwards, your Lordship asked Mr. Anstey this question: "Did I understand you to be prepared with affirmative proof, that these Khojah charities were instituted by persons of the Suni persuasion for others of that persuasion? To this Mr. Anstey replied that he was answered; and Mr. Scoble following, said: "We can show that the Khojahs were Sunis." Now, my Lord, I hold my learned friend's allegation of the original Sunism of the Khojahs to be an admission that they are bound to prove it, as the foundation of the issue. That is the main issue, my Lord, although your Lordship in the way of fact or argument has been brought to bear on it, either by Mr. Anstey or Mr. Scoble, who

indeed both shunned the point—it is to that issue that we, on the other hand, shall mainly devote ourselves. Let there be no mistake on that point: the dispute between the two parties really is whether *by origin the Khojahs were Sunnis or not.*

THE JUDGE: You put it that the Relators and Plaintiffs undertake to show the Khojahs were, in origin, Sunnis; and that you, the Defendants, on the other hand, undertake to show, that in origin the Khojahs—

MR. HOWARD: Were not Sunnis. That is my proposition; and I say, that if your Lordship is satisfied from the evidence that the Khojahs were originally not Sunnis, the Bill and Information must be dismissed as a matter of course; or, if you are unable, after hearing all the evidence, to say positively, whether the Khojahs are by origin Shihs, or Sunnis, or whether of any definite religion at all, I say that in that case, the estate management belongs to the majority, and the Court will refuse to interfere on behalf of the Plaintiffs and Relators, who are the minority. There is also the question, whether the estate property is properly a charitable estate, and as to that I will speak afterwards.

THE JUDGE: You alluded just now to the fifth paragraph in the prayer, which prays that the Court will decree that the property is held for, and ought to be applied to, the use of persons of the Khojah sect, and "none other." Well, then, you show that the Plaintiffs urge the Court to hold, that those who are entitled to be named Khojahs who are Sunnis, and that the Shihs are not Khojahs at all?

MR. HOWARD: Yes, my Lord.

THE JUDGE: Then there is another view of the case perhaps; supposing the Plaintiffs say: "we are Khojahs belonging to a community, which is not proved distinctly, either to be Sunni, or Shia; in which we claim to be entitled to a portion, at least, of the property which was given for the benefit of the community, at a time, when they were not Sunnis, they were at least so outwardly; and were in fact, neither Sunnis nor Shihs, and, as Khojahs, we claim to have a share in the property?"

MR. HOWARD: That, as I said just now, my Lord, the Plaintiffs cannot now do. They have asserted their claim in quite another way. They have committed themselves to the most uncompromising expression of Sunnism, and pray for the exclusive possession of the

estate property. If they had wished to claim part, they should have framed their case differently. It was the whole tenor of my learned friend's argument, that the Plaintiffs are alone entitled, and they pray in the fifth paragraph of the prayer, that every one holding Shihs opinions shall be excluded from the estate. The prayer is founded on the allegation in the 11th paragraph of the Bill, that the trust-estate was acquired before any of the doctrines or any portion of the discipline of the Secta Salsol of Islam was introduced into, or taught unto, the said sect." So, my Lord, they have put an entirely different case before the Court from the one suggested by your Lordship, and that is what we have come here to meet. If the Plaintiffs had put their case differently, if they had only claimed a share in the estate property, we might have found it difficult to resist their demand, and perhaps have agreed to some compromise,—a course which is now impossible.

I say, therefore, that if your Lordship is not perfectly satisfied that the Plaintiffs have made out their fundamental allegation of the original Sunnism of the Khojahs, the Bill must be dismissed. Should the Plaintiffs be successful in their attempt to cast the non-Sunni party from, what is called, the "estate property," the result will be, that the latter will still call, and consider themselves, the true Khojahs Junats; they will still be in communion with the Khojah Junats at Bhow, Dhaumagar, Muscat, and other places; they will still acknowledge, and probably, with more devoted zeal than ever, Aga Khan to be their spiritual chief. It is impossible to separate him from his adherents, or to hold him up as the Jush, whose ejection would restore peace to the community. Both parties are agreed that they must be separate, each from the other. In his evidence, li-himabhey Hwaraj said, "of course those who do not act according to the (Sunni) religion cannot be allowed to use the property of the Junat; none but Sunnis." The two sections are mutually exclusive. If the Plaintiffs fail to persuade the Court that they—the Sunni party—are the true and original Khojahs, their prayer against the Aga must be dismissed, as well as their prayer against the Defendants, who are of the Aga's party.

THE JUDGE: The Court will have to consider 1st—Do the Plaintiffs make out their case that the Khojahs are Sunnis? 2nd—Do they make out that the Khojahs are mixed Sunnis and Shihs? and, if the latter

is the case, whether the decision of the majority must not be confirmed?

Mr. HOWARD: And then there comes another issue, namely, as to whether the funds in dispute are trust funds for charitable purposes? Supposing your Lordship is satisfied, as I have no doubt you will be, that the property was purchased by the Jamat with funds paid by members of the community, as tribute to Aga Khan, you will hold that the Aga cannot be turned out of possession of the property, which really belongs to him, and not to the Jamat, or to charity.

Before proceeding to examine the case made by the Plaintiff upon this very important, and fundamental issue, of Sunnism, or non-Sunnism, I desire to clear away a great amount of irrelevant matter introduced into his speech by my learned friend Mr. Anstey. He went on for hours spinning a web of titipateration against the Shia as (so which great division of the Mohamedan world, the Aga and his party belong), on account of the errors and misdeeds of sectaries of every conceivable denomination, with whom he attempted to connect them. At one time it was the Mazdakians, then the Kharijians, the Gnostics, and other obsolete heretics, preachers of blasphemy, and preachers of I know not what immoralities; for all of which the Aga's party were made responsible. An immense number of bad names was showered on the Shia sect; and I now propose to analyse this elaborate indictment and to show, as shortly as possible, that what was said was either irrelevant or untrue.

The first point urged with much pertinacity, both by Mr. Anstey and Mr. Scoble, was, that the Shias are not Mohamedans at all. No doubt fanatical Sunnis hold that doctrine strongly, and it is easy to find Sunni authorities to support it. It is difficult, however, to see how it is to be used as a legal argument in the case. If all that is meant is that the Defendants, who are Shias, are not entitled to participate in the benefit of a Sunni Mohamedan charity, I certainly should not deny that proposition. But if it is meant that this Court will not recognise Shias as a distinct sect of Mohamedans, I say that the Shia law is undoubtedly recognised in English Courts of Justice in India.

This was shown by the Advocate General who referred to the case reported in *Mowat's Indian Appeals*, vol. 2, page 441, where it was distinctly held that the Shia Imamites were entitled to have their own laws applied to them. In the Khojah females suc-

cession case, reported in *Ferry's Oriental Cases*, Sir Erskine Perry decided that Mohamedan Discoseters were entitled to the benefits of their customs, although those customs were expressly opposed to Mohamedan law. That was a very strong decision in accordance with the provisions of the Charter of the Supreme Court, but it has never been appealed against, and, until overruled, it stands as law. It is clear then, that the Defendants, as Shias, are entitled to have their own law administered to them.

I will now refer your Lordship to the *Preliminary Discourse to Hamilton's Hclaya*, page 18. This answers the statement of Mr. Anstey, as to the extreme insignificance of the Shias as a Mohamedan sect. Even if the facts were so, it would, I apprehend, have no legal consequence. But Mr. Hamilton states the fact differently: "From this period the posterity of Ali sunk into insignificance, except in the eyes of their sectarians. Their descendants, however, under the title of *Shi'as*, have spread over India, Persia, Turkey, and the northern coast of Africa, and are held in veneration by the multitudes, as inheriting the blood of the Prophet, and have frequently excited the jealousy of the reigning princes of Arabia and Turkey. In Persia and India, particularly, the memory of Ali and his sons is cherished among the people with a veneration approaching to idolatry; and the latter country exhibits some striking instances of the force of this partiality, which possibly a long lapse of time, instead of weakening, has rather contributed to strengthen. The Mussulman Princes of Hindustan, as is general Spain, as well as most of their chief men, the heads of the law, or the ministers of State, whilst the great body of Mohamedans being descended from a Persian stock, or from the posterity of the first Mohamedan conquerors, adhere rigidly to the principles of the Shias."

The Judge: Mr. Anstey founded his argument as to the Shias not being Mohamedans, on the authority of a text in the *Koran*, which shows that no sects are recognised by Mohamed: there is only one orthodox sect.

Mr. HOWARD: Yes, my Lord; so says the Christian Church as to sects also, but the question arises, which is the orthodox sect? I will now refer you to *Mowat's Administration of Justice in India*. At page 250, there is the following passage relating to the Shias of India, in which you will observe that he does not agree with Hamilton as to their

numbers, though he does as to the admissibility of Shih law:—

"The Shia doctrines were adopted by the Persians at the foundation of the Saffav dynasty in A. D. 905 (A. D. 1499), and from that period until the present time have prevailed as the national religion and law of Persia, notwithstanding the violent efforts to substitute the Suni creed made by the Afghan usurper Asiraf and the great Nahir Shah. There are also numerous Shias in India, though but few when compared with the Sunis, and a small number are to be found in the eastern portion of Arabia. During the Mahomedan period of Indian history, the Shias were chiefly confined to the kingdoms of Bijapur and Golconda, their sect never having been suffered to make any progress in Hindustan where the religion of the State was according to the tenets of the Sunis. Since the British rule, however, those who profess the Shia faith are no longer persecuted, or forced to conceal their opinions; and although the majority of the Mussulmans of India still adhere to the doctrines of Abu Hamid, the Shia are allowed to celebrate unobscured the tenth day of the Muharram, and to mourn the untimely fate of the virtuous Hussain and the martyrs of the plain of Kerbela." In passing I will say that from the difference between Hamilton writing in the last century, and Morley writing last year, assuming that they are both correct, I think we find evidence of the *Stultitia* of Indian Mohammedans—a process which has certainly been going on since 1835 among the Bombay Khojals and probably among other Indian Mohammedans, where the Sunis have had power. The Shias seem to have been forced, first to disguise their religion by the superior power and intolerance of the Sunis, and to have ended by professing Sunism altogether, though they still retain unmistakable marks of their old Shianism.

Shifting from the legal to the ecclesiastical or theological view of the question, Mr. Anstey told the Court that the Shias are heretics. It would be extremely undesirable for us to bandy texts of the Koran with Moollas at a Mujlis, in order to argue a point of this kind; this Court is not sitting as a Mahomedan inquest of heresy; but I may observe that Mr. Anstey here merely acted as the mouthpiece of the Sunis—of the bitterly opposite sect—and we all know the spirit of truth and charity in which religious sectarians love to speak of their opponents. It is as much our case, as theirs, that Sunis and Shias mutually excommunicate each other. The fact is important; which

of the two parties is right theologically, we need not contend. If the present enquiry was as to the religious teaching of a charitable school or college, it might be necessary to examine into the true construction of Koranic texts, here.—

THE JUDGE: You can relieve yourself from the necessity of going into that, Mr. Howard.

MR. HOWARD: I am much obliged in your Lordship. I will leave that point, but as also charges of immorality have been made against the Shias at great length, I must be allowed to answer those charges, though shortly. In order to do this—

THE JUDGE: I merely point out to you that, sitting here as Judge, I disclaim any capacity for forming a judgment between the theology of the two sects. I do not at all wish to shorten your observations in replying to Mr. Anstey's speech.

MR. HOWARD: The charge of immorality is almost equally irrelevant in this suit with that of heresy, but as it was made at great length, I must answer it, in justice to my clients. For that purpose I shall first consider Mr. Anstey's historical sketch of the sects of Islam, which I think was neither very correct, nor very clear, owing to the absence of dates and places.

After the death of the Prophet's son-in-law, Ali, and his two sons who were murdered in A. D. 660, the family of Ali fell into obscurity. Under the Omniads, they could, of course, have no political influence; but the living head of the family was revered in the highest sense by his secret adherents, under the title of *Imam*. This term originally meant a person who presides at religious worship. But the followers of Ali understood it in a far higher sense, as signifying semi-divine teacher. Hence they were called "Imames." The Alids did not in those early days bear the name of Shias. They called themselves "the Just," and the other party, who were in power, were designated as "Rafais" or "separatists." They never lost the hope of recovering the Khalifat, and looked for the appearance of a Messiah who was to deliver them from oppression. The house of Omniad lost an opportunity of persecuting the family of Ali, and did their worst to crush them. After the death of Imam Jafr Sadek, in A. D. 765, the sect of "Ismaelites" arose, who traced the Imam's succession through Ismael, Jafr's son, who died in his father's lifetime. Jafr seems to have been a very devout person, and given

to the study of mystical theology. His followers looked upon him and his son Ismail, as especially great among the Imams. The other section of the *Alites* traced the *Imamic* succession through another son of Ismail, to the twelfth of the series, Mahomed Mehdi, the "Director." This last disappeared from human view, but it is supposed that he is still living, and that he will appear again as a sort of Messiah for the deliverance of the Faithful.

As long as the Omniads possessed the Khalifat of Damascus, any member of the *Aliti* cause, as I say, were severely discountenanced. It was at this time that the bulk of Mahomedan tradition was formed under Omniad supervision. *Muir* in the preface to his life of Mahomet says:—

"The weak and vacillating reign of Omniads nourished or gave birth to the discontent and conspiracy of Ali and his party, who by the murder of the aged Prince, caused a fatal rent in the unity of the Empire and left it a prey to the contending factions of the new competitors for the caliphate. The immediate effect of this division was not unfavourable to the historical value of tradition. For although each party would be tempted to colour their recollections by their own factions bias, they would still be conscious that a hostile witness was opposed to them. And, while as yet there were alive on either side eye-witnesses of the Prophet's actions, both would be cautious in advancing what might be liable to dispute, and eager to disprove and expose every false statement of their opponents. The caliphate of Ali, after a troubled and doubtful existence of four and a half years, was terminated by assassination and the opposing faction of the Omniads then gained undisputed supremacy. During the untraced sovereignty of this dynasty, that is for nearly one hundred years, the influence of the ruling power directly opposed the cautious dogmas of the adherents of Mahomet's more immediate family. The authority of a line which derive its descent from Abu Ismail, long the grand opponent of the Prophet, may naturally have retained the asperity of tradition regarding the conduct of their progenitor, while it aided with perhaps the loudest noise, in swelling the clamours of glory to Mahomet. But it would be tempted to none of the distorting fabrications of those whose object was to make out a direct right of succession in favour of the uncle or the descendants of the Founder of Islam, and who, for that end, invested them with

THE JEW: But apart from the Khattabians being orthodox, is there no proof they were not Shia? We Europeans take our view of Mahomedanism from Shia writers.

MR. HOWARD: The sect of Khattabians, existed before the Shiae so ancient were known.

THE JEW: Then I may take it that the Khattabians were not Shiae?

MR. HOWARD: Yes, certainly, my Lord. They were an obscure and transitory sect of the early days of the Mahomedanism. The *Moslems* were not Shiae, except so far as they maintained the claims of Ali's family to the Khalifat.

Again among the early sects of Mahomedans some took a high view of the character of Ali than others. Some went so far as to believe that he was an incarnation of God, for which opinion they were reproached by the opposite party, as being blasphemers. In order to appreciate this condemnation, it is necessary to remember that one of the chief grounds of complaint by the orthodox doctors was, that the blasphemous doctrine of an incarnation was borrowed from the Christians. In *Winkelmann's Bibliotheca Orientalis* it is said under the article *Nazaritani*—

"Ce mot, qui signifie les Nazaréens, secte de religieux ou de gens dévot à Dieu parmi les Juifs, signifie aussi une Secte de Chrétiens, que confondirent les dogmes et les observations du judaïsme, avec les principes et les loix du Christianisme.

C'est aussi le nom d'une Secte particulière des Sâdites, ou secte de Ali parmi les Musulmans, qui croient que la Divinité s'est jointe et s'est unie à quelques uns de leurs Prophètes, et particulièrement à Ali et à Mahomed Ben Hanzila en de ses enfans. Car ces hommes croient, que la Divinité peut s'unir corporellement avec les hommes et la nature humaine par elle-même avec la Divine. Ce sentiment est réprouvé par les autres Musulmans, qui reprochent aux Nazaréens, d'avoir joint cette Doctrine dans les livres deschrétiens."

The "Ghuliat," or exaggerations of the *Aliti* sect were mentioned by Mr. Anstey—the Ghuliat, I think he called them. They were extravagant notions of Ali, but it was before the formation of the Shiae the very end of the *Safavi* dynasty, this sect arose, and decayed, and the same may be said of the other sects mentioned by him. There seems indeed to have been wonderful activity of mind

among the Mahomedans in the first century or two after the death of the prophet, not in Arabia only but in various parts of the *Moslem* world. The disciples included among their numbers the most subtle-minded races of that age, the Syrians and the Egyptians, among whom so many strange Christian heresies also took their rise. All kinds of doctrines were promulgated under this intellectual stimulus. All these sects (the Alites in particular) under the Abbasides were subjected to extreme persecution, which by natural reaction, produced extreme zeal and fanaticism in the victims. Nothing is more remarkable in the history of these early sects, than the fact that the heads of them, almost invariably suffered a violent death. They appear to have been always treated as criminals by the Khalifs, and on some occasions, immense numbers of their followers were slaughtered with them. The Kharejites are said to have lost 1,00,000 of their number in one tremendous massacre.

It was in a. d. 837 that a new stimulus and direction was given to the doctrines of the sectarians by the translation into Arabic of certain books of Greek Philosophy, under Kalif Almansour (the 7th of the Abbasides). From that time, mystical, and metaphysical speculations of a new stamp began to appear in the world of Islam, and I think we have manifest indications of this Greek influence in the sacred writings of the *Druses*, translated by Dr. Socy in the work which I have recently quoted. Referring to Von Hammer's *History of the Assassins*, translated by Dr. Wood (not a good translation) we find, at page 27, the following passage:—"In the reign of Mansour, the Serenissimus Abasside Khalif, when translations, and the invitation to the Emperor of Greece and Persia, had caused the seeds of *Manichæism*, already planted, to bloom in full luxuriance—the spirit of the Arabian, which was now imbued with the systems of Grecian philosophy, Persian theology, and Indian mysticism, shook off, more and more the narrow trammels of Judaism. The appellation of *Mulhid* (infidel) and *Sindik* (Libertine), became constantly more and more common with their cause, and the wisest and best informed of the Khalif's Court were thus stigmatised." Now, my Lord, this well illustrates the charitable and venacious nature of the self-styled orthodox authorities on whom Mr. Anstey relies to discredit the *Ismael* to which my client, *Ismael*. The ancient Persia as we know, had a purer faith than any of the heathen nations of antiquity, except the Jews, and yet their name among the Moslems "Sindik," that is

a Zensik, meaning a Magian or Parsi, is used by the Sufis as equivalent to *libertine*. *D'Herbelot* tells us, that among Mahomedans and Arabs, the title "Zensik" meant, as infidel, a person who was neither Christian, Jew, or Mahomedan, and he gives as the source, *Gaabr* (a word applied to the Magians, from *Gimâr*, infidel) an amusing story showing the prejudice the Mahomedans had against these poor worshippers in the ancient Zensik name, whom they charged with immoral orgies. *D'Herbelot* says, the word "Zensik" is Persian and that it signifies in particular a Zensik, a worshippor of fire. The article relates that some young men in Mecca having become very dissipated, were suspected of frequenting the house of a Zensik and there joining in unhalloved orgies. The Sheriff could get no direct proof against the house-owner, so he hit upon a stratagem. He got all the donkeys of the bazaar together, and when they were let loose, all the animals went to the suspected house, where they stopped. That was taken to be convincing evidence against the owner of the house, who was condemned and about to be whipped, but at the last moment, procured a release by suggesting that the Arabs would be hounded, all over the world, if it was known that when the testimony of men failed, they resorted to that of asses.

The Sufis again, have also been dragged into my learned friend's speech, and after being called by very hard names, without reason, have been identified with the Shi'as, without authority. The speculations of the Sufis in Persia, were probably derived, to some extent from the neo-Platonic books. The Sufis however, are not necessarily Persian nor Shi'as, nor even Mahomedans, some of them are Hindoos. Their writings much resemble in spirit, the mystical Jewish poem which is called the *Song of Solomon*. There is therein the same expression of the love of God, under the terms of earthly affection. One is also reminded of the sermons of St. Bernard and St. Theresa. The good and disgusting story told by Mr. Anstey, of Shubli a Sufi may very likely be true: highly strained religious persons seem always in danger of falling into the like temptation, but it is no imputation (as he seemed to put it) against the whole Sufi school. The Sufis are, or were ascetics, of the most severe and rigorous character, and if there is any credit in being an austere ascetic, they most undoubtedly, as a school, deserve that credit. But I repeat, the Shi'as are neither responsible for the doctrines nor the practices of the Sufis.

The last sect I shall mention among those selected for reprobation by Mr. Austey is, the Mazdakians, who were called by many hard names, and then were attempted to be connected with the Shi'as. Now Mazdak was the head of a strange religious sect before the time of Mahomet. Mazdak lived in the reign of Nushirwan the Just (by whom he was tolerated) and he did certainly preach the doctrine of a community of women, which he grounded on the fact (observed before his time by the Roman poet, that women are the most fruitful cause of quarrels and wars among men). He also instituted socialism in respect of goods. These my learned friend following Sale, called "the devilish doctrines of Mazdak." No doubt we, in the 19th century, are not disposed to favour Mazdak's experiment of the community of women. English people are also very averse to socialism, though some most benevolent and clever men are at this day engaged in developing socialist schemes, as the only hope for smothering; but to speak of these questionable crutches, as "devilish doctrines" is a misrepresentation of the real nature of communistic enthusiasm. However, it has not even been pretended that the community of women, practiced in this wild pre-Mahommedan sect, prevails or has ever prevailed among the Shi'as or among the Ismaelites.

In one word all these strange sects were anterior to the formation of the Shia school of theology, and seen the name of Shia. It was about A. D. 950, when the Bowaid dynasty ruled at Bagdad, that the name of Shia was first used to denote the Alites. It is applied by modern writers to sects before that date, but as we may say, by way of anticipation, and not correctly; in the same way it would be erroneous to talk about "Tories" at the court of Charles the 1st, though we should quite understand what was meant. Under the patronage afforded by the Bowaid dynasty, the Shi'as became a great school of Islam, opposed to the Suni school. The teaching of the other Alite sects then gradually lost its distinctive character, and, according to political circumstances chiefly, the various nations who took up the Moslem word attached themselves to one or other of the teaching schools. Strange doctrines and wild practices disappeared with the discontinuance of preservation. All the partisans of All of whom ranged themselves under the Shia banner, and so, I think it is incorrect for my learned friend to say the Shi'as are "divided into many sects." It would be more accurate, to say that the Shia School, absorbed and reconciled all the sectaries of Ali—who before, were

divided by many differences of doctrine, for all the modern Shiae Shi'as sects are agreed among themselves in essentials. Thus as to the Shi'as, who claim Catholic unity, I believe there are as many as 10 sects among them as to doctrine among the Shi'as, and that appears from the last section of *Sale's Preliminary Discourse to the Koran*. But when it is said that the four Suni sects named after the four great local teachers, are orthodox and all others the heresies of Idris, one can but smile; this is Bishop Warburton's expression, and as his orthodoxy is my duty and his heresy is another man's duty." It is the mere echo of Suni authorities. *Van Houts*, who displays a strong partiality for the Suni, candidly admits (at page 16 of the *History of the Assassins*) that the reason why the Sunis are regarded as the orthodox, is because all the Mahommedan authorities known to Europeans are Sunite. *So Deon Mirhas* in his notes to Gibbon, reports that the Shia accounts of the early discussions of Islam, are not accessible to Europeans, as the Suni accounts have been hitherto our only guides. If we had those Shia works, we should be better able to judge of the controversy, which divides the two parties. The fundamental point of difference between the Sunis and the Shi'as, is of course as to the succession to the Khalifa and the doctrine of a living Imam.

The first Shikera commenced, as I have stated, with the establishment of the Bowaid dynasty at Bagdad; the second, with the establishment of the Fatimite dynasty in Egypt in A. D. 918; and the third, with the accession of the Saffari dynasty in Persia. Now can it be said that Mr. Austey in his speech pointed out one doctrine of the modern, or Persian Shi'as, which, theology apart, may have really cause to be objected to? There were two points of this kind, and two only. One was the doctrine of mental preservation; and the other *Mutah* or temporary marriage. Both these he described as censured by orthodox Moslems and in themselves as censurable.

As to the doctrine of mental preservation, I will refer to *Mur's Life of Mahomet* to show that it is not exclusively Shi'ah. This book, I may say by the way, is part chiefly valuable, for the author arranges all the Surahs of the *Koran* in chronological order. In the *Koran* itself they are mixed up together without regard to the dates of "revelation." It is wonderful how instructive they become when read by the light of chronology. Now it is true, as Mr. Austey states, that the Apostle

strongly commends that all Mahomedans should adhere to the faith and even die for it; but this was after Mahomet had become a conqueror; and they are the proselytes of a powerful independent chief who propagates his religion by his victorious sword. There is a kind of Roman pride about them. But in early days when he went into battle with six camels, and one horse, he was more indolent and less exacting. At page 74 of the Introduction to *Muir's Life of Mahomet*, there is a story showing that *pians frauds* were allowed and even enjoined by the apostle under circumstances of danger. Muir says:—

"The system of *pians frauds* is not abhorrent from the axioms of Islam. Deception, by the current theology of Mahometanism, is allowable in certain circumstances. The Prophet himself by precept as well as by example encouraged the notion, that to tell an untruth, in some occasions allowable, and what occasion would approve itself as more justifiable, nay meritorious, than that of furthering the interests of Islam? The early Moslems would suppose it to be fitting and right that a divine religion should be supported by the evidence of miracles, and they no doubt believed that they were doing God's service by building up testimony in accordance with so laudable a supposition. The case of our own religion, whose purer morality renders the attempt incomparably less excusable, shows that *pians fabrications* of this description easily convinced themselves to the conscience, where there is the inclination and the opportunity for their perpetration.

At the present day, among the Sunnis there are four things in respect of which mental reservation is allowed to a Muslim; one being for the sake of saving one's life; another, to effect a peace or reconciliation; another, the persuasion of a woman, and the fourth, on the occasion of a journey or expedition."

The authority for this statement of *Muir's* is the *Katib al Warikh*. It is told, my Lord, there is a Bombay place on one of these points:— "In the fleet that if your wife asks you for money to buy jewels, you may make her a promise, without intending to carry it out." (Laughter.)

THE JUDGE: Oh, I dare say, Mr. Howard; I was not aware of the existence of such a state of things here. (Laughter.)

Mr. Howard, in continuing, said: I do not think it lies in the mouth of these scrupulous people the Plaintiffs, therefore, to condemn the doctrine of mental reservation, held by the Shias, as a breach of

the faith of Islam. Looking at the point historically, there was good reason for this doctrine being developed among the followers of Ali, who were cruelly persecuted, and were taught reserve as the only means of preserving their lives and their religion.

With regard to *Mutah* or usufructuary marriage practised in Persia the suggestion is, that it is something horribly impure and alien to the doctrine of Mahomet. This is quite a mistake. *Quesada* fully describes this sort of marriage as a civil contract, in which he seems to find nothing revolting. The fact is, it is a lower form of marriage employed not to gratify licentiousness but to satisfy the scruples of the Shia divines; it is a legal concubinage very similar to concubinage in the old Roman law; and the Shias appear to use it or to have used it, so that if they keep a woman, not a legal wife, they may not be violating the law of the Prophet against fornication. The Sunis have perhaps been less nice. As it seems to be imagined that the practice is not by origin a Mahomedan practice at all, I will refer your Lordship to the 3rd volume of *Muir's Life of Mahomet* where the subject of temporary marriage is treated of. At page 306, there is this passage:—

"The tone of Mahomedan manners may be imagined from the functions of the temporary husband hired to legalize re-marriage with a thrice divorced wife, having passed into a proverb. Such a disgraceful branch of decency, such cruel violation of the modesty of an offending wife, may be an abuse, the full extent of which was not at the time contemplated by Mahomet; but it is not the less an abuse, for which, as a direct result of the unnatural and revolting provision framed by him, Mahomet is justly responsible." The note to this passage is as follows:—"A thousand years before the age of Mohammed, many lovers or gallants came less shame to a woman than one Mohammed. According to the Moslem law, a person who has (thrice) divorced his wife, cannot marry her, until she has been married to some other man, who becomes her legitimate husband, cohabits with her for one night and divorces her the next morning, after which the first husband may again possess her as his wife. Such cases are of frequent occurrence—so men in the heat of anger often divorce their wives by the simple expression, which (thrice repeated) cannot be retraced. In order to re-marry his wife, a man hires (at no inconsiderable rate) some *praxia* whom he chooses from the ugliest that can be found in the streets. A temporary husband of this kind is called

Marriage, and is generally most disgusting to his wife. *Burckhardt's Arabic Travels*, p. 36. Tradition and law looks abroad with solid common sense illustration of this subject, and with checks against the intermediate marriage and cohabitation being merely nominal. Some commentators hold the practice as described by Burckhardt to be illegal; whether legal or not, we may hope for the interest of existence is unaltered, and it has existed, in a more or less retreating form, ever since the verse which I have quoted was revealed. A case is mentioned by tradition in which Mahomet himself insisted on the fulfilment of the condition of cohabitation with another husband, before the original union could be returned to, in language which I am willing to believe the puritan tradition has fabricated for him. It must not be forgotten that all the immorality of speech and action connected with this shameful institution, and the outrage done to female virtue (not necessarily as a punishment for any fault of the wretched wife, but often from the passion and thoughtlessness of the husband himself), is chargeable solely and exclusively to the verse of the Koran quoted above. It is a very sorry excuse that Mahomet wished thereby to check inconsiderate divorce; a good object is not to be sought for through such abominable means."

THE DEBATE: Then it appears that, under some circumstances, a man may be regarded as a temporary husband by the orthodox Mahomedan law?

MR. HOWARD: Yes: Next I will refer to the *Dahabian* or School of *Moslems*; certainly one of the most interesting and amusing books I ever read. At pages 87 and 88 of the 3rd Vol. of the *Dahabian*, it is said:—His Majesty Akbar said one day that he heard from Sheikh Abd. Nafiz, that one of the chief lawyers of the Sunnites declared that taking of nine wives to be legal, whilst other learned men denied it. I then quoted the passage in the Koran.

"Take in marriage such women as please you, two or three, or four."

There is a note to this passage, my Lord, which says:—"Othra translate, 'two, and three and four, consequently, nine wives; as the instruction, *ra*, in *Arabic*, may mean or as well as *and*." "The text is open to any—

"As even eighteen wives were said to be legal, then the learned men of the decision that it may be admissible, by the words of *marriage*,

a temporary agreement, by means of which the obtaining of women is facilitated for a certain price, and this is permitted pursuant to the creed of the Muslim *Mosk*."

In a note to this it is said "the passage in the Koran favourable to temporary marriage is in Chapter IV., v. 28." "For the advantage, which you receive from them, give them their reward (assign them their dower), according to what is ordained, but it shall not be criminal to make any other agreement among yourselves, after the ordinance shall be complied with." This passage is a distinct authority that *marriage* was sanctioned by Suni doctors in India.

This sort of marriage is also admitted in the great *Sani* Law Digest, the *Hindaya si fará*; "the guide in the branches of the law" (translated into English by Charles Hamilton, 1791). "Nevertheless it was a subject of great contest among the Mahomedan doctors, whether such a connection be legitimate or not. The Imáms, Abu Hanifa, and others, declared it abrogated, according to the universal concurrence of the prophet's companions, on the authority of Elm Abdou Abdallah, who died Hej 68 (A. D. 687). This Muslim adduced the information received from Ali, who, on the day of the combat of Chailar, A. D. 686, heard the Prophet declare that such marriages are forbidden. Moreover, a strong opposer to their legitimacy was Yafia, the son of Aktar, son of Mahomed, son of Katan, a celebrated judge, who died in the year of the Hejra 242 (A. D. 856). Living during the reign of Mamun, he succeeded in persuading the Khalif, to prohibit by a decree temporary marriage, which he had before permitted" (see *Musfeda*, Vol. 11, pp. 123-129).

(At the rising of the Court on Friday, Mr. Howard closed his remarks with the above passage. On the assembling of the Court on Saturday, he recommenced by saying, I found the passage in *De Saey's Religions des Druzes*, to which I wished yesterday to refer, but could not lay my hand on it. It is an extract from *Mabriz*; it appears at page 49 of the Introduction, and describes the Khattabians, with whom Mr. Anstey wished to connect the Shias. *De Saey* says, "The Khattabians, who belong to the anthropomorphist class, have an unbounded veneration for the Imam Ujjar Sadek, &c." Now, my Lord, there is no pretence for saying that the Shias are, or ever were, anthropomorphists; therefore, the evil practices of the Khattabians have no weight as a means of discrediting the Shia sect.

I now wish to add a word as to the practice of mental reservation by the Shias, which Mr. Anstey said was forbidden by Mahomed. Mr. Anstey was at the pains to discriminate the particular department or stratum of hell assigned by Mahomed to "Hypocrites," meaning (so he asserted) those who practise mental reservation. The only authority he gave was the following passage, at page 66 of *Sale's Preliminary Discourse to the Koran*. "As to the punishment of the wicked, the Mahomedans are taught that hell is divided into seven stories, or apartments, one below another, designed for the reception of as many distinct classes of the damned—the first, which they call Jehinnam, they say will be the receptacle of those who acknowledged one God, that is, the wicked Mahomedans, who, after having there been punished according to their demerits, will at length be released. The second, named Ladhâ, they assign to the Jews; third, named el Hottama, to the Christians; the fourth, named al Sâir, to the Sabians; the fifth, named Sakar, to the Magians; the sixth, named al Jahim, to the idolaters; and the seventh, which is the lowest and worst of all, and is called el Hîwiyat, to the hypocrites, or those who outwardly profess some religion, but in their hearts were of none." Now, my Lord, it is abundantly clear that this definition cannot apply to the Shias. There must be a desperate amount of *adum theologium* in any Suni divine who maintains against the Shias the charge that they have no religion at all. And there is no pretence for the suggestion, that the text in question makes mental reservation a damnable sin.

Now, leaving the primitive era of Moslem heresies, can it be said that the Shia theology as settled in quieter times—the accession of the Safavi dynasty in Persia—is to be charged with inculcating wild doctrines, anti-social institutions, or immorality? The date of the accession of the Safavi dynasty was A. D. 1499, and the doctrines then adopted by the Persians, under their auspices, that is, what is properly called Shia theology, were much influenced by historical circumstances. For 800 years previously, Persia had suffered under the cruel persecutions of the Arabs, its national life had been all but stamped out. The Magians or Parsis had been almost exterminated, and the remnant covered under the opprobrious name of "libertines." The age of persecution had also left its mark on the partisans of Ali's family, under the Arab yoke. Hence the prevailing practice of mental reservation, of outward conformity, and secret belief. During the

whole term of Suni supremacy, there was never wanting in Persia a secret current of opposition, and of allegiance to the family of Ali. Although the Persians outwardly performed Suni rites, they ascribed for the Saint and Imam with whose their real religious feelings were inseparably connected. The name of Ali was the constant watchword of insurrection, and there was never absent the remembrance of some Isfah or Messiah, who was to deliver them from the oppressor.

There can be no doubt the Shia theology defended somewhat from the Shemitic spirit which inspired the first persecution of Islam, and that it was a temperate endeavour to steer a middle course between paganism and the narrow, cruel, jealous monotheism of the Arab Sunis.

The Shia theologians, whilst reverencing the Koran, curtailed the tautologous creed of "God is God," with a more humane element, and taught the mission of Ali, whom they honoured as the most perfect of men, and even as something more, saying of him, "Thou art not God, but thou art not far from God." He was to them the "light of God."

The Sunis denounce the construction of this praise of Ali as a quasi-divine incarnation, just in the same way as the Jews condemn the healing tract of the Christian faith. They even charged the Shias with picking this portion of their theology from the Christians. Indeed it may have been the fact that the Shias derived their ideas of Ali, of a semi-divine man, of a mediator, from the Christians, though some say it was from the Magians. Then the fanatic element was not wanting in the Shia system; that element which has been so powerful in softening and refining Western Christianity, which has inspired so much divine poetry and art, which was the leading idea of civility, and which has had so much to do with the formation of the modern European character. I refer, my Lord, to the honour paid to the memory of Fatima, the daughter of the Prophet and the wife of Ali.

I shall now read some extracts from authorities, in illustration of the difference between Shia and Suni theology. Baron Von Hammer, observing that the two great schools of Islam, the Sunis and the Shias, hold the same *fundamental faith*, but differ on points of practice, compares them to the Eastern and Western Churches of Christianity. The chevalier de Chardin, the great French traveller in Persia, looking to what the Shias have added to the Suni creed, compares

them to the Roman Catholics, and the Sunnis, to the Protestants; in which case Gibbon's axiom is equally applicable to both the Moslem and Christian world—that the heterodox was more hated than even the open enemy of the faith. But looking at the wisdom of Islam in all its aspects, I have been led rather to compare the theology of the Shia to Christianity as developed from Judaism. It is wilder, less formal and more human, than the theology of the Sunnis. In a word it is Aryan, or Indo-European in spirit, as distinguished from the Semitic ground work of Mahomedanism.

One marked characteristic of the Shia in Persia,—which I have already referred to—was, that during the whole of the long period of oppression and cruelty in which they lived under the Sunnis, they never lost the traditions of their Alid faith, though they practiced Suni forms under mental reservation. Indeed it was by that system of secrecy alone, that those traditions were preserved in their integrity. After the establishment of Shiism in Persia they did not resume the duty of going on pilgrimages to Mecca; but Mecca was in the hands of the Sunnis who looked upon them as further removed from the truth than even the Jews or Christians. The consequence was, that the Shia pilgrims were oppressed and abused in every possible manner, when they visited the Holy places. And to protect themselves, when they came to Mecca, they were forced to adopt the orthodox Suni twist of the elbow in praying, and otherwise to meet the forms of Suni worship. Captain B. von in his pilgrimage to Mecca, gives a very graphic account of the behaviour of these oppressed Persians there:

“He says:—In describing his visit to the Haram, or the Prophet's Mosque at El Medinah (Vol. 2, page 250):—

“My old friends the Persians—there were about 1200 of them in the Hijjaz caravan—attracted my attention. The door keepers stopped them with crosses as they were about to enter, and all chained from the sun of five paces, whilst other Moslems are allowed to enter the Mosque free. Unhappy men! they had lost all the Shia swagger; their mustachios drooped pitifully, their eyes would not look any one in the face, and not a head bore a cap stuck upon it crookedly. Whenever an “Ajeui,” whatever might be his rank, stood in the way of an Arab or a Turk, he was rudely thrust aside, and abuse, loud enough to be heard by all around. All eyes

followed them as they went through the ceremonies of prayer, especially as they approached the tombs of Ahsabek and Omar which every man is bound to visit if he can—and the supposed place of Fatimah's burial. Here they stood in parties, after praying before the Prophet's window; one read from a book, the pathetic tale of the Lady's life, sorrows, and mourning death, whilst the others listened to him with breathless attention. Sometimes their emotions were too strong to be repressed. “*O Fatimah! O Medinah! Way! way!—O Fatimah! O thou injured one! Alas! Alas!*” burst involuntarily from their lips, despite the danger of such exclamations, tears trickled down their hoary cheeks, and their brawny bosoms heaved with sob. A strange sight it was to see rugged fellows, mountaineers perhaps, or the fierce Hynt of the plains, sometimes weeping silently like children, sometimes shrieking like hysterical girls, and utterly careless to conceal a grief so coarse and giddy, at the same time so true and real, that we knew not how to behold it. Then the satanic custom with which they passed by or pretended to pray at the hated Omar's tomb! With what curses their hearts are bedying those months full of blessings! How they are internally execrating Faysal. (The Persian slave who stabbed Omar in the Mosque) and praying for his eternal happiness in the presence of the mangled man! Sticks and stones however, and not infrequently the knife and the sabre, have taught them the hard lesson of disciplining their feelings, and nothing but a furious contraction of the brow, a roll of the eye, intensely rictus, and a twitching of the muscles about the region of the mouth, denote the wild storm of wrath within. They generally, too, manage to discharge some part of their passion in words. “Hail Omar thou hog!” exclaims some fanatic Madani as he passes by the heretic—demand more outrageous than requiring a red hot black-mouth, Protestant to bless the Pope. “O Allah! Hell him!” mockly responds the Persian changing the benediction to a curse most intelligible to, and most delicious in his fellow's ears.” There is a note to this passage as follows:—

“I have heard of a Persian being beaten to death; because instead of saying “peace be with thee, Ya Humir (O Ass!) A favourite trick is to change Razi Allahu anhu—may Allah be satisfied with him—to Razi Allahu An. This last word is not to be found in Richardson's.

but any "Luti" from Shiraz or Isfahan can make it intelligible to the curious linguist."

Cherâh writing in the 17th century, describes the negotiations entered into with the Arabs from time to time, by the Shah, for the purpose of ensuring the safety of his subjects when on pilgrimage. This all goes to show that the habit of usual conversation in regard to their religion was forced on the Shias by Sunni persecution precisely as alleged by the Khojah Shias in this suit.

(Before reading some extracts as to the Sunni and Shia controversy which will not be immaterial as showing what the difference between the two parties really is; and as the attempt has been made, though without success, to point to doctrines in Shia theology, as morally objectionable, and opposed to public policy, I will point out the one great leading principle of Sunnism which most undoubtedly the Court will hold to be contrary to policy and even to the existence of the British Government in India. That is the doctrine of "War on the Infidel;" for we, the British, are "the Infidel" according to the Sunnis, whose doctrine this is; but if this does not make the Sunnis outlaws in this Court how can any obsolete speculation of Rafeethis, or other Alitic acts of primitive times be disinterred for the purpose of inducing a British Judge to show disfavour to the present Shias? The Sunnis are at this day bound to obey the command of "War on the Infidel," and if the preaching of any dangerous doctrines, opposed to public policy, can put a class of sinners out of Court, it would be the teaching of those who consider it their sacred duty to wage war on the British Government—aye have done so—actually waged this holy war against the British power in this part of India, not ten years since. Of course my learned friends will say, that the Court will not act upon inferences, however logical, from such doctrines, that we cannot suppose people will formally abrogate their religious principles, although they in practice, never think of acting on them. This liberal statesmanlike policy is very familiar to us at home with regard to the holders of Ultramontan doctrines, which are absolutely inconsistent with the British form of Government. All Protestants agree that it would be monstrous on that account, to deny to Roman Catholics, absolute equality in an English Court of Justice. In the same way, I say that it is monstrous for my learned friends to pick out scandalous tales from books of all ages and coun-

tries, more or less supposed to affect the Shias, and use them as arguments against the *locus standi* of the Shia defendants.)

In reference to the Suni and the Shia controversy, there are instructive articles in *D'Herbelot's Bibliothèque Orientale*, under the heads "Sunnah" and "Schiah." I may here state my belief, that although the Sunnis so call themselves, from adhering to the Sunna, or written law, yet the Shias also adhere to the Sunna, where the materials are obtained from authorities which both the schools admit; but they do not admit those which were collected under the authority of the Omniades. The passages in *D'Herbelot*, I shall quote, are as follows:—

SUNNAH OR SONNAH. Ce mot Arabe signifie proprement ce que les Hebreux appellent Mischnah, le seconde ley, ou la ley orale, qui n'a point été écrite par le législateur et qui est seulement tirée de ce qu'il a dit ou fait et consignée par tradition de main en main, par des personnes autorisées.

Le plural de ce nom est Sunan et Sunen et plusieurs Docteurs Musulmans ont donné ce titre à les ouvrages, dans lesquels ils ont ramassé tout ce qui est obligatoire et de précepte dans la ley Musulmane, quoiqu'il ne soit pas expressément commandé dans l'Alcoran. Cependant il ne faut point confondre cette Sunnah et ces Sunan avec ce que les Musulmans jusqu'à ne soit pas expressément commandé dans l'Alcoran.

Cependant il ne faut point confondre cette Sunnah et ces Sunan, avec ce que les Musulmans appellent Hadith et Haoudith. Car les Hadith ou Haoudith ne sont que des recits Historiques, dont la tradition n'est pas si authentique. Mais la Sunnah est de précepte cernue on l'a déjà dit, et est de règle a de discipline aux Musulmans. Néanmoins, ces deux choses sont souvent confondues dans les ouvrages des Malcomitans. Car il y a plusieurs qui portent le titre de Sunan et qui ne contiennent que des Hadiths.

SCHIAH or SCHEAH. Ce mot Arabe signifie en général, une Troupe, un Party, et une faction de gens confédérés et qui sont une secte particulière en matière de Religion.

Les Musulmans Orthodoxes qui donnent le nom de Sunnah à leur religion et profession particulière, donnent celui de Schiah à la secte de ceux qui se disent Partisans d'Ali et qui ont quelques observations, et quelques cérémonies et pratiques particulières.

Schiâh et Schî, est celui qui est opposé au Sunni et la différence, qu'il y a entre ces deux sortes de personnes, consiste essentiellement en ce que les premiers croient et professent que le Souverain Imam, dignité qui comprend toute l'autorité spirituelle et temporelle sur les Musulmans, appartient, de Droit Divin à Ali et ses descendants.

Les Persans sont Schiites, et les Turcs sont Sunnites. Mais cette différence de partis, qui est aujourd'hui entre ces deux nations, a commencé dès l'année 363 de l'Hégire sous le Khalifat de Mothâ Billah, l'Abbaside. Car ce fut pour lors que les Schiites se rangèrent du party de Soltans de la Race des Bouïdes, et le Sunnites prit celui des Turcs, qui étoient alors très-puissans dans le tour des Khalifes, et ce furent enfin les divisions et les dissensions de ces deux Partis, qui furent la cause de la ruine de Bagdad, et du Khalifat des Musulmans, comme l'on peut voir dans le livre de Mostâdhem, dernier Khalife des Abbasides.

Les Schiites ou sectateurs d'Ali, n'appellent pas leur secte Al Schiâh, non qu'ils croient leur être injurieux. Mais ils lui donnent le titre de Schiâh, à cause qu'Ali étoit plus qu'on ne le voit, le titre de Dieu de Ali; où le sujet de cette opinion des Schiites d'avec les Sunnites est plus amplement expliqué.

Ces schiites sont encore divisés entre eux en cinq sectes différentes. Les Kessaliques, qui en sont une, ont des sentimens fort différens. Ils croient qu'Ali étoit plus qu'on ne le voit, le titre de Dieu de Ali; où le sujet de cette opinion des Schiites d'avec les Sunnites est plus amplement expliqué. Car les uns s'attachent à la branche de Hassan, fils aîné d'Ali, et les autres à celle des Housseïnes, qui étoit son cadet.

Il y en a même qui ont suivi le party de Mahomet Ben-Hanifâh, fils aussi d'Ali; mais d'une autre façon que Pathimâh, fille de Mahomet. Les uns ont pris le party du Mahâdi l'Africain, fondateur de la Dynastie des Khalifes Pathimites d'Égypte, qui sont les Schiites d'Afrique et les autres ont pris celui des Ismaéliens de la Perse, dont la Dynastie a pris son origine de Hassan

Ben-Hanifâh, fondateur de la secte Hanéfienne parce qu'il étoit le petit-fils de Scheikh Haïdar, arrière petit-fils de Scheikh Soû, qui étoit descendu aussi d'Ali.

Plusieurs Schiites croient le Tensoukiah, qui est la contempation et la Hulenâh, qui est une contempation de l'esprit de sainteté qui se trouve de l'un à l'autre et entre ces cinq principales sectes des Schiites sont comme cinq autres qui se suivent en sixième et dix branches. Cependant les sectateurs de ce parti, qui consiste à regarder les Khalifes Aboû Bekr, Omar et Othman, que le Sunnites ou orthodoxes regardent beaucoup comme des usurpateurs du Khalifat et de l'autorité suprême dans le Musulmanisme, qui devoit selon eux passer immédiatement de Mahomet à Ali qui ne fut cependant que le quatrième Khalife.

C'est par la même raison qu'ils détestent la mémoire des Khalifes Ommiades, qui firent mourir Hoerssein fils d'Ali, duquel ils déplorent encore tous les ans la mort, et rejettent aussi les Khalifes Abbasides, quoique Parents de Mahomet, comme Haseelimites, parce qu'ils ne descendoient pas d'Ali.

L'on peut voir dans le titre de Namon le violent scrupule, que ce Khalife eut de posséder le Khalifat au préjudice des Alides, et de quelle manière il le leur vouloit restituer, en déclarant pour son successeur Ali Reïha, qui tint le huitième rang parmi les Imams.

It is important, my Lord, to remember, that this is the real distinction between them. The turning point in the controversy, is the question, who was the lawful successor of the Prophet, the Shîes fervently supporting the claim of Ali and his family. As further exhibiting the difference between the two parties I will refer to page 126 of *Sale's Preliminary Discourse* to the *Koran* in which he says: "It may be proper, however, to mention a word or two of the great schism at this day subsisting between the Sunnites and the Shîites, or partizans of Ali, and maintained on either side with incredible hatred and furious zeal. Though the difference arose at first on a political occasion, it has, notwithstanding, been so well supported by additional circumstances, and the spirit of contestation, that each party detect and denounce the other as abominable heretics, and further from the truth than either the Christians or the Jews." Now there, the words "partizans of Ali" are used as equivalent to Shîites.

That is the fundamental distinction between the two schools, and I call your Lordship's attention to the fact, that they are so bitterly opposed to one another that each thinks the other further removed from the truth than the Jews or the Christians. I am as anxious as

Mr. Anstey, to insist on the fact that the Shi'as do not regard the Shi'as as Mussulmans, that they hold that non-Shi'as cannot use the Suni Jemal Khanna and that the excommunication is reciprocal. They hate one another so much that they cannot use the same building for religious purposes. This has a most important bearing on the issues in this case. And now I shall refer your Lordship to some passages in *Sir John Malcolm's Translations from the Persian*, given in the 1st Vol. of the *Transactions of the Literary Society of Bombay* (1811).

The Judge: That was the Society founded by Sir James Mackintosh, previous to the establishment here of the Bombay Branch of the Asiatic Society?

Mr. HOWARD: Yes, my Lord. The passages commence at page 68, and they occur as "illustrative of the opinions of the Suni and Shi'a sects of Malabar." The first paper, which is a Suni manifesto, addressed to the Shi'as who had protested against the plunder of Mashed by Muslem invaders, commences thus:

"It cannot be concealed from any one of the true faith, that it is forbidden to attack the person or property of a Mussulman who believes in God." Then, referring to the dissent of the Shi'as, it is

"undoubtedly becomes the indispensable duty of the Prince of the faithful, and of all true believers in the world, who desire to fulfil the mandates of the most High God, and to fix and strengthen their religion,—to kill and exterminate all such; to raze their houses and take their property, whether in woods or land; and if the kings of the earth, in whose hands are power and dominion and the Caliphs (and whose shadow may God order) that the faithful find shelter on the great day of Judgment!) neglect to combat in this sacred cause, which it has been declared their duty to do by the unanimous voice of the *Ulmah* or holy men, who speak what the Prophet and his disciples have proclaimed, they shall answer for it to their Creator."

Above all others, those will obtain that beatitude who are included in the following verse of the divine Koran, "God is well satisfied with the faithful that acknowledged thy authority." "The Great God was their guide and they followed him." "as there be a doubt but the three Caliphs, Omar, Othman, and Abdoulay are included in this verse! It follows

from what has been stated, that to deny their perfection is to wander widely in the maze of error, and in fact to deny the Koran and the Prophets; and those only that believe and follow them are the true followers and believers in the faith; for God commanded our Prophet to say to the world, "You that are the friends of God obey me; and God will be a friend unto and pardon your sins" The indubitable valour of Aly, the lord of the faithful, is known to the whole world; and yet that prince acknowledged the authority of the Caliphs. Ignorant men do not reflect that if they succeed in fixing obloquy on any Caliph, they must also fix it on Aly. How can the Shi'as defend their conduct in leading with abuse Ayesha, when all are agreed that she was the wife of the Prophet and was the favorite of that sacred personage? How dare the Shi'as then be so indecent and impious as to abuse the partner of the bed of the moon? You have written unto us that it is stated in Holy Writ, "Do not without cause plunder each other's property"; and that it is a sacred precept that it is unlawful to take the property of any Mussulman whatever, unless for his advantage; and you argue from this that the produce and revenue of the city of Mashed cannot be deemed lawful plunder. We have to reply, that those holy sentences and traditions only relate to true believers; and as we have correct and authentic proofs that the sect of Shi'as abuse the Holy Caliphs (at the same time that they call themselves Malabar-dons), we conceive not only the sentences you have quoted, but many others which it is unnecessary to state, have this plain and obvious meaning,—that to put to death, to seize and ravage the property and country of unbelievers, is lawful. No person indeed can deny this; and especially those who declare themselves servants of the prince of the faith, but swerve from their truth, must also be deemed by the concurrence of the learned, proper and legitimate objects of plunder You say, on the authority of Holy Writ, that God created man and angels only to obey and adore him. This cannot be controverted; but the obedience and adoration which is acknowledged to be most pleasing to God is to war with infidels, and no man should be shown to those who forsake their adoration to their Creator, who abuse the heads of the faith But though all are agreed that God has cursed Satan, there would appear no good to be reaped from execrating him; and what renders

the present case more extraordinary is, that there are numbers of Shi'as who really understand the meaning of the holy sentences, and have successfully expounded many of the sacred writings.

Such we must remind of the verse in the Koran which states — "That the time approaches when an answer will be required from those who have knowledge."

I shall now quote, my Lord, from the same collection a letter from the Shia divines, intended to answer the foregoing:

"By the style of your letter, I am reminded of a saying in Kharasah, 'He that goes alone to the judge will return satisfied.' The learned men of the sect of Shi'eah have had no access to your sovereignty, who has been taught that their faith is a new invention, destitute of truth; when he has heard all the arguments fairly urged on both sides, his royal mind will be enlightened and we shall be satisfied with his decision. There are many books of traditions regarding which the Shi'eahs and Shi'eahs differ, but we desire in this discussion to refer to none as authentic in which both do not profess a belief. The whole of the Mahomedan are divided into two sects, Sunnees and Shi'eah. The essential difference is this: the former believe that Abousteher had a just right to succeed the prophet; the latter, on the contrary, do so. Murteza Ali the lawful heir, and condemn his exclusion an act of impious and injustice. This difference implies no rejection of the acknowledged traditions to which we mean to refer. Such indeed is not a general principle with either sect, as we object to the protest that any individual may make of this nature.

From all this it must appear obvious that what you have urged against the Shi'eahs is from your self, and is neither supported by the Koran nor the holy traditions. Now we, on the contrary, are fully aware of the guilt of the Caliphs, do not deem it a duty to punish them; nor indeed is it thought reputable to do so; and if any unthinking headed Shi'as affirm it to be a duty, they are mistaken in punishing them in the same rank with those senseless Sunnees who deem it a duty to put all Shi'eahs to death — neither of those sentiments are presented as duties by any authorities of respectability."

The doctrine of plandering the heretic appears to be by no means common among the Sunis; it is heartily concurred in by Mr. Anstey, who asked the Court to take away the Defendants' money because they are not orthodox; and no doubt on the ground, as the Sunis say in

this passage, that it is legitimate to plunder Shi'as. The Shi'as do not advance these pretensions. By their answer your Lordship has seen that the course is very reasonable; and that they do not assume the unbecomingly ostentatious of their orthodox Suni opponents.

In another of these translations by Sir John Malcolm, there is an amusing story of a public controversy, held in the time of the celebrated Huzon al Raschidi, in which the Shia disputant says that out of the 73 sects of Islam, only one, the Shi'as, will be saved; all the others will be damned.

The next extract I shall trouble your Lordship with, is from the third volume of the *Dabistan*. [Before reading it, I will say I have no doubt as to this being a most valuable book, but with reference to the *Desatir* mentioned in it, which Mr. Anstey wished the Court to accept as the same with the *Dasatir*, the sacred book of the Khojahs, Mr. William Erskine has clearly shown that it is a modern forgery, and that I can also undertake to say myself. It contains many Hindustani words, showing it is not a pre-Zoroastrian book, which it pretends to be. It has no value whatever. I shall on the other hand, show that the genuine *Dasatir*, that is the "book of ten incarnations," is a purely Khojah book, utterly unconnected with pre-Zoroastrian history or fable. I don't indeed see that it would have done my learned friend's case any good to show that the Khojahs used such a book as the *Desatir*, which is not Suni nor even Mahomedan, but if the Plaintiffs told their counsel to say that the old Khojah *Dasatir* was really this *Desatir*, it was a gratuitous and gross attempt to mislead the Court. Mr. Anstey probably did not know anything about the *Dasatir*, but the witnesses whom he called did; and they also knew, that if the true Khojah *Dasatir* were produced, it would prove the falsity of their Suni pretensions. The *Dasatir* was produced by us, and then the Plaintiffs did not dare to ignore it, but they said it was only ignorant Khojahs who read it. But the fact is, as I shall show by the universal consent of the Khojahs, it was written by Suddooddeen, who converted their ancestors to Islam.] Now the passage I am going to read from the *Dabistan* is from the third volume, page 63. It relates to a remarkable religious controversy carried on in the presence of the great Akbar, in the course of which there is a battle between a Sunnite and a Shi'ite: the Sunnite says everything he can against Ali; and the Shi'ite defends Ali and trusts the Suni —

"The Shi'ah interrupted him, saying; 'You are here from the very beginning. Abu Hanifa, your great Imam, was a native of Kابل and attached himself particularly to the service of Imam Jafir Sadik; as was he left him, and professed openly the religion of his fathers, who were Magi. A sign of the Magian creed was, that he thought it right to eat three times a day, and to lay aside all choice of diet, as well as not to reckon the unbelievers impure, saying that impurity resides in the interior, if anywhere, and the like.'

"The Sonnite remarked: 'Thou thyself agreest that Abu Hanifa was a follower of the Imam Jafir, therefore he most likely practised what was conformable to the religion of the Imam Jafir. We do not admit that your people are attached to the religion of the Imam; we rather believe that they are Magi; for when your ancestors were conquered and subjected, they by necessity joined the Islamian, but mixed the right faith with the creed of the Magi, as it appears from the worship called *saw ras*, which is a custom of the Magi, according to whom they likewise perform divine worship three times a day. They think it right to turn their head in praying to the left, which is turning off from the Kiblah (of Mecca); they recite that the five prayers every day are improper, as they are not able to perform them exactly; they maintain, however, as requisite those at mid-day, before-noon, and in the evening on going to sleep. In the same manner they took the Matiah or temporary matrimonial unions from Mazhab-Khan."

I quote the passage, to show the sort of imputations which are exchanged between the two parties of Islam; and this completes my account of the two schools.

Abu Khan belongs, as he says, to the Shia-Imami Ismaili sect. With regard to the term *Imami*, that does not, at all events now-a-days, denote a sect of Shi'as. It is a term descriptive of their belief in the Imam and his succession, in the same way that the term "Papists" is applied to Roman Catholics. The belief in an Imam, is held by all Shi'as. The precise nature of the Imamiat is perhaps not very well known. It denotes a spiritual headship in which there is a succession, as in the orders of the Christian Church; and if we are sometimes startled by the loftiness of the language employed by the votaries of Ali, and the Imams, we may remember that Popes have arrogated or accepted a superhuman authority: Martin IV. did not rebuke those

who addressed him as "Lamb of God." But Ali was never worshipped in the high sense of the term.

The succession of the Imams is differently ascribed by different sects. The Ismailites are distinguished by other Shi'as, by their tracing the Imamist, through Ismail, the son of Jafir, the Shia Imam, instead of Musa. But all the *Imamiens* are equally Shi'as, as shown by *D'Hérbelot* in the article "Imam." Mr. Anstey said the Ismailites were outcasted since the time of the Imam Jafir, and a name of reproach even among the Shi'as (as Protestants might speak of the Jesuits among Roman Catholics; we know very well how fond religious partisans are of calling names). The authority for this statement about the Ismailites was Mirkhond, who was not a Shia writer and who wrote under Tamerlane, a violent anti-Shi'ite. The Ismailites have, indeed, always professed to be Shi'as of the Imamist sect. The Ismaili sect is connected in history with three political establishments—the Fatimite Khalifs of Egypt; the Druses who still exist in Syria; and the followers of Hassan Sabah who received from the Crusaders the ill-sounding name of the "Assassins." The Fatimite Khalifs were as respectable as other Asiatic dynasties, and they deserve the credit of founding the first University, the *Dar-ul-Hikmah*, which Von Haussner abundantly calls "a lodge," at Cairo. It was known they were the head of the Ismaili; and all the Moslem world was aware of it. To say therefore the Ismailites were "outcasted" from the time of Jafir is a manifest perversion of facts. By the Assassins, they were, no doubt, always regarded with hatred, as the most dangerous enemies of the non-Alite rulers. They, therefore, whilst this perversion lasted, kept their religion concealed, and like the Templars and the Presbyterians, and other secret societies of Europe, were accused of all kinds of evil practices which were probably untrue. Before the time of the Fatimite dynasty, the Ismaili was a secret sect, and it was in this time of danger, during the interval before their leaders assumed the throne, that the strange custom of initiation, by seven or nine degrees, was devised among them. Further in disproof of the assertion that they have always been regarded as outcasted since the time of Jafir, I may mention, that the late Shah of Persia gave his daughter in marriage to Aga Khan, the head of the Ismailites, made him governor of the districts of Koom and Nakhallat, and afterwards of Kernan. They, too, the grandfather of the

Agā, also the head of the the Ismailites, was governor of Kerman (under Ali Mozal), as was his son, the father of the Agā. They were perfectly well known to be the head of the Ismailite, as shown by *Fergusson's History of Persia*, and, no doubt, received their honours from the Shah on that account. These recognitions of the Ismailite, by the civil authorities, in recent times, may counterbalance the holy reputation of *an dīn* orthodox authorities of bygone days. I shall now say a few words as to the secret religious system of the Ismailite. My Lord, there was very good reason why they should keep their system secret. Under the Abbassides every Ismaili was burnt or tortured, whenever he was discovered; for the chiefs of the sect were, of course, the most dangerous enemies of the non-Allite Mohammedan rulers. Naturally the Ismailite, under alien Sovereigns, kept their secret, if they desired to retain their lives. It may be, as suggested by *von Hammer*, they borrowed their system of initiation from the Egyptians; at all events they practised it in self-defence. If they wished to make converts in a foreign and hostile country, they did so with the means that possessed the most practical security. They began by imparting to the convert very harmless teaching, "milk for babes," and after leading him on, step by step, as seemed safe, they showed him what they really were—the believers in an Imam, and the enemies of non-Allite Sovereigns. A great deal of vituperation has been poured on this secret system of initiation; there were seven, or nine different grades, and it is said the novice was thus led to Atheism and immortality. This statement, however, is based on very slender foundation.

As to reserve in religious instruction generally, we know of the Jewish Proselytes of the gate; of the *discipulus secreti* in the Catholic Church, to say nothing of more sacred authority. I am not a Freemason myself, but I believe there is something of the same kind in the degrees of initiation into that body. No one outside of masonry knows what its secrets are, but we have the best possible reason for believing that Masons are a harmless, festive, and benevolent community, yet their secret system has exposed them to fearful imputations, and it is but lately that the Holy Father thought it necessary to denounce them as the enemies of religion and society.

There is but one authority for the received story of the Ismaili system of initiation, and that is *Moshāhā*, an ancient author who is quoted by *Makrizi* and by *Nesairi*, another almost contemporaneous historian.

They could give no further information than from what they got from *Moshāhā*, who certainly pretends to relate minutely the nine degrees, and who, like an orthodox Muslim, pronounces the Ismailite doctrine to be as worthy of condemnation as the Pope thought the Freemasons to be. A little criticism throws a doubt on *Moshāhā's* account. If such secrecy was observed under such elaborate precautions, how is it—especially with reference to the higher degrees—that the secret was ever divulged? We are told that women attended the the *dar-ol-ikhrāq* at Kairo (I believe the Freemasons do not account for the grades to which "lodges"), and this may be said to account for the grades to which the ladies were admitted becoming a matter of common notoriety; but is this explanation consistent with the general theory?

It is not explained how Akhon *Moshāhā* came to know the degrees. He was never initiated himself, and was hostile to the Ismailite, whom he calls miscreants and unbelievers. I think it is very possible, that the nature of the lower degrees may have oozed out, and that they are correctly given, for they would not do the person who professed them any harm in the eyes of orthodox Mahomedans. But the higher degrees would only be known to a few, and it is extremely improbable they would become divulged. The account given of the method employed by the Ismaili Missionaries—the *Dais*—is probably carried as general outline,—after allowing for hostile language, and false comments and inferences—but as I have already observed, only two authorities, at second-hand, are available. *Makrizi* says the Ismaili novice was led by degrees to the Magian religion, and, according to him, that is, as much as to say, infidelity, atheism, and libertinism. The *Dais* were to exhibit great missionary zeal, and were to build on the religious system of the person addressed, and to begin with Sani arguments to Sani, and Shia arguments to Shia, &c. First the missionary commenced by pushing the novice asking him difficult questions about the Koran. Then, having got the novice into a state of great bewilderment, he improved his opportunity, and administered an oath of obedience to him. This completed the first stage of instruction. Then the second degree revealed the Imāmi doctrine as to authority and reason, and the divine mission of the Imāms to teach the religion professed by all the followers of Mohammedanism. That may be a correct idea of the second degree, but your Lordship will see that such a doctrine

was a most dangerous one for the preacher, and we may doubt whether, under Suni rule, it would be confined to the novice at so early a part of his instruction. Then the next and third degree taught the Ismaili succession of the Imams, that is to say, from Ali, through his descendants to Ismail, the son of Ja'far. As to this degree, I see no reason to doubt the correctness of Makrizi's report. The fourth degree makes known the periods of the Imams; and after that comes a break in the system; the character of the teaching becomes entirely different, and it is for your Lordship to form your own opinion as to whether the account is at all probable. It is said the fifth degree took the novice through a course of arithmetic and geometry, in which particular numbers, with their mystical significations, were taught, in a most singular method which is perhaps not more absurd than the similar speculations of persons who, even at the present day, pretend, as they say to "expound prophecy." We know that some of the Greek writings were brought to the East before the time when these doctrines were inculcated, and perhaps these mystical numbers were derived from Greek sources. Then the sixth degree allegorized the Koran. It imposed an entire submission to the Imam, and taught that legal and religious ordinances are contrivances for keeping people in necessary subordination and dependence.—

THE JUDGE: With regard to the fourth degree?

MR. HOWARD: It teaches, that the Imam will appear at a future age as the Messiah.—

THE JUDGE: To establish a sort of Millennium?

MR. HOWARD: Yes, it is so.

It was with reference to the sixth degree that the Ismaili sectaries called themselves Batiniya or "interior." The Greek philosophy is said to have formed part of this stage of the teaching, and if that is true, it is quite clear the sixth degree could only have been taught to very few people. We may indeed say this of the fifth also. I will not say that the arithmetics included in the fifth degree was an overwhelming difficulty in the way of such instruction, but the geometry certainly was, and I will undertake to say that the philosophy of Plato, and the teachings of Pythagoras which followed, would have puzzled the Arab and the Coptic novices too much to allow of such instruction being general. It may be assumed that, if there is any

truth at all in the statement that such instruction formed the six degree, it must have been confined to a very few.

The seventh degree is very singular; it teaches the novice a system of metaphysical Dualism which reminds one of Spinoza. Here we have duality instead of unity, which latter is certainly the leading doctrine of Mahomedan theology, so that it may be said a deadly heresy here shows its face. But I say these speculations do not belong to theology at all, but to metaphysics. It is perfectly incredible that subtleties of this kind formed any part of the common religious doctrines of the people. They can only have been the speculations of individuals. The eighth degree develops these philosophical theories. At the ninth, the proselyte knows no religion and no submission to any other authority than his own. My Lord, I repeat, the account of the four first degrees is very likely true; the fifth and sixth must, from their nature, have been confined to a very few; and it may well be that the seventh was a malicious interpolation to support the stories invented against the Ismailis as a means of proving them "Zembi'ans," that is, "Atheists" and libertines. That is the conclusion I have come to as to these seven degrees, as described by *Makrizi* and *Nasir-i*.

THE JUDGE: But what about the fifth and sixth degrees?

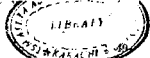
MR. HOWARD: There is nothing very definite, but I will read what is quoted from our two authorities in *Dr. Socy's Preliminary Discourse to the Religion of the Druses* (Mr. Howard having read the description of the eighth degree).—

THE JUDGE: That is a further exposition of the theory of dualism?

MR. HOWARD: Yes; the ninth is as follows. (This passage was also read.)

THE JUDGE: Why, this relates to natural science?

MR. HOWARD: Yes, and the end of all this teaching is, not that the disciple becomes an atheist, but that all dogmatic religion is done away with, and he may teach any doctrine he likes best. The ninth degree, then, is "a passage that leads to nothing." This really seems like a joke, and the absurdity and inconsistency of such a system suggests that it was a mere invention of the enemies of the Ismailis for the purpose of bringing discredit on them.



The Jews, I suppose, that may be so but the last degree might result in the teaching of Atheism, you know.

Mr. HOWARD: Yes, if it is truly described; but there is always a difficulty in accepting the statements of the outside world upon matters of exotic religion. In some instances we know for a fact how preposterous and false they may be. The Jews kept their religion secret from the Romans, and your Lordship will remember the columns written of them by Tacitus in the 5th book of his *Annals*, and the burning language in which the writer condemns their *perda sapientia*; *Apud eos he says, nihil non illicitum*. Such was the verdict of a Roman philosopher, and a historian, respecting a faith so far purer and better than anything that was ever known in the days of heathen Rome. The Christians, with their secret discipline, fared no better with their Pagan critics. I would also again refer to the persecuted Magians whose name was made by the Moslem a synonym for Atheism and Libertinism. Whether there is any foundation for the surmise that the Ismaili Dais taught Parsism to the sect is not certain; but in any case the ancient religious system of the Persia is now known to have been pure and holy. Dr. Haug (whom I am proud to have been instrumental in bringing to India) the first authority on that subject, speaks of the Zoroastrian theology in the highest terms; he pleasantly calls himself a "Dastur" or Parsi religious teacher, and he expresses himself on the question of that religion with great enthusiasm. The Persians have been called the Anglo-Saxons of the East, and no class of people more inclined to lead a blameless and useful life can be named among the Queen's subjects. So that to connect some of the Ismailian doctrines with Parsism, is not in itself a very damaging imputation.

The Templars of the Middle Ages afford another example of the case with which false charges are made against secret societies and hidden by the world. The Pope's late Bull against the Freemasons of the present day I have before mentioned.

I now come to the ill-ouced name by which the Ismailites are elderly known to Europe—the "Assassins." Gibbon, whose extraordinary tact and power of condensation make his every word important, records, in six lines, the popular report of the wickedness of the Assassins and warns us that it is perhaps exaggerated by historians. Since Gibbon there has been a special History of the Assassins, by

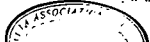
Dixon *Vis Hammer*. In reading his book we must distinguish very broadly between that part of it which is a compilation from various Mohammedan authorities, and the speculations which he introduces of his own. As regards the *Sect*, his book is very valuable, subject to the remark that the materials of the history are obtained from the open and avowed enemies of the Assassins. When we come to *Vis Hammer's* own observations, we are unable to value them very highly. He generally condemns the so-called Assassins as self-constituted criminals, and says, that although the things charged against them might, to some extent, be the inventions of their enemies, yet that, on one occasion, the dreadful discovery was made, and they confessed and openly proclaimed and gloried in their atrocities. From the mountains, however, comes forth the very smallest possible mouse. At page 107, of the English translation, he says:—

"Hassan, the son of Mohammed, determined, at whatever cost, to be an expositor, and to favour the impunity of vice, not merely by example, but also to preach from his own mouth the irreprehensibility of crime. In Ramadan, of the 559th year of the Hegira, the inhabitants of the province of Haddar were collected by his orders at the castle of Alnoval. On the place of Mousalla (*the place of prayer*), situated at the foot of the castle, like the suburbs of Shiraz, celebrated by Hæfiz) a pulpit was placed, looking towards Kihla (namely, the country of Mecca), to which the Meccensian turn in praying, and in the four corners four different coloured flags were planted—a white, a red, a yellow, and a green."

The Jews: I think I remember this passage, Mr. Howard: I think it was one to which Mr. Anstey referred.

Mr. HOWARD: Yes, my Lord. The passage goes on to state:—

"On the seventeenth of Ramadan, the people were assembled on this place; Hassan ascended the pulpit and commenced by involving his hearers in error and confusion, by dark and puzzling expressions. He made them believe that the envoy of the Imâm (the phantom of a Khalif still tottering on the Egyptian throne) had come to him, and brought an epistle addressed to all Ismailites, by which the fundamental maxims of the sect were renounced and fortified. He declared that, according to this letter, the gates of mercy and grace were open to all who would follow and obey him; that those were the peculiarly elect; that they should be freed from all obligations of the law,



released from the burthen of all commands and prohibitions; that he had brought them now to the day of the resurrection (namely, the manifestation of the Imām). Upon this, he began to recite in Arabic the Khutbe, or prayer, which he pretended to have just received from the Imām. An interpreter, standing at the foot of the pulpit, translated to the audience, in the following words: "Hassan, the son of Mohammed, the son of Busurghoni, is our Khalif, dai, and haidab (our successor, missionary, and proof), to whom all who profess our doctrine are to yield obedience in spiritual, as well as temporal, affairs, executing his command and considering his words as inspired, and must not transgress his prohibitions, but observe his behests as our own. Know all that our Lord has mercy on them, and has led them to the most High God." He then descended from the pulpit, caused tables to be covered, and commanded the people to break the fast, and to give themselves up to all kinds of pleasure, to music, and play, as on feast days; "for to-day," said he, "is the day of the resurrection" (namely, the revelation of the Imām).

From this day, on which crime manifested itself, undisguisedly to the world, the name of Mulhid, or Impious, which hitherto had been given to the disciples of Karimat, and other disturbers of social orders by the lawyers, was now bestowed upon all the Ismailites of Asia in general. The 17th of Ramazan was celebrated with games and banquets; not only as the feast of the revelation, but also as the proper epoch of the publication of their doctrine. As the Moslems reckoned their time from the flight of the Prophet, so did the Mulhid or Impious, from the revelation of the Imām (namely, the 17th Ramazan, is the 559th year of the Hegira). And as the name of Mohammed was never mentioned without the addition of the "Blessed," as, henceforth, was added to that of Hassan, the words "Blessed be his memory," which history, instead of blessing, curses.

So here these wretched Ismailites, actually, were so abandoned as to break the fast of Ramazan. Nay, they even drank wine (if they did not eat pork). Of course, nothing could be worse in a Mussulman's eyes, but that a respectable German, writing in Vienna towards the beginning of the nineteenth century, should set these things down against the Ismailites, as the great manifestation of their dreadful crimes is really too absurd, and it makes one strongly inclined to doubt all his moral judgments. He merely echoes Markhoed, and

in fact he is only to be taken as an authority from a Sani point of view.

THE JEW: But the facts stated in the passage just read are very strong proofs of an open revolt against Mahommedanism?

MR. HOWARD: Against the ceremonial law. The revolt was like that of Christianity which released people from the legal burdens of Judaism. No doubt, the course taken by Hassan and his followers, of amising the enemies of their religion with the danger, is abhorrent to modern European notions, but what I say is, that *l'es Homme* should have exercised more critical judgment and more insight. He should have endeavoured to understand these fanatics, and not contented himself with repenting the injustice of their contemporaries. I will give an example to show his want of liberality, where his prejudices are involved. One of the Assassin princes or chiefs was Jelaleddin, who, after that temporary rebirth of Hassan bin Mahomed, brought his people back again to the profession of Islam, and was thought a great deal of by his contemporary sovereigns as a devout and respectable potentate. *Vol Hammer*, however, passes the following judgment on him (page 54):—

"Although no marbler stains the history of Jelaleddin's reign, and so far as his conduct was in full accordance with his system, the historian is, nevertheless, compelled not only to question the purity of his motives, but also the sincerity of his return to the doctrines of Islamism. Two circumstances place this in a very suspicious light. In the first place, the just mentioned refusal to deliver up the murderer who had sought, within the walls of Alamut, the usual sanctuary of impurity, unless in return for the cession of a village; secondly, in the burning of the books, when Jelaleddin pretended to celebrate an *auto da fe* of the works and rubrics of former grand masters, in order to convince the deputies from Kasmir, of the truth of his conversion. In this, however, it is probable that he consumed the works of the dogmatists and fathers of Islamism, while the great library of free-thinking and immorality, together with the metaphysical and theological works of Hassan Sabah, the founder, were preserved, though secretly, and only, as we shall see below, devoted to the flames on the fall of Alamut and dissolution of the order.

"It is therefore more than probable that Jelaleddin's conversion of the Ismailites to Islamism, so loudly proclaimed abroad, and his public

objuration of the doctrine of impunity was nothing else than hypocrisy and deeply designed policy, in order to re-establish the credit of the order, which had been exposed to the anathemas of priests and the ban of princes by the inconsiderate publication of their doctrines, and to gain for himself the title of prince, instead of the dignity of grand master. Thus the Jesuits, when they were threatened with expulsion by the Parliament, and with a Bull of Excommunication from the Vatican, when, on all sides, the voices of cabinets and countries, rose against the principles of their morals and policy—denied their doctrine of lawful rebellion and regicide, which had been imprudently looked at, by some of their enemies, and openly condemned the maxims which they, nevertheless, secretly observed as the true rules of the order.

"This assertion of a purer moral system, and genuine Christianity, afforded little in restoring in the possession of their former greatness and power, the cure unmasked and exposed order of the Jesuits; and equally small success had the Assassins, in regaining their preceding influence and authority by this system of proselytism, which was proscribed from every pulpit."

You here see, my Lord, in every line, the expression of prejudice, and the want of critical power. Mahomedan repudiated the ceremonial law: he was a criminal; J-aheldin restored it; he was a hypocrite. Whichever the facts, the Assassins must be a villain.

THE JEW: There is the expression used there of "grand imposture?"

MR. HOWARD: Yes, that is one of *Yon Hammer's* crochets. He wishes to connect the Assassins with the Tomplats and the Egyptians. I know how different a view is taken of these old Mahomedan sects by modern scholars, since the creation of criticism. I will mention that following his Sani guides, reserved the severest reprobation for the Motazalites. No words were had enough for them, but still, and probably the first of modern critics in Mahomedan history, ranked them as the most respectable thinkers of the Moslem world. They were, he says, the Rationalists of Islam. This may be a warning to you in forming a hasty opinion about the "Assassins." Not in the first place, this word creates a false impression. They did not know, or call themselves. They called themselves "Dahni" and "Ismaelites." They were strict Mussulmans, and thought themselves saints

in Islam. (And it is almost to suppose it possible that a nation or tribe should have been suffered by their neighbours, or could possibly have existed as *professed murderers* for a period of 150 years. One thinks of the famous cats of Kilkenny.

THE JEW: What is the Etymology of the word "Assassins?"

MR. HOWARD: The word comes from "Hashish." I may mention here that the most valuable thing in *Yon Hammer's History* is the interesting paper at the end written by *De Saey*; from which it appears that the Ismaeli Hashishin, known to the Crusaders, were so called from the use of "hashish," and that the word was corrupted into "Assassins" by the Europeans. We know how innocent words become by religious spite, dy-logistic. The word "miscreant," by origin, only means one who believes amiss, yet to all ears, it now denotes one who is steeped in the last degree of infamy. A "Jew" means a scold, cheating knave; a "Turk" a furious bully. A "Jesuit" a schooling bar. So with these Ismaeli employers of hashish; they are gibbeted for ever as professional murderers. Your Lordship will probably recollect that in *Dumas's* novel of *Monte Cristo*, the effect of a dose of hashish is described. The use the Assassins made of it is not quite certain. One story which is told by *Marco Polo*, the Venetian traveller of the 13th century, is very curious. He says that when the Old Man of the Mountains met with a strong and likely young man whom he thought fit to serve his purpose, he invited him to supper, in the course of which hashish was given him. The guest straightway fell into a swoon. Whilst in that condition he was conveyed into a delightful garden, where on his awaking, he found himself surrounded by beautiful young women and by all kinds of objects that delighted the senses. He was allowed to enter into the enjoyments of the place, and after a while, more hashish was given him, when again he fell into a trance, on recovering from which he found himself sitting at table with the Grand Master, by whom he was told on promising what he had witnessed, that it was but an imperfect vision of Paradise which would be the reward of all who became the Shaik's followers. We know the carnal scheme of Mahomed's Paradise, and the promise of dark-eyed Louis, whose uncles and good Mussulmans are taught to expect at the moment of death, and probably such a realistic production of those heavenly joys was an admirably contrived device to influence the novice. Another

story is that a dose of hashish was given to any follower of the Shaik who was sent on any errand of danger. We know that on similar occasions the Mahomedans of India resort to bhang. Religious murder has unfortunately been so much the rule of all sects (except perhaps the Hindus) that to confound even those envoys of the Shaik with common criminals, such as we now-a-days hang for murder, is a fallacy and injustice. In his history of the Assassins *Von Hammer* traces their fortunes under the various Sultans, until their fortress of Alamut was ultimately destroyed by the Tartar invaders, and from this narrative, imperfect as it is, one gathers information which is absolutely inconsistent with the notion that they were a tribe of criminals. It is quite clear they formed a tribe or sect who believed themselves to be saints, and that whilst they held Alamut, they only wished to protect themselves from oppression. No doubt in the defence of their religion they exhibited all that zeal which we admire so much in the Jews and the Christians; they gladly suffered martyrdom for their faith, and we cannot consistently deny that readiness to die for their faith is an admirable trait in the character of a people.

The Ismailis of Alamut suffering long and grievous persecution, and they practised assassination as a form of war, meeting the sword with the dagger. They assassinated, indeed, here and there, but whenever their enemies got hold of them, they massacred hundreds and thousands. It was in fact a dreadful system of reprisal that was carried on by all parties. *Von Hammer* says the Assassins were denounced as the most terrible enemies of the throne and the altar, and that they were handed over to all men, to be slain as outcasts, and if that was so, can it be said they were not entitled to the desperate means of self-defence? I quote from page 211 of *Von Hammer*—

"It was a fearful period of murders and reprisals, equally destructive to the declared foes and friends of the new doctrine. The former fell under the daggers of the Assassins; the latter, under the swords of the Princes, who, now roused to the dangers with which Hassan Sabah's sect threatened all thrones, visited its partisans with proclamations and condemnations of death. The first Isma'is and priests hanged, voluntarily, or by order, fettered and judgment, in which the Ismailites were condemned and anathematized as the

most dangerous enemies of the throne and the altar, as heretic criminals, and lawless atheists; and which delivered them over to the avenging arm of justice, either in open war or as outlaws, as infidels, separatists, and rebels, whom to slay was a law of Islamism. The Imam Ghassali, one of the first moralists of Islam, and most celebrated Persian teachers of ethics, wrote a treatise, peculiarly directed against the adherents of the esoteric doctrine, entitled, *On the folly of the supporters of the doctrine of Indifference, that is the impious (Muhabit) whom may not condemn*. In tant essential *Pearls of the Future*, a celebrated collection of legal decisions, the sect of the impious (*Muhabit*) of Khusman were condemned according to the ancient sentences of the Imam; Eliu Jassaf and Mohammed, pronounced against the Karmathites, and their lives and goods given as free prey to all the Moslems. In the "*Confessions*" (*Mulkath*) and the "*treasures of the Future*" (*Khassaratel Futavi*) even the repentance of Mulhad, or the impious, is rejected as entirely invalid and impossible, if they have even exercised the office of Dai or missionary, and their execution commanded as legal, even though they become converts and wish to abjure their errors; because perjury itself was one of the maxims, and no recovery could be expected from libertine atheists. Thus, the minds of both parties were mutually embittered, governments and the order were at open war, and head-fell a rich harvest to the assassin's dagger, and the executioner's sword."

Then my Lord, at the end of *Von Hammer's* History of the Assassins, there is a short statement which at all events connects the Ismailites with the present time. It is this—

"Remains of the Ismailites still exist, both in Persia and Syria, but merely as one of the many sects and heresies of Islamism, without any claim to power, without the means of obtaining their former importance, of which they seem in fact to have lost all remembrance. The policy of the secret state-subverting doctrine of the first lodge of Ismailites, and the murderous tactics of the Assassins, are equally foreign to them. Their writings are a shapeless mixture of Ismailitic and Christian traditions, glossed over, with the ravings of the mystic theology. Their places of abode are, both in Persia and Syria, those of their forefathers, in the mountains of Irak and at the foot of Antilebanon.

"The Persian Ismailites recognize, as their Chief, an Imam whose descent they deduce from Ismail the son of Isler Nasodik, and who resides at Kheh, a village in the district of Koon, under the protection of the Shah. As, according to their doctrine, the Imam is an incarnate emanation of the Deity, the Imam of Khok enjoys to this day, the reputation of miraculous powers, and the Ismailites, some of whom are dispersed as far as India, go in pilgrimage from the banks of the Ganges and the Indies, in order to share his benediction. The castles in the districts of Rudbar, in the mountains of Kuliistan, particularly in the vicinity of Alamut, are still inhabited to this day by Ismailites, who, according to a late traveller, go by the general name of Hoosinias."

Now dreadful as was the system of persecution to which the Assassins were subjected, there can be no doubt that their misdeeds have been exaggerated. We have no history of the Ismailites by one of themselves. And should we not have the same sort of distortion of fact, if the story of the Jews was told us by the Philistines. The old Jewish zealots like Ehud or Samson, who smote their victims in the name of Jehovah are regarded as the servants of God, and we are taught to honour and admire them. It is not surprising if the death-bearing envoys of the Ismailites were honoured in the same way among their own people. Are we to say, then, that the deed of the followers of Hassan Sala was the dagger of the monk, when it was directed by the same spirit of religious and political zeal as the sword which exterminated the enemies of the Lord and of His Son? We have many stories in the Old Testament, in which deeds are recounted with praise similar to those ascribed to the Assassins. There is the story of Jael who smote with a mallet and a nail, Sisera, her invited guest, whilst he slept; and yet she is to this day hailed in stirring poetry as blessed above women! All religious sects have sanctified in the cause of the true faith and record the names of their holy *Martyrs*; but of the acts of the Assassins, we have unfortunately no account, but the reports of those who treated them in the way I have indicated—as enemies of the human race. I will no longer call them Assassins, but I will speak of them by the name which they themselves employed, namely, "Ismailites" and "Batonicas."

THE JUDGE: Is there not a blank in the history of the people from the time of the destruction of Alamut down to the present period?

MR. HOWARD: There is a very considerable lapse in their modern history. But before coming to that, one of the points to which I intended to call your Lordship's attention, was that, that we are either more agreeable lessons in their history than their very religious zealotry. They were not merely a set of professional murderers, they were the fosterers of science and education. One good work they performed was the foundation of a University at Keiro: the *Dar el Hikmah*. It is said that the Khalifa or Sultan was by the students there, were the origin of the great school by the students at Oxford and Cambridge. *FOR HOWARD,* absurdly enough, calls the University a "college." It was founded by the Fatimite Khalifs, and therein was taught astronomy, mathematics and other branches of learning. Their theology was an allegorising of the Koran. There was therefore among the Ismailites a spirit new for Mohammedans—a desire to educate the people and promote learning. These "accursed people," this nest of murderers, brought forth the most eminent Mohammedan mathematician and man of letters ever known, Nussereddin Toasi. He was most eminent also as a divine, and his treatise upon morals is quoted to this day with great respect. Yet he was an Ismailite.

THE JUDGE: It has been said that he had a great deal to do with the capture and destruction of Baghdad, the reason being that the Khalif had treated his book on astronomy with disrespect, and had even thrown it into the river.

MR. HOWARD: He may not have been a man admirable in all his personal conduct, but as a scholar and a sage he was eminent. And here I will repeat that it is most unfair to quote a number of writers atomically and literally hostile to the Shahs as trustworthy authorities where the character of their enemies is in question.

It is more to the point to observe that the Chiefs of the Ismaili tribe formed alliances with respectable potentates, their neighbours. For instance, at the beginning of the thirteenth century, Jelaluddin, the Ismaili chief who restored the Islamic ceremonies and burnt the "Batoni" books, married the daughter of the Viceroy of Ghubor. It is a fallacy to impute the crimes of this or that Sheikh-el-Label to the Ismaili religion, as it would be to hold the Catholic faith responsible for the atrocities of the Borgias. At all events the "Assassins" had nothing to do with the Ismailites of after times, whose peculiarities

re reduced to a mysterious Inamiani, which alone distinguished them from other Mohammedans.

The account of this people in the *Dabistan* shows what the views of impartial persons were respecting them in the 16th or 17th century. At page 1, of the 3rd vol. of the *Dabistan* is the following Editor's note, in which the Inamianis and a cognate sect, the Saddikis, are mentioned as the objects of calumny:—

"In the before quoted memoir of H. S. Colebrook (*Asiatick Res.* vol. vii. page 342) we read, as taken from the account of Nūrullah of Shuster, what follows: The *Sadiki yaks* are a tribe of the faithful in Hindustan; pious men and disciples of *Sayyad rabi' ru' dāin*, who derived his descent from *Ismail, son of Ismael Jaf*. This tribe is denominated *Sadiki' yaks*, by reason of the 'sādure' (*Sadik*) call of that Sayyad. Although that appellation have (sic), according to received notions, a seeming relation to *Abū Deer*, whose partizans give him this title, yet it is probable that the sect assumed that appellation for the sake of concealment. However no advantage ever accrues to them from it; on the contrary, the arrogant inhabitants of *H. I.* who are *Hindus*, being retainers of the son of impious *Hind* (meaning *Hinda*, the mother of *Masih*) have discovered their attachment to the sect of *Shiāhs*, and have reviv'd against them the calumnies which, five hundred years before, they broach'd against the *Inamianis*. They maliciously charge them with impiety. Such is indeed their ancient practice. . . . In short, nearly thirty thousand persons of this sect are settled in provinces in *Hindustan*, such as *Multan, Lahore, Delhi, and Gujrat*. Most of them subsist by commerce; they pay the 5th part of their gains to the descendants of *Sayyad rabi'* who are their priests; and both preceptor and pupil, priest and layman, all are zealous *Shiāhs*."

The Jones: It appears that down to a certain time we have information as to the Inamianis, and that then there follows a blank!

Mr. Howard: I have not been able to find all the links in the chain, certainly. I have carefully read through *Chardin*, and from it I gather that in their religious the Inamianis in Persia must have become more dogmatists. But in point of fact their religious has always been kept secret and their teachings would not have been much known, unless they had adopted an aggressive proselytism which they have not done since the fall of Alamut. When the Safawi

dynasty was established in Persia, there was nothing for the Inamianis to contend against, for the Shiāh form of worship then became the national religion, and suffered no further persecution.

I think I have now shown in reply to Mr. Anstey, that Aga Khan's party are not the enemies of the human race, as they have been said to be, and that they are not disentitled to the protection of the court, whether as Shiāhs, Inamianis, or Inamianis.

And now, having at some length gone through what, but for Mr. Anstey's argument would have appeared in some respects rather irrelevant matter, I come to the great question raised in this suit; that is, whether the Khojabs are Sunis or Shiāhs!

Now in the suit of 1830, the Plaintiffs did not affirm, or suggest that they were Sunis, but merely disputed the claims of spiritual superiority, set up by Aga Khan.

It was in 1851 that they first announced that the Khojabs were originally converted by a Suni, and that their practices were partly Suni. It is true their practices in India have been partly Suni, but the Plaintiffs did not then venture to say the Khojabs had always been Sunis in faith, neither did they demand what they now ask—so amply that all non-Suni persons shall be turned out of the Khojab community by the decree of this Court. Now when we look at the evidence adduced to prove them Sunis, we find it comes to this; that they rely on the external conformity of the Bombay Khojabs to Sunism in the matter of *nikāh* and funeral rites. We fully admit the existence of the Suni forms among the Khojabs, but that admission is coupled with the explanation, that the Khojabs adopted these forms as an outward show, in order to avoid persecution. We rely on a sort of plea in confession and avoidance. Now I take it that if you find a community following the outward observances of one sect, and secretly reading the books of another, the inference is, that they belong to that other. Mr. Anstey replied, first that the reason for Suni non-conformity is manifestly absurd, that the defendants could not have been afraid of persecution in reality, as the British power had been settled in Bombay for 200 years past, and secondly, that the Mohammedan law does not allow of mensal reservation in matters of religion, and he even produced official evidence as to the particular department of internal torture, to which hypocrites were consigned by Mahomed, quoting from *Sole's Koran* on the point. But

(ce sont leurs termes) que les Persans seront traités sur la route avec toute la douceur et affection désirables) j'ai vu quatre ambassadeurs de cette nature au douze ans de régence que j'ai fait à la cour de Turan et je sais qu'il y en est vous plus de douze ans ensuite passés, toutes de princes Arabes, qui sont sur le chemin de Liara à la Mecque, auxquelles on accordoit toujours leurs demandes; mais c'est toujours à recommencer, et les Arabes sont toujours de vingt Arabes. C'est peut-être à ces vexations qu'il faut attribuer les limitations que les Persans apportent au précepte de faire le pèlerinage de la Mecque une fois en sa vie; car au lieu que les Turcs et les petits Tartares, et tous ceux qui tiennent, les mêmes opinions disent que ce précepte oblige tous ceux qui peuvent se soutenir avec un bâton, et qui ont seulement une soule de bois vaillant pendue à la ceinture, qu'on va parmi les chafay, une des quatre grandes sectes du Musulmanisme jusqu'à enseigner que chacun est obligé de faire le pèlerinage, n'édit pas une son vaillant; les Persans, au contraire, disent qu'il ne faut pas prendre le précepte à la lettre, mais avec modération, et que les imams, qui sont les premiers successeurs de Mahomet, ont déclaré que l'obligation du pèlerinage n'est que pour ceux qui sont en parfaite santé, qui ont assez de bien pour payer leurs dettes, pour assurer la dot de leurs femmes, pour donner à leur famille la subsistance d'une année pour laisser de quoi se remettre en métier ou en négoce au retour, et pour emporter après tout cela cinq cents ceus en deniers comptants pour les frais du voyage; que si l'on n'a pas ces moyens — c'est-à-dire n'est point obligé au pèlerinage, et que si on les a, et qu'on n'est pas la santé requise, il faut faire le pèlerinage par procuration, en qu'on fait ou en envoyant un homme en sa place, ou en achetant le pèlerinage de quelqu'un qui l'a fait."

Now, *Burton*, in his *Pilgrimage* (Vol. I., page 95), says, "My choice of doctrine, however, confirmed those around me in their conviction that I was a rank heretic, for the Ajeuni, taught by his religion to conceal offensive tenets in lands where the open expression would be dangerous, always represents himself to be a Shi'ite." The note to this passage states that this is "A systematic concealment of doctrine and profession of popular tenets, technically called by the Shi'ah, *Takuyyah*"; the literal meaning of the word is "fear" or "concealment." As to the lawfulness of such outward conformity, it is

said that Mahomet forbids mental reservation, but it is difficult to see how even if the statement were ever so correct, it could be shaped into an argument suitable for an English Court of Justice. The question before your Lordship is, I apprehend, whether, in fact, the Khojals practised mental reservation, not whether, if they did so, they would be open to religious censure. It may, however, be pointed out that the allegation itself is entirely untrue. It is true the witness *Rahimbinay Niematz* said: "The Saah do not shew mental reservation. The Shi'ah do. In this respect the Khojals have always sided against the Shi'ah." *Moolam Rasool* also gave similar evidence on the point, but it came out that the outward conformity of the Khojals was not such as need cause any pain to their consciences, or in involving any such position, acts or utterances as a Shi'ah must object to.

Now as to the teaching of Mahomet on the subject, undoubtedly he forbids Muslims to deny or conceal their faith. But, my Lord, to properly understand the *hadiths* we must arrange the *Sunnis* in chronological order, in the way *Muir* and *Sprague* have done. We then find no doubt that when Mahomet was in the full tide of success, he required his followers to profess the faith openly, but in his early days at Mecca, when his disciples were few, and the scoffers many, and the persecutor oppressive, he directed reserve in the most distinct terms. In the 1st Vol. of *Muir's Life of Mahomet*, page 74 of the introduction, there is the following passage:—"The first" (the using of mental reservation to save one's life) "is borne out by Mahomet's express sanction. *Amr bin Yafir* was surely persecuted by the pagans of Mecca, and denied the faith for his deliverance. The prophet approved of his conduct:—'If they do this again, then repeat the same reservation to them again.' *Kutub al Waki'ah*, p. 227." Another tradition preserved in the family of *Yafir* is as follows:—"The idolaters seized *Amr*, and they let him go until he had abused Mahomet, and spoken well of their gods. He then repaired to the prophet, who asked of him what had happened." "Evil, oh Prophet of the Lord! I was not let go until I had abused thee, and spoken well of their gods."—"But how," replied Mahomet, "dost thou find thine own heart?" "Secure and steadfast in the faith." "Then," said Mahomet, "if they repeat the same, do thou say repeat the same"—*Ibid.* Mahomet also said that *Amr's* lie was

letter than Abu Jahl's *trick*. The second "(mental reservation to effect peace)" is directly sanctioned by the following tradition:— "That person is not a liar who makes peace between two people and speaks good words to do away their quarrel although they should be foes. *Mishkat* vol. 2, page 427. As to the third, we have a melancholy instance, that Mahomet did not think it wrong to make false promises to his wives, in the matter of Mary his Egyptian maid. As regarding the fourth it was his constant habit in projecting expeditions (excepting only that to Tabak) to conceal his intentions and to give out that he was about to proceed in another direction from the true one. *Hishmi* p. 392. *Kutab al N'ahidi* p. 133."

I say that the outward conformity of the Shiaks, was not such as to cause shame or pain to an ordinary person. It would be very much like the case of a Church of England man worshipping among Unitarians. Some of his cherished forms would be absent from the service, but there need be nothing positively offensive to him, nothing that he could not join in, though he might think the Unitarian office to be and imperfect. The only difference between the Sunis and Shiaks in their prayers, pointed out by Rahimulloy Hemraj is in the "K'ne," yet the Shiaks do nothing but add a few words to the formula used by the others. The Suni Kalma has the words *La ilah-illallah Mu'ad and re-oo-lla*. The Shiaks add, *Allian callee-olla vasser-rasool illa and* at the "Khooda," the Suni Moolas names the four Khoodis. The Moolah who was examined said the only difference he could see in the Shi's worship was that the Shiaks prayed with their hands open. It is admitted that a Suni could not use the Shi's forms without appearing to have to utter what his sect consider positively untrue, and in fact false-ho-fo-foes, namely, that Ali is the successor of Mahomet. The Shiaks do not cherish the intolerance of the Sunis or consider the Almighty will reject prayers that are not offered up with the twist of the elbow. They are not so oppositional as the Sunis, they do not think that praying in another than the prescribed attitude makes their prayers the less acceptable.

The Shiaks add a few words to the Suni formula, but there is nothing in the formula itself to which Shiaks take objection. It is quite true that in the Suni "Azaan," or "Dhang" which is the Indian term for the summons to prayers, persons are mentioned as the successors of the

Prophet who would be offensive to the Shiaks and whom they regard as usurpers.

The Sunis are not allowed to use mental reservation, and therefore, no Suni can follow Shia practices as an outward form.

It is possible for the Shiaks to follow the exercises of the Suni faith, but not for the Sunis to worship according to the Shiak rite.

The question then is thus raised as an issue of fact: "Is it, or is it not the truth, that the Khojaks though outwardly practicing certain Suni religious forms, inwardly hold non-Suni opinions?"

It is remarkable how the Plaintiff's counsel have shrunk from adducing that kind of evidence which alone could do them any service on this issue, while they called all the Suni Moolas that have officiated in the Khoja Masjid, and elicited, with unnecessary diligence the fact distinctly admitted in the answers—that the Khojaks have been in the habit of performing funerals and marriage through Suni Moolas, and therefore, of course, in Suni fashion. And what evidence do they bring forward in the matter? Why they put forward the Suni Moolas who have conducted these nikka and funeral services for them, and all of whom on being questioned say: "Oh, yes, the Khojaks have always been Sunis," but my learned friends did not dare to ask a single question as to the private opinions or the religious beliefs of the community. That was left for us to do, and your Lordship must have been struck by the result of our cross-examination, for it then came out distinctly, that the Moolas had no other reason than the fact of the existence of these external conformities for inferring the Suni opinions of the Khojaks, not further, a most significant piece of evidence—that the Khojaks have always kept their Suni Moolas at arm's length. The Moolas were not themselves Khojaks, they would not, they said, intermarry with Khojaks, they knew nothing of the Khoja religious books, and in particular they knew nothing of the *Dawacter*, which as I shall show has always been the peculiar and characteristic sacred book of this community. These Moolas knew nothing about the private life of the Khojaks, or what their private religious practices were. They only said, "these Khojaks are Sunis, because they practice the Suni form of worship." There were indeed three Khojaks, who said generally, that the Khojaks were Sunis, but these all belonged to the anti-Aga party, and their evidence when analysed, goes for little or nothing; Mohamed Dana said,

"I am a Shia—no's Suni; I was twice married in the *Real Court*, that is why I knew." But your Lordship must have observed that a very different kind of evidence was given by one of the Khojals, the most respectable of his party, Mr. Ahmed Huldibhoy, who up to this time has paid all the expenses of this suit. He is a young man of little more than thirty years, and the son of the old enemy of the Aga in 1829, has always been brought up, like a Hamlet, as the chief of the opposition. The other two Khojas entered your Lordship's representation for the way in which they gave their evidence, but this much was wrong from them very reluctantly, that the Khojas had religious books in use amongst them, about which the Moslems knew nothing, and which were quite alien to Sunnism.

The use of these books and the performance of Shia practices among the Khojals have been kept secret from the Moslems. And it is from this clear, that the great body of the Khojas' Shia practices were merely followed by way of external conformity, and that apart from the outward observance, they had a private and very different religious system of their own. It also appears that the Khojas do not perform the pilgrimage to Mecca, which all Sunnis consider a duty and obligation; it is indeed recognized as one of the five great duties of the Sunnis, but not of the Shias. This agrees with what *Chardin* says on the subject; and none of the Khojas whom I put through the cross-examination, were able to enumerate correctly what those five duties of the orthodox Sunis Mahomedans are. Nor those duties are prayer, alms-giving, fasting, abstinence, and pilgrimage. But though the Khojas do not make the Hajj to Mecca, it was admitted that many of them do go to Kerla, where is the tomb of Hussein, the darling saint of the Shias. Without entering into detail, I think I may say that your Lordship must be of opinion, that on the evidence adduced by the plaintiffs, they have wholly failed to show, that the Khojas are Shias; or that they are even Sunis at all (certain outward observances being explained). That they have dishonestly attempted to hide their secret books, and the doctrines, from the Court, and that their practices with regard to Aga Khan and the visiting of Kerla are suspiciously like the characteristics of Shias. Especially is this so with reference to their observance of the Muharrum festival, the inscription on their Mausoleum, their reverence for Aga Khan, and their customs in the matter of

inheritance. We go further than all this however, we do not content ourselves with breaking down the plaintiffs' case, we shall make out the contrary of it.

Now first as to the proof adduced by the Plaintiffs that the Khojas are by origin Sunis. The plaintiffs' party did not say this in 1830, or in 1831, but they said so, that the Khojas were originally converted by a Suni, but they did not dare then, as they now do, to say that the Khojas were always Sunis; and they did not then pray as they now do, that Shia Khojas should be excluded from the estate. The witnesses that were called to prove this part of the plaintiffs' case, fell back, when pressed, on the existence of outward Suni conformity among the Khojas which we have never denied. But what reliance can be placed on the testimony of men who were evidently brought here for the purpose of misleading the Court? I have a right to say so when witnesses who profess to serve the interests of morality and a purer faith, have without question concealed evidence which they might have given, and which they knew to be material, and have put before the Court, a case which they must have known to be false. It is extremely important to observe the inferences derived from the fact disclosed by the evidence, namely, that the Suni Moslems knew nothing about the Khojas' secret books; and that none of the Moslems were themselves Khojas. All this shows that the Khojas have systematically kept things secret; that their conformity was only external and that apart from the outward Suni observances they had a separate secret system of their own. It is quite true that the plaintiffs' witnesses said generally the Khojas were always Sunis, but when they were pressed in cross-examination the statement came to nothing. I have already mentioned one of the witnesses who on being asked what he was, replied "I am a Shia and then correcting himself, said "No a Suni." That illustrates very well the general character of the plaintiffs' evidence, and your Lordship will recollect the case of one witness who admitted that he was a Shia and adhered to Aga Khan, but afterwards altered that statement and said he was not really a Shia but that he wanted to get something out of Aga Khan. Now what kind of reliance can be placed on the evidence of such witnesses? Then your Lordship recollects the statement made by Khan Mahomed Dathobhoy about his brother, Noor Mahomed Dathobhoy,

The brother in the former suit stated that the Khojas were Shiés, and the attempt made to explain that statement away by Zhan Makhomed Dathobboy was about as disgraceful a piece of shuffling as I ever knew of in a Court of Justice; yet in cross-examination by the Advocate-General, he admitted that a man might practice mental reservation on some occasions perhaps.

My Lord, I say we shall connect the Khojahs beyond a shadow of doubt, with books, and formularies, and practices and facts which are absolutely inconsistent with the Suayim which their learned counsel has tried to fix upon them. We do what the other side dare not do, we go back to the times prior to the disputes in the Khojah community. And first as to the meaning of the name "Khoja;" Mr. Austey correctly stated it to be "an eminent person," "one distinguished" (in particular for piety). The word is Persian as we find from Richardson's dictionary, and we can quite understand that the title may have been given to the tribe on their conversion to Mahomedanism, by a Persian Missionary. The title "Khojah" was assumed by the Sarbedarian dynasty in Khorassan from whom the Seifs of Persia descended. The last was a fanatic Allié who kept a horse always saddled, ready for the Mehdí, as shown in Dr. Herbelot's *Bible Orientale* article *Sarbedar*, which states:—

"Sarbedar et Sarbedariouan. Noms d'une Dynastie de douze princes qui ont régné dans la ville de Sebzaran Khorassan et dans plusieurs autres qu'ils conquièrent pendant l'espace seulement de trente cinq années.

L'origine de ce nom qui est Persien, vient de ce que le premier de cette famille ou Dynastie, avoit remené plusieurs gens sans aveu, qui excitèrent une grande sédition contre le Gouverneur de cette province, et attachèrent pour signal de leur révolte, plusieurs bouquets ou turbans aux fourches publiques, ce qui est exprimé par le mot Persien composé Sarbedar, qui signifie des testes sur la polence. Le premier qui s'opposa du commandement parmi ces rebelles et qui prit la qualité de Prince ou d'Emir, se nommoit Abdolrazzak Ben Faúh-Allah Al Baschtini, natif de Sebzar, lequel commença à faire bruit l'an de l'égire 737, aussitôt après la mort d'Abou Süid Ben Algaip-tan, Sultan ou Empereur des Mogols et Tartares. Car ce fut justement après le décès de ce prince, que le grand Empire ou dynastie des Ghingiz Khaniena, commença à tomber par la division des princes

de cette maison, abou Süid n'ayant point laissé d'enfans pour lui succéder.

Abdolrazzak ne régna que sept mois, sous le simple titre d'Emir.

Le second prince des Sarbedariens, fut Khorogh ou Coghah Vagibheddin Massoud, qui régna six ans, quatre mois.

Le troisième, Agah Mohannoud Tinar, qui n'étoit point de la race d'Abdolrazzak Al Baschtini régna deux ans et deux mois.

Le quatrième, Ghelou Asfendiár, un an et un mois.

Le cinquième, Khoghali Schameddin Adhal, fils de Fadhallah Al Baschtini, premier prince de cette dynastie et frère de Vagibheddin, qui en fut le second regna sept mois et laissa le commandement a son Xeren.

Le sixième, Khonagh A'li Schama eddin, régna quatre ans et neuf mois.

Le Septième, Emir Khoghah Isah Ben Haider Al Kerabi, quatre ans huit mois.

Le huitième, Khoghah Zeineddin Thaher Ben Haider Al Kerabi régna un an.

Le neuvième, Pahalavan Haider Cassab, le Boucher, un an et un mois.

Le Dixième, Khoghah Lutfullah Ben Vagibheddin Massoud, régna un an et trois mois.

L'onzième, Pahalavan Hassan Al Dampani, quatre ans et quatre mois.

Le douzième, Khoghah Abi Moúad, Ce dernier prince des Sarbedariens s'attacha à Tamerlan l'an 782 de l'égire, lorsque ce conquérant entra victorieux dans la province de Khorassan et il demeura toujours auprès de sa personne jusques en l'an 798 qu'il mourut.

Ce Khoghah Abi Moúad fut fort estimé pendant sa vie et acquit beaucoup de crédit auprès de Tamerlan, qui se servoit souvent de ses conseils il portoit grand respect aux docteurs de sa loi et particulièrement a ceux qui étoient de la race de Mahomet et d'Ali, en quoy il étoit si superstitieux, l'on dit qu'il ne toit tout les soirs et tous les matins, un cheral tout prêt a monter pour aller en devant du Mahidi le douzième Imám de cette race."

"Khoja" was also the title of the Ismaili envoy murdered in A. D. 1127. *Chardin*, at page 200, Vol. VI., says: "Le plus célèbre des

autres des derniers siècles et le plus savant Coje Nooir de Thus, son-fameux et respectable pere, le savant de l'Asie, qui vivoit il y a environ quatre cent cinquante ans" &c.

It is extremely curious that the word Khoja occurs in the *Dabir-tan*—which was so extensively quoted from by Mr. Anstey—only once and that there it is used as a proper name, and connected with the Ismaili sect. The word Khojah at page 417, vol 2, is said to signify, "Lord, professor, man of distinctions" and also a eunuch. Khojah is the title commonly prefixed to *Nasir Eddin* "the defender of the faith," which is the surname of Muhamed ben Hassan or Ben Muhammed el Tusi whom I mentioned before. He was born in Tus in the year of the Hejira 597 (A. D. 1220). He is acknowledged to have been the Doctor who required among Mussulmans the highest reputation in all sorts of sciences; he was a commentator of *Aristid* and of the spheres of Theodosius and Menelaus. He left scientific works, duly admired, and was an astronomer, lawyer, theologian and statesman. He was also eminent as the historian of the Ismaili Khalifa.

The Khojahs were correctly stated by Mr. Anstey to have been first settled in Kutch. This is their own tradition, and it is confirmed by their old books which are written in the Sindhi characters and in a mixed language of Kutchi and Gujerati. From Kutch, came the fathers of the present Bombay Khojahs, and it is important to observe that there are still other Khoja communities in Cutch, Sindh, and elsewhere. Towards the end of the last century there were Khojahs in Bombay, and early in the present century they formed a community, and used to send contributions to the Pir. The Plaintiffs have carefully abstained from referring to these communities, and their religious opinions, we, on the other hand, shall be as anxious to call attention to them. The Bombay Khojahs, I repeat, are only one among many Khoja communities; and it was probably the stimulus afforded by the spectacle of European Government, in this island, which inspired some of the Bombay Khojahs with the spirit of resistance to their Pir in 1820-30.

In the celebrated Khojah female case, where the issue was simply as to the law of inheritance applicable to Khojahs, the general effect of the evidence, as to the history of the Bombay Khojahs, is thus summarized by Sir Erskine Perry, who had not however so many facts before him, as your Lordship will have. "However this may be,

the Khojahs are now settled principally amongst Hindu communities such as Cutch, Kattiawar, and Bombay, which latter place probably is their head quarters. They continue at this place, apparently about two thousand souls, and their occupations, for the most part, are confined to the more subordinate departments of trade. Indeed the caste never seems to have emerged from the obscurity which attend their present history, and the almost total ignorance of letters, of the principles of their religion, and of their own *status*, which they now evince, is probably the same as has always existed among them since they first embraced the precepts of Mahomed. Although they call themselves Mussulmans, they evidently know but little of their Prophet and of the Koran; and their chief reverence at the present time is reserved for Aga Khan, a Persian nobleman well known in contemporary Indian history, and whom they believe to be a descendant of the Pir who converted them to Islam."

The footnote to this passage states:—

"This is a mistake, I think; from an instructive note I have seen by Lt.-Col. Rawlinson, it appears that Aga Khan is a lineal descendant of the sixth Imam, and that a large section of Mussulmans believe this sixth Imam is again to appear on the earth. It is probable that the Pir, who converted these Khojahs, belonged to this Imamly sect of Persia and hence the reverence for Aga Khan which is shown by numbers in Persia, and which induced the late King to bestow on him his daughter in marriage. The peculiar doctrine of the Ismailites, as this section of Mahomedans is called in Persia, is that they believe each successive Imam from Ali to Ismail was an incarnation of the Divine Essence, and further that the incarnation is hereditary in the direct male line; hence Aga Khan is worshipped as a God by all true Ismailites." ("Col. Rawlinson's Rep. to Gov. of India.")

The last statement, my Lord, is not correct in the strict sense of the word; there is no worship, strictly speaking, the Aga's followers only kissing his hand. So far as the evidence in that case goes, it is quite inconsistent with the devout and scrupulous Sunyism now attributed to the Khojahs. It appeared in that suit that the Khojahs opposed to Aga Khan then intended to join the general body of the Mussulmans in Bombay, a most significant fact, as showing that they were not Sunis then; and your Lordship will further recollect that

of the two opposing parties in the female succession case, the one which wished to apply the Mohomedan law in regard to the inheritance of Khoja women, was the Aga's party, and not the other. It is undoubted that the Aga wished to apply the Mohomedan law which gives a right of succession to women, and that he desired to make the Khojas more just and liberal towards their females. It is one of the great glories of the religion of Mohamet that he did so much to raise the position of women among the idolators of the ancient world, and yet these people, the Plaintiffs, have the impudence to avow their wish to get rid of this obligation, and stick to the old Hindoo system, at the same time claim to be orthodox Sunis.

The Khojas in fact said were proved to have called themselves Sunis to the Sunis, and Shias to the Shias; now the Sunis cannot practice that reservation, but the Shias may, and it is remarkable that this is specially true of the Ismailis. Dr. Saucy in his Preliminary Discourse to the *History of the Religion of the Druzes* says, the Ismaili Dais represented themselves as Shias to the Shias and Sunis to the Sunis. Sir Erskine Perry in his *Oriental Cases* (page 113 and 114) speaks thus of the religion of the Khojas:—

"But even to the blood of their saint they adhere by a frail tenure, for it was proved, that when the grandmother of Agha Khan made her appearance in Bombay some years ago, and claimed tithes from the faithful, they repudiated their allegiance, commenced litigation in this Court and professed to the East of Bombay their intention to incorporate themselves with the general body of Mussulman in the Island. To use the words of one of themselves, they call themselves Shias to a Shia, and Sunnys to a Sunny, and they probably neither know nor care anything as to the distinctive doctrines of either of these great divisions of the Mussulman world. They bare, moreover, no translation of the Koran into their vernacular language, or into Guzerati, their language of business, which is remarkable when we recollect the long succession of pious Mussulman kings who reigned in Guzerat and in the countries in which the Khojas have been located. Nor have they any scholars or men of learning among them, and not a Khoja could be quoted who was acquainted with Arabic or Persian, the two great languages of Mohomedan literature and theology, and the only religious work of which we heard as being current amongst them was one called the *Das Avatar* in the Sindhi character and Cotehi language."

Now the name of the book here mentioned, is formed of two words *Das Avatar* (ten avatars or incarnations) and it is quite impossible (as I have before shown) that the *Iskandari* got formed by Mr. Austerly can be the same. In the *Das Avatar*, the Tenth and most sacred chapter is the incarnation of God in the person of Ali—a horrible blasphemy to the Sunis, and which proves that the book is Shiite. This fact alone, is fatal to the case of the plaintiffs. And I say broadly, that so far as the general result of the evidence laid before Sir Erskine Perry goes, the history of the Khojas was and is quite inconsistent with their being Sunis.

I got a glimpse of the Khojas in Kutch in 1818, from a notice by Captain James Macmurdo, the Resident at Anjar, at page 322 of the second volume of the *Bombay Literary Transactions*. In that memoir, the author ranks the Khojas among Mohamadans, and says they considered themselves of Persian origin and venerated a living Pir in Persia. This of itself, shows the gross falsehood of the suggestion in the bill, that Aga Khan set himself up as a Pir of the Khojas for the first time, in 181. The evidence of Captain Macmurdo is very important, for he was on the spot. He says:

"The Khoja is a Mohamadian cultivator. The Khojas consider themselves of Persian origin, and frequently make a pilgrimage to a spot eight days march to the north west of the Lepahau, where they worship a living *Fear or saint* to whom they pay an annual tax on their property."

THE JUDGE: The Pir referred to here, would be the Father of Aga Khan!

MR. HOWARD: The paper was read just about the time of the death of the Aga's father.

There is again a negative piece of evidence supplied by the census of the Bombay Mohamadans, for 1807-1808, and which is given in the 1st volume of the *Transactions of the Bombay Literary Society*. It is appended to the Preliminary Discourse by Sir J. Mackintosh. The table was prepared for him by the Cazi of Bombay, Shaboozeer Mohuree, of course a strict Sani. It is a curiously immethodical classification. Under the first head, come, "Kukuree and Mahratta Mussulmans" who are set down at 13,502. Then comes the very small class of Mussulman water carriers, 129; next there are "Butchers who kill goats only (from the ghats)," 321. Then we

have the number of Mussulmans in Cochin and Malin, and next come "men connected with establishments of prostitution, 200"; then "prostitutes and females connected" with prostitution, 1,200; and lastly, "Menna Mussulmans," 3,659. The total of the Mussulman population of Bombay in the beginning of 1808 thus set forth amounted to 20,284, of whom 9,960 were males, and 10,324 females. Now your Lordship will observe the significance of the fact that the Menna, now are Sunnis, are placed in this list, but after the water-carriers and those degraded creatures whose profession is connected with prostitution. The Mennas are Hindoos who were some centuries since converted to Mohomedanism. They being Sunnis, are admitted into the list of Moslems. The Borahs, who like the Mennas, are Mohammedanized Hindoos, are not admitted into the list, obviously because they are not Sunnis but Shias, and I say the inference is plain to you, if when this census was made there were any Khojas on the island—as we know in fact there were—they were not considered by the Cases to be Mohammedans at all, or any more than were the Borahs. Thus there were then Khojas on the island is quite clear from the fact that there is an entry in the books of the Bombay Khoja Jamat (relating to the Pir) under date of 1806-1807.

As the Cazi did not consider the Bombay Khojas to be Mussulmans at all I need not repeat that they could not have been Sunnis. This circumstance connects itself strongly with the statement of Sir Erskine Perry, in his judgment in the Khoja female case, that in 1670, the Bombay Khojas went to the Kazi and applied to be admitted among the Mohammedans of the island. If they had been Sunnis that course could not have occurred.

As to the Khojah Masjid, which I admit was consecrated by the Cases, I shall give evidence relative to the circumstance under which it was built by the Khojas in 1822 or 1823, and I shall be able to show, by the testimony of old persons, that before it was built, the Khojas had no common place of worship. They were reproached by the orthodox Mohammedans on that account as ignorant, irreligious persons, and they then built a Masjid in deference to the prevailing sentiment and invited the Cazi to open it, but that did not make them, nor was it understood to make them, Sunnis. We brought it out on cross-examination, that in the inscription at the door of the Masjid which includes the Ahitte "Panj-tan," there is no mention

the four Khalifs, the badge of Sunnism. I do not rely on that fact as in itself conclusive of the Shiism of the Khojas, but it certainly does strengthen our case; for it shows that Ali, Fatima and their two sons, are regarded with special reverence and love by the Khojas, while no honour is paid to the personages who are invariably named after God and Mahomet, in the Suni inscriptions. No doubt the Panjian is in some sense, as Mr. Anstey remarked, acknowledged by Suni and Shia, but specially by the latter, and Mujlis over which it is inscribed, are presumably Shia. In the same way although the blessed Virgin is venerated by Protestant and Roman Catholics alike, yet if we were to see her name appearing over the door of a church there would be a strong inference that it was a Roman Catholic place of worship. And the Court will remember that when I asked one of the witnesses, whether he would not regard the Masjid as a Shia place of worship from the fact of the Panjian being inscribed on it, he candidly replied, Yes; and that it certainly would be an exception to find such inscription in a Suni Masjid.

I now come to the important evidence afforded by the Khoja sacred books. The *Dasavtar* is mentioned under the barbarous spelling "Dassowtar" in the Bill of 1850: It is referred to also in that of 1862, the present Bill, as follows:—

"They" (the Khojas) "never had any learned men among them and had never any knowledge of the Koran, but had esteemed a book called the *Dasavtar*, which was invariably read over to Khojas who were on the point of death."

The Plaintiffs' counsel were manifestly embarrassed when a copy of the "*Dasavtar*" was put into the hand of one of their witnesses; but, it is impossible for them to get out of the statement made in their own bill, that it is the Tenth Chapter of this book which is by the ancient custom of the tribe, read over dying Khojas. That fact alone, as will appear, demolishes the case of the Plaintiffs. The "*Dasavtar*" is also mentioned by Sir Erskine Perry, in his Judgment in the Khoja female case.

It is admitted by the reluctant witness Allaruckia Coorjee, to be an ancient book of the Khojas; and it professes to be the work of Pir Sudrodeen, the apostle of the Khojas. It is most instructive to remark, that the anti-Aga party have now for the first time attempted to repudiate the book. Their counsel, Mr. Anstey, wh

From the bill of 1862, doubtless never saw the "Dasavtar," and he knew nothing about its nature until I examined his witnesses on the point. In his speech the learned counsel, made what I am bound to consider the extraordinary blunder (one that could never have been suggested to him by his clients) of suggesting that the book used by the Khojas and called "Dasavtar" in the Bill (which is nothing but an uncoloured copy of the "Dasavtar," was the "Dasavtar," a curious history of the 100 Zoroastrian Deities, a book which I shall have occasion to speak of presently, but which has no more to do with the *Dasavtar* of the Khojas, than *Herodotus' History*. If it was not an extraordinary blunder it was an attempt to withdraw the Court's attention from a document which was vital to the case of his clients. I was really amazed when I heard one of my learned friends suggest that the statement in the bill relative to the use of the "Dasavtar" among the Khojas was a limited though a clerical error!

The "Dasavtar" is a book in the Persian Khoja dialect and character resembling to be written by Saïyid, it containing the nine incarnations of Vishnu as followed in the *Hindoo* and being a work of great value, which I have seen in the hands of some persons in Ali. Such a book, as the *Shikhar* and *Shikhar* are, is not possibly to be used by a Suni. Mr. Howard, at the same time and another place, has suggested that the *Dasavtar* is the work of an Ali, and that it is only written in the *Hindoo* dialect. It is a book written in *Hindoo* for the *Mohammedans*. To a *Suni* it is doubly irrelevant, it is impossible to connect the *Dasavtar* with any *Suni* or *non-Suni* as such a theory suggested on behalf of the plaintiffs, have discovered since the filing of the bill of 1862, they were repudiated, or give up all title to be considered as. It is not, possibly such a book as an *Ismaïli Dai* or *Ali* to his *Hindoo* converts. The author must have been a *Suni*, the *Dasavtar* is a book in the *Hindoo* dialect of the most *Suni* *Shikhar*. It also contains the *Dasavtar* of *Ismaïli* *Shikhar*. *De Saey's* *Mahomed* also mentions that the *Ismaïli* *Shikhar* to relate every nation from his own around whether as an *Ali*, *Jew*, *Christian*, or *Suni* or *Ali*.

The *Dasavtar*: Your proposition is, that when a word as this Khoja

book never could have been composed by a *Suni*, although it might have been written by a *Suni*?

Mr. Howard: Yes, my Lord, and I go further. I say it bears strong marks of having been written by an *Ismaïli Dai* for the use of *Hindoo* converts, agreeing as it does precisely with the mode of teaching by the *Dais* described in *De Saey*. No one pretends to tell us how old the "Dasavtar" of the Khojas is, but it is admitted to be an old book, and (until this hearing) that it was always the sacred book of the caste. And I say it is perfectly impossible to get rid of the evidence which it affords as to the prevailing religious ideas of the Khojas. You will recollect that all the Khojas said that a book which contained the incarnation of *Ali* would be horribly blasphemous. It seems to me impossible for the plaintiffs to remove the inference, that the Khojas who always used the book could not be *Sunis*.

Then there is the *Saktra* or *Hundred Ceremonies*, a book in other respects colourless, but which gives *Ali* the title of *Mowla*, that is, "master." It is clear this must be an *Alite* book, although the attempt was made by the plaintiffs' counsel to put it forward as a *Sufi* Khoja document. The *Suni Mowla*, *Itassad*, said he had never heard of it. Then there are the collections called *Gangas* from the *Sankat* word *Ganga* meaning "knowledge," just the sort of name that a tribe of *Hindoo* would give to a religious book upon the occasion of their conversion to *Mohammedanism*, &c., as they would consider it, the obtaining of better knowledge. A still more special document is the *Dance*, an old Khoja prayer used in the *Jamat Khana*, and which contains the genealogy of *Murtiza Ali* and thence down to *Agã Khan*, which is a roll of fifty names. We can understand by our own experience in the matter of religious enthusiasm, that every one would not take the trouble to learn and retain by rote, this lengthy pedigree but I have heard some of the Khojas repeat the whole of the name with great ease and fluency. The prayer from its very nature is such a would be used only by *Alites* of the most distinct character. This *Mowla*: *En Kalim* (one of the *Gangas*) or "Word of the Master" (*Ali*) must be taken to be a genuine Khoja book from the evidence we have heard. It was printed some years ago by *Allanbhis Coorjee*, the witness who said the Khojas were *Sunis*, and yet there is a passage in it to this effect:-

"Know that God is one. After the prophet, know that *Ali* comes next; *Mowla Ali* is in place of the prophet."

Mr. JAMES: Well that is manifestly Shih.

Mr. HOWARD: Yes; in this collection of *Ghazas* there are passages which could be considered highly blasphemous by Sunnis. All this is in an extreme manner, and there is one crucial phrase of which I find the reference; "the false Suni *dega da gaur*." The instances of their sacred books point in an unmistakable manner to the Imamite and Alid tendencies of the Khojas, and the practices which would be looked upon as deeply blasphemous by Sunnis. This, the plaintiffs and their witnesses insist. To recur for one moment to the Puritan inscription on the *Masjid*. Your Lordship will recollect that when the witness was asked whether he had not observed the defendant answering evasively, yes he had and that it contained "God and some other person." The witness evidently thought it would damage his case to admit that the other was *Ab. Fatma, Hussan and Hussain*.

Mr. JAMES: You put it that the books you refer to, have long been in the hands of the Khojas, and that they were not written by Sunnis?

Mr. HOWARD: Yes, my Lord, and I attribute genuine historical evidence afforded by these books, for it is clear that they were not written by any person now alive.

Mr. JAMES: If you can prove that this prayer, containing the name of Khan down to *Ab*, has been long used among the Khojas, it will be a very important piece of evidence.

Mr. HOWARD: We shall produce such evidence and I believe it will be of great value. I have now shown by evidence that could not be denied, that the Khojas were, before the commencement of the present century, a non-Sunni sect; and I should now proceed to the principal point of the subject, namely, their connection with their Imamite ancestors. I will complete my argument. In the first place your Lordship will recollect that some importance was attached by my witnesses to the statement, made by one of their witnesses, that "the Khojas have no Saints;" but I will dispose of that statement in an evasive manner by a reference to the VIII. Vol. of *Chandernagore*, where a score of Shia saints are mentioned at length.

Mr. JAMES: You need not trouble yourself on that point; I think it is unnecessary to go into it, the Shias no doubt have

many saints, but it is very important to show what the relations have been between the Khojas and the Aga.

Mr. HOWARD: It is not disputed that Aga Khan is the living representative of a Synd family established in Persia. He traces his descent of forty-six generations, through the four chiefs of Almas, through the Fatimid Khalifa of Egypt, to Ismail the son of Jaffar Salih the sixth Imam, and so back to *Ab*, the common ancestor of the Aga and of the Aga of the Aga. This is indeed a spiritual pedigree, but one which I am not going to prove; it is quite sufficient for me that it is taken to be true in the main by the other side, who admit the Aga to be a Synd, that is a descendant of *Ab*. The late Shah of Persia must have considered the pedigree true, or he would not have given his daughter and a government to the Aga when he was a youth. In the genealogy, the 20th and 21st names are those of Shah Nizar and Shah Ismail Shah, who are mentioned in the sacred books of the Khojas. In the Bill of 1850 the Aga was named Pirzada, that is "the son of a saint." He is an Imamite Imam by a long descent, — not a sect, possessed, and he was a spiritual monk to him, for my learned friend to describe him as an impostor or a false prophet. This court cannot properly form or express an opinion as to whether the belief in his fallacy in his person is just or not; it exists, and that is sufficient. Any Imamite Imam, in virtue of a sort of apostolic succession, he is an spiritual chief, he does not pretend to you a false one, and he is not worshipped. The passage read by Mr. Sedgwick is a recently published work, *History of Persia*, correctly relates the story of Aga Khan's father's name; but it does not give much more detail in the *Asiatic Researches*, where the Aga's father and grandfather are mentioned as Imams of the Imamite sect. This work is a printed book in Persia, and the passage I refer to is in the second chapter of the 1st Volume. (Passage read.)

Now this extract shows that Aga Khan's father was an hereditary Imam of the Imamite sect with the assent and respectful recognition of Fatah Ali Shah, the Zand Shah of Persia, who came to the throne in A. H. 1212.

Mr. JAMES: The Zand Shah held out against the authority of the present Persian dynasty, the Kajars, a dynasty founded in 1787, — thereabouts?

Mr. HAYWARD: The Zenda only held out in the South. The passage also relates that the Ismailites of Hindustan and Turkistan used to pay their Imam *Zacat*, or religious dues and that whenever they were unable to remit the money so collected, they used to throw it into the sea. (I have heard the figure employed, of extravagant people, that they "throw their money into the sea," but I never before heard of the thing being literally done.)

Mr. HAYWARD: Oh I believe the same thing is practised in Bombay now though the money is not lost in the sea intentionally. (Laughing.) They are referred to in the account you have read. Koom, here, where the Mosque of Fatima, has been the burial place of the ancestors of Persia for some centuries, and it is the burial place of the founder of the present Kajar dynasty.

Mr. HAYWARD: The passage shows that Aga Khan was recognized by the *Ismailis of Hindustan* (who are they but the Khojists) as an extraordinary religious chief. (The learned counsel then read a translation of a passage in the *Nash-Khat Tavariikh* which narrated the marriage of Aga Khan with the 23rd daughter of the Shah of Persia, and his unsuccessful rebellion against a subsequent Shah.) From the Aga's *Zafat* we find him in Seind, and then in Bombay, after his arrival in Bombay.

Mr. HAYWARD: A little, I may say that the account books of the Khojists show that the cargo came money to the Imam (the Aga's grandfather) in Persia in 1775 and in other years of the same century. Now your Lordship may remember that the wife of the Aga said a Sunni could not pay *Zacat* to a Shia; so that the Khojists, who contribute to Aga Khan, they were doing that which no Sunni would have done.

Mr. HAYWARD: I think it is clear no Sunnis would act in such a way. The facts are all of them important as showing that money was sent by the Khojists of Bombay and other places to Pir Salami.

Mr. HAYWARD: It will be well for you to defer the rest of your argument till Monday.

The Court then rose.

On the re-assembling of the Court on Monday—

Mr. HAYWARD said: I wish to add a few words, my Lord, to that part of my argument which had reference to the Ismailites. The

learned author of the *Dobistan* writes in the year 1618 records of the Ismailites in such a way as makes it clear that he regarded them as a religious body at least as respectable as any other. It was said by Mr. Austin that the Ismailites were considered as outcasts, even by the Shias, but that is demonstrably incorrect. At page 397 of the second volume of the *Dobistan*, there is this passage—

"Information was received from Mir Amir who was a governor of the Navahi "district" of the town Shekonda, that the Ismailites are a tribe among the Shias, and their creed is ascribed to the Lord Imam Ismail, the son of the Lord Imam Jafer Sadik and this sect believe this Lord an Imam.

One of the Ismailite divines mentioned in the *Dobistan* is found at Mooltan, which in those days was almost a frontier town of Persia, and in *Chardin's Travels*, it is said there was a great caravanerai at Shiraz devoted to the Mooltaneese pilgrims; the passage is at page 418 of the VIII. Vol. of the *Voyages de Chardin*, and is as follows:—

"Les bonts se rendent l'un à la place qui est au-devant de la maison du gouverneur, l'autre au caravanerai des Mooltani, qui sont les Indiens ainsi nommes de Multan, grande ville des Indes, sur les frontières de la Perse, du côté du nord: les deux autres en d'autres endroits."

Therefore any argument for Pir Sulddoondeen's having been a Sunni, founded on the fact that he was buried at Mooltan (now a Sudd place) comes to nothing. There is nothing more probable, than that in those times, he an Ismailite, would pass through Mooltan on his way between India and Persia.

Again as to the Ismailite, at page 419 of the second volume of the *Dobistan* it is said: "A great number of learned men are followers of the Ismailite, such was Amir Nâ'er Kâsur (from among all learned poets the contemporary of Ismail, surnamed *Montaser* "the victorious." Amir Nâ'er was born in the year of Hejira 539 (A.D. 969). When he arrived at the age of *disreputement* and rectitude, he heard the voice of Hussein teaching the morals of the Ismailites, in the time of the Khalifat of the legitimate Imam Montaser; he hastened from Khorassan to Egypt where he dwelt seven years: every year he made a pilgrimage to Mecca, and returned from thence; he was exceedingly devoted to the practice of the law."

At page 423 of the same volume the author says: "The names of the Western Ismailihs were all zealous in the practice of their worship, and an account of them is published in the historical books. The Ismailihs of Iran are celebrated with the titles of Kohistan and Rudbar. The first of the former was the founder of Sabak. As the account of him in the histories is coloured with the pen of partiality, therefore I shall endeavour to make a statement such as obtains credit among the Ismailihs concerning him." This shows, my Lord, that the orthodoxy of Hassan and his followers was disputed by the Ismailihs themselves and apparently the writer of the *Indiastan*, as if he is impartial by adverting to the fact. (With regard to the missionaries of Hassan Sabak, Mr. Austey said that the word is not a Governor, but that I venture to say is a mere mistake. It is like "dey," Semicitic, at all, but an Aryan (Persian) word signifying a "caller" or "teacher." These missionaries were confined at Amamut but from thence were sent forth to other parts, the chief of the sect devoted himself to the work of proselytizing. At page 420, we come to the charges which history records against the "Assassins":—

"At Medina the Fedayis, in order to destroy the learned men and doctors who entertained a hatred towards the chosen Ismailihs, renounced their creed, were dispersed on all sides, and they brought out a number of this class beneath the blows of their swords and arrows which account the learned men and the theologians of Medina were frightened." The author speaks of these assassinations coolly, and of course among Mohammedans the killing of a man for the sake of religion, provided always that the murderer is a true Moslem is considered very proper. In proof of this I refer to *Muir's Life of Mahomet* where the author refers to the practice of religious murder as having been expressly sanctioned by the prophet. At page 131 of the 3rd volume he thus speaks of the

"The blood shed at Medina with the countenance of Mahomet, the chosen woman, Asma, daughter of Marwan, belonged to the daughter of a family which had thrown off their ancestral faith, and was the object of her dislike to Islam; and being a prostitute, commanded the prophet, after the battle of Badr, on the Jolly of her

followers in receiving and trusting one who had slain the ablest men amongst his own people. The verses spread from mouth to mouth (for such was one of the few means possessed by the Arabs of giving expression to public opinion) and at last reached the ears of the Mohammedans. They were offended, and Omar, a chief man of the same tribe, vowed that he would kill the author. It was but a few days after this return of Mahomet from Badr, that this man in the dead of night crept into the apartment where, surrounded by the life-guards of Asma lay asleep. Feeling stealthily with his hand he removed her infant from her breast and plunged his sword with such force into her bosom, that it passed through her back. Next morning being present in the mosque at prayers, Mahomet who seems to have been aware of the bloody design, said to Omar: "Hast thou slain the daughter of Marwan?" "Yes," he answered, "but tell me now is there any cause of apprehension for what I have done?" "None whatever," said Mahomet, "two goats will not knock their heads together for it. Thou smiling to the people assembled in the mosque, he said: "If ye desire to see a man that hath avenged the Lord and his prophet look ye here!"

In the notes to this passage it is said: "Complets if happily completed, on any topic of general interest, sprang abroad like wild fire. They performed the part of the press in our days, by giving expression to public opinion, and on critical occasions often played an important part in forming it. Mahomet greatly dreaded the activities of his enemies, and not infrequently employed poets for a similar purpose on his own side.

Hizanti says that Mahomet being vexed by Asma's verses said publicly "who will rid me of this woman?" which speech, overheard by Omar, led to the assassination."

This shows, my Lord, that Mahomet formally approved of assassination for religious purposes.

Assassination for religious objects among Mohammedans and the Semicitic races generally, was deemed right and lawful, and was in no wise regarded with the horror with which we in modern times view any kind of assassination. But can we Christians forget, that the man claiming to be the head of the Christian church, the Pope of Rome, highly approved of the massacre of St. Bartholomew, which exceeded any thing recorded of the Ismaili *Fedayis*. Catholics and

Protestants equally, at the present day regard that atrocity with feelings of indignation. No Scotch Presbyterian would now defend the assassination of Archbishop Sharp, but as I have said, the idea that murder committed for religious purposes is a crime, is purely modern.

When the Court rose on Saturday, I was engaged in describing the connection between the Khojas of Bombay and their Pir, and I read some extracts to your Lordship, which identified Aga Khan's father and grandfather equally with himself as the successive Pirs of the sect, and Imams of the Jamiahah. I now desire to call your attention to the fact, that the books of the Bombay Jamat show that in 1806 and 1807, the Khojas of this island sent tribute to the Pir *Salamat*. This was the Aga's father. In 1816, the Aga succeeded to the office and the books of the Jamat show how eagerly he was acknowledged. The first document I shall now proceed to read, is a letter which with others will of course be tendered in evidence—written in Persian. The date answers to the 23rd May 1792. It was written by Shah Khalilullah (the Aga's Father) to the Jamat of "Derrish" or orderotees at Dhonnagar; and in it he says he has succeeded as to have taken his seat on the throne of the Pir. He also asks them to be faithful "as usual" in sending money to him, and their tribute to remit to him to the care of the Jamat at Muscat. The next letter is dated July 1794, the precise day does not appear, but is from the Shah Khalilullah, and addressed to the "faithful Derrishes" residing in Scinde, Kutch, Surat, Bombay, Ghim, Dhonnaggor, and other places. In the letter he asks the Jamats that they should send him a fixed stipend every month, as all of them are faithful, and will send their Sircar—"Sircar Sahibi" being the title of the Pir, the name in which the accounts between him and the Jamats are kept. (And here I may mention, my Lord, that the title of Imam is secular as well as a religious title, and in some measure applied to a royal title. But practically, it is not understood as being confined to the regal office, any more than the title of "King" is assumed by the kings of England, up to the reign of George III. Shah Abbas, however, said he would have all the self-pretensions swept off the face of the earth.) The next letter is dated 27th December 1820; this is from Aga Khan and is addressed to the Khoja Jamats of Scinde, Bombay, Kutch, Surat and other places.

It states, that the Kamaria will deliver to the Jamats the letter of the Sircar and inform them respecting the six-month grants, that were asked in aid of the Sircar's marriage gifts to the King of Kings (the Shah of Persia). He also says that the dues hitherto paid, have not been sufficient or equal to the proper amount. Now from this it is quite clear, my Lord, that there was some fixed amount payable by the Jamat to the Pir, that it was clearly understood, and that properly, the dues were to be paid at the end of three months.

Another letter from the Aga is dated March 1824, in which one-ditto is asked for. In a letter dated November or December 1825, the Aga refers to the existence of the regular accounts kept between himself and the Jamats and appoints persons to go and adjust such accounts. A letter of October 1825 shows, there was a well understood system of tribute and account practiced by all the Khoja Jamats, for, speaking of certain places, the Aga says, the Jamat have transgressed his rights and he "will not allow it," and he evidently treats the whole matter quite as one of business. And yet this is the Pir who, the plaintiffs pretend, did not set himself up until 1831:

And now my Lord, I proceed to speak of the Duffers or account-books of the Khojas. These books have been in the custody of the Master in Equity, since the former suit. One of them is a Guzerati account book of the Bombay Jamat, containing the cash account for 1806-7. At page 11, under date of 10th January 1807 there is an account with the Shri Sircar Sahibi (i.e., the Aga). Then there is a credit to the Tansa Jamat, of Rs. 325, sent to the Bombay Jamat for transmission to the Aga as Pir. In the same book, for the same year there is a credit to the Mahim Jamat of Rs. 1,300 received for transmission to the Pir, and the payment of this sum to the Bombay Jamat, appears in the account book of the Mahim Jamat. The same book of the Bombay Jamat contains a credit for Rs. 46-4-0 received for payment to the Sircar, from the friends of a deceased person in Muscat. Then on the 9th April 1807, there is a sum debited to the "Durkhana," which is explained as meaning the residence of the Pir. This item was for money expended on goods bought for the Pir and sent to his residence, and thus it seems they credit the Pir with all money received on his account, and debit him with the goods bought with part of such funds. The Bombay Jamat appears to have received the dues from

certain other Jamats up-country and accounted to the Aga for the gross receipts.

THE JUDGE: It appears natural that there should have been such an arrangement, this being the great sea port. I suppose the goods and money were sent hence, by way of the Persian Gulf?

MR. HOWARD: No doubt. There are other entries of the kind, my Lord, but I only think it necessary to mention a few of them. In the account-book of the Bombay Jamat for 1818, there is an entry, the error of which is important, because your Lordship will remember that it was about this time that Aga Khan succeeded to the Musnad. Here the Aga is spoken of as the only true "Guru" (religious teacher or disciple). I say that it is subject to the strongest commonsense that people should now come before the Court and assert, in the face of such evidence as we have here, that the Khojas merely treated Aga Khan as a nobleman and relative of the Shah of Persia, and that it was not till the year 1830, that he set himself up as Pir. Some, at least, of the persons who instruct my learned friends, in particular, the more elderly of them, must know perfectly well that the statement they make is entirely false and without foundation. In another entry the Pir's account is credited with Rupees 90, part of the money received on account of people admitted to the Khoja caste, at Zanzibar, and for the gratification to them of the dust of Kerleva. In an entry in the account-book of the Bombay Jamat for 1820, it is stated that a man had been born to Shah (or Pir) Housain Ali (Aga Khan) and that in money was given to the person (Fakir Noor Mamee) who brought the good news from Persia.

(Your Lordship read all the correspondence and the entries referred to, and the further entries of moneys sent to Aga Khan as the Pir, and I will go on to say.) The payments go on till September 1826, when there is a pause, and this enables us to understand the delay for Aga Khan's sending his messenger to collect his moneys in the year 1828-29. In 1829 the first bill was filed in his name, but as he says, without his authority. Now that we are so conscious can the relation allege, as they do, that the fact that Aga Khan first set himself up as the Pir of the Khojas in 1831? I repeat that allegation must have been false, to the best of my knowledge. They make no suggestion to explain how the Aga obtained his influence with the Khojas, and the mere excuse that

he was a nobleman and a Synd, is quite insufficient to account for the fact, which is patent in the books of the Jamats which I am now reading from, that for many years the Khojas were in the habit of sending a *Jahzeb* (present or hoze) by Haws, or envoys, to the Jamat at the "Darkhana;" which custom is proved to have been established for some time by the fact that in the latter he claims his "usual" dues. In the book for 1826, there is an account of certain goods sent to the Aga, and the Jamat is here called the "Jamat of the Pir Sahib." Then in the cash book for 1831, there is an account opened in the name of Sha Husein Ali (Aga Khan). From 1831 there is an interval in the accounts with the Aga, of about four years. In one book there is an entry relating to Rs. 48 overpaid to the Aga, and at all events that shows that the Jamat were free agents and exercised the right of examining and correcting the accounts with their Pir. There are many other entries similar to those I have already read, but I do not know whether the Court requires me to go into them?

THE JUDGE: Do I understand you to say that from this time, until recently, no entries appear of the transactions between the Bombay Khojas and the Aga?

MR. HOWARD: Yes, my Lord, there are no entries from 1835 or 1836 until a comparatively recent period, but large sums were still sent to the Darkhana; the money was paid as a cess. The cash was handed over by the Jamat to the Agents of the Aga. (Mr. Howard then read some more items in the account.)

THE JUDGE: In the face of all this evidence, it appears very difficult to contend that no payments have been made to the Aga as the religious Pir of the Khojas.

MR. HOWARD: Undoubtedly, my Lord, I cannot see how my learned friends can get out of their difficulty.

THE JUDGE: Who are these Momenes spoken of?

MR. HOWARD: They are a sect of Guzerati Hindu partially converted to Islam.

THE JUDGE: Who and what are they?

MR. HOWARD: They are a hostile community of shoemakers or cobblers, not Khojas, but adherents of Aga Khan.

THE JUDGE: Is theirs an hereditary trade?

MR. HOWARD: Yes, my Lord, and you will remember these people

mentioned in the *ghazna* as having "attained salvation." They try to say people. I am told it is wholly untrue, as has been said, that they were first admitted to the Jamat by Aga Khan. They always admitted there. In the accounts of the Jamat there is by stating that half a rupee was received in copper money from

THE JUDGE: This appears like the contribution of Peter's Pence.

MR. HOWARD: It does.

THE JUDGE: Does it appear where the money from the Momen

MR. HOWARD: I am told these people are dispersed and that they are found in Bombay alone. There are several entries in the accounts of contributions in very small sums from the Momen, and I think it important as strengthening my argument. It shows the force of the Aga's claims.

THE JUDGE: The force of your argument does not rest merely on the account of the contributions thus made to Aga Khan, but on the fact of such payments being made?

MR. HOWARD: Yes, among the accounts there is an item showing that money was paid to Aga Khan for a divorce obtained from the Momen. In turning over these accounts, I find something like this in almost every page. Here is one entry proving that in the year 1822, rupees 25 were paid to the Aga's son for the marriage of some Khojas.

THE JUDGE: Do not pass over anything material.

MR. HOWARD: I am much obliged to your Lordship, but I fear I have depended much upon the time of the Court.

THE JUDGE: But this point is very important, especially with regard to the earlier entries in the books, because the case against Aga Khan is that he has exercised authority, and set up claims which he has altered. That alteration is clearly done away with if these accounts are true and correct, for they show that the custom of giving to the Aga as the Pir of the Khojas has existed for a great length of time, though on the other side it is attempted to be shown that only as a comparatively recent period he claimed to be the Pir. It seems to me that the earlier dates in the accounts are the best evidence.

MR. HOWARD: There are entries in the account books of the Bom-

bay Jamat for 1835-36 and 1837 to which I will call your Lordship's attention, for they show that three properties, situated in Bombay, one in Deccan road belonging to the Sirkiz Khojas were bought by the Jamat and the proceeds handed over to Mohamed Kareem, the Aga's agent, for transmission to the Aga. These entries appear in the books as regular commercial transactions; it is evident the Jamat considered that the properties belonged to the Aga, and that therefore they went the price to him at the Durkhana by his agent. Now these are extremely important transactions, as they show clearly the relations existing between the Jamat and Aga Khan: and from the oral evidence we shall produce, your Lordship will find that this landed property had been bought out of funds belonging to the Sirak. And of course if that is proved the Court will hold that the property belonged to him just as much as if it had been bought by him personally. The transactions are perfectly open and businesslike as they appear in the account books of the Jamat who do not there pretend to hold such property as against the Aga. The officers of the caste—and I call them so, because there is no attempt to show that they have been put out of their offices—will prove that all the caste property in dispute claimed by Aga Khan properly belongs to him, as having been bought out of the religious contributions made to him by members of the Khojas and Momen sects.

THE JUDGE: There is very great absence of proof upon the part of the relators and plaintiffs with regard to the purposes for which this property was purchased. I confess that the case of the plaintiffs on that point was very weak indeed.

MR. HOWARD: Of the "Dassoon" one-tenth was payable to the "Sha Salamat," the Aga himself, and two and a half per cent. to the "Pir," the title appropriated to his heir apparent. There were fees payable on the marriage of Khojas, and if they were not paid the ceremonies were stopped. Our witnesses will tell your Lordship they never would have made the offerings, except on the understanding that they would go to the Pir. This separation in the caste commenced about the time when the Aga demanded his dues in 1829. The opposition party has always been small and vigorous: they comprised at first twelve persons, called popularly in the caste, the *barbhaya* (twelve brothers). They commenced to ally themselves to the Soonees as a party manœuvre, just as the Federals in America made use of abolition

as a military measure against the south: and as the Portuguese in Bombay attached themselves to the jurisdiction of Rome or Goa, according to the exigencies of the moment—or—to use another illustration—as the Prince of Wales afterwards George IV., one day when he was a little boy, and something had put him out of temper called out “Wilkes and liberty” at his father’s door. This is the real and recent origin of Sunyion among the Khojaks. Up to the time I am speaking of, the Khojas had been accustomed to employ the sacred dust of Korbela in their devotions. The opposition began to abandon this practice and at this time they succeeded to a new Jamat Khan and were re-organised in accordance with the directions of the Pir. Five years later came the submission of the opposition, and a very important piece of business was transacted between the Jamat and Aga Khan—I mean in reference to the purchase of the landed properties in Bombay out of the offerings credited to the Pir Salanout. As I have already shown, these were bought in, by the Jamat, and the proceeds remitted to the Aga in Persia. Returning to the correspondence which I have read, I may no doubt take it, that your Lordship will remember the letter addressed by the Plaintiffs party to the Jamat at Bhowanuggur. I now propose to put in the answer sent to that letter, the existence of which my friends say they know nothing about.

THE JUDGE: What is the date of the letter?

MR. HOWARD: The date of the Bombay letter is 2nd January 1862, and before sending the answer, I will refresh your Lordship’s memory on some points. The Bombay letter is addressed to the people of Bhowanuggur, the Plaintiffs say that they have a school at which children are to be taught free of charge, at the Masjid built by the respondent party. (Mr. Howard read the letter and added) I shall prove that the Plaintiffs have not dared to put up any Suni inscription at the Masjid. They mention Aga Khan in this letter in precisely the same way that the Parliament party at first talked about Charles the 1st—respectfully of his person but condemning his measures. It would be just as ridiculous for the Plaintiffs’ party to say that when they wrote this letter, they did not recognise Aga Khan as the Pir of the caste, as for the Parliament party to say they did not recognise Charles the 1st as King of England at the time when the quarrels began between them and the King. In stating their objections to the Aga’s policy in this letter, the Plaintiffs do

not say that he is an impostor, or that they are Sunis and do not choose to follow him: but they actually mention him by inference as the Pir (they call him “Pir”) whom they admit the very foundation of our case. They talk about it being a matter of faith and state that Ali founded the true religion! So it seems they did not know what the orthodox Suni Mohammedan faith was then. It is since 1862 they have learned their catechism and to relegate Martin Ali to a humbler rank. They say they do not think it right to put their signatures to the declaration issued by Aga Khan, adding, however, that should all the other Jamats think their conduct improper it might be discontinued! Now it is certain that Sunis could not possibly write such a letter as this. We have here the timid language of persons who feel that they have taken a dangerous step, the issue of which is doubtful. They therefore write to the Jamat at Bhowanuggur asking them what they think of the step taken by them (the Plaintiffs); they say too, that the Bhowanuggur Jamat should not carry on matters as the Bombay Jamat (i. e., the Aga’s or true Jamat, as we say) did, but should receive back into it persons who had left it. Now I do not understand how persons can write a letter containing such a declaration and ask their counsel to put it before the Court. They ask, too, that the persons on the other side, whom they here admit to be the Bombay Jamat, may not be allowed the use of the caste property.

THE JUDGE: I do not see how there can be two Jamats in Bombay unless the caste is split up.

MR. HOWARD: The worship of the two parties cannot be carried on in the same building—although in Germany one may see, as I have at Heidelberg, a Protestant and a Roman Catholic congregation, worshipping in the same church. But we could not expect the same thing to occur here. The case of the Plaintiffs is, that the defendants are heretics, that therefore they ought not to be allowed to enter on the caste property, and that being so, I submit the Plaintiffs cannot now be allowed to withdraw from that position and say “oh very well, the court says we have made an unfounded claim to an exclusive property we will now abandon it, and accept part instead of the whole of the caste property.” I say your Lordship will not allow that change of front and that you will not amend the prayer of the Bill to the detriment of my clients.

THE JUDGE: Unless I see it is proved that the Khojas were Sunnis and not Shias, I must leave the whole matter to the Juries, and a finding that there is a failure of proof of what appears to be the necessary foundation of the Plaintiffs' case, at least so far as regards the fifth paragraph of the prayer, I do not see how, in the absence of the necessary evidence, the Court can do what it is asked to do in the fifth paragraph.

MR. HOWARD: I will now read the letter from the Khoja Jamat and also the communications sent by the Plaintiffs. (Mr. Howard read the letter in which the Khoja Jamat said, "We are upon the point of going to the Durkhaan, but should his Lordship Aga Khan ask for the signatures, we are ready to give them 1,000 times a day. Whatever order comes from his Lordship we are bound to obey.")

THE JUDGE: Well, that is a very decided letter; at any rate, there is no mistake about that.

MR. HOWARD: Yes, and it shows how strong the feeling of jealousy of Aga was among the Khojas unconnected with Bombay.

THE JUDGE: Is Khoja the original country of the Khojas?

MR. HOWARD: Yes, Mr. Anster himself said so in his opening speech, and your Lordship recollects, Mirza Saïd Canjee confirmed it.

THE JUDGE: About what time was it when Pir Mohammed Sha, mentioned in this letter, "attained Paradise"?

MR. HOWARD: He was buried in the Darga about 30 years ago, and the attempt made to put Aga Khan in the witness seat, and would, in fact, have been, a very great outrage; and we know from the attitude of the Plaintiffs and particularly from the speech of Mr. Anster, what offence would have been extended to the Aga in the Durkhaan. And here I may say that a most painful impression was made on the minds of the Defendants, who have their religious feelings as well as Christians, by the joint allusion of Mr. Anster to the twelve Imams. It was very improper in a Court of this kind to deal impartially with people of all kinds of religions, and to make such an offensive remark. Your Lordship has been asked to do this in a purely religious dispute, and allusions to religious matters made by counsel are out of place. Your Lordship recollects the painful feeling created among the bar and the

MR. HOWARD: In the accounts of the Mahim Jamat, there are some items which point to important facts, for instance, it is shown that in the year 1806 the Momenes subscribed money to be forwarded to the Pir at the Durkhaan.

THE JUDGE: Will it form part of your case, that there were pilgrimages made to the Durkhaan?

MR. HOWARD: Yes, my Lord, we shall bring forward witnesses who have made the pilgrimage thither.

THE JUDGE: I will take it the accounts which you put in show that a large amount of money was collected among the Momenes and transmitted to Aga Khan or his ancestors. I do not think you need trouble yourself further on the point.

MR. HOWARD: Very well, my Lord, I will leave that branch of the evidence.

You will recollect that my learned friends brought here an old man named Syed Pir Sha his Syed Meer Hossain, and made a great deal of him, because he described himself as being a descendant of Pir Suddood-ool. He offered to put in this pedigree, the correctness of which was not and could not be disputed, but it was not admitted by the Court, because there was no official translation of the same. He said he was a Sunni and the Khojas were Sunnis, and that he had the Suni prayers in the Khoja Musjid. Now, to show what the value of his testimony was, he said that he should hold all who said their prayers properly to be true Sunnis—that opinion, of course, being merely founded on external conformity. In cross-examination the old man said, he did not know any of the Khoja books. Perhaps externally his father may have been a Sunni, and his grandfather may have been the same before him, but he is not a Khoja, and he proves nothing as to what the Khoja religion was originally. A man like this witness might fancy, because his family followed the Suni outward observances his ancestors were all Sunnis, but that shows nothing as to the faith of the Khoja community.

THE JUDGE: The witness said he was a Suni Mussulman, not a Khoja.

MR. HOWARD: Yes, what I say is, that because a man on the ground of external conformity holds himself a Suni now, it does not in the least follow that 400 years since his ancestors were Sunnis. The Court will recollect that *Hamilton*, writing in the last century

there were many Shihs in India, and the subsequent authorities
 them as few, and what I suggest is, that like many others,
 of this old man living among Shihs, may through fear,
 originally Shihs, have outwardly conformed to Sunism.
 there was a majority of Sunis, a bimillitary and fanatic
 ready to turn out in arms and destroy the heretics on the
 that the Suni faith had been established, the Shihs were
 led to lay aside, and perhaps in a generation or two forgot
 The Khojas in Bombay were always small in number com-
 the Sunis, and being timid in character like all the Hindus
 the presence of genuine Muslims they easily submitted to

the confirmation of my contention that the Khojas were always
 point to their observances in regard to the Mohurrum, and
 being far Hassan and Hosin, which so far as it is a genuine
 is essentially a Shia institution. In *Chardin's Travels* we
 way in which the Mohurrum is observed by the Shihs of
 they lament, beat their breasts and really mourn.

Q. Yes, we read the same thing in *Petrie's* elaborate
 what he saw at Teheran; that was written in 1818. And
 has recently published *History of Persia*, describes the
 dramatic representations of the sufferings and the death
 according to all the accounts I have read, the Persians
 affected by the representation of the Mohurrum, in that
 terrible manner.

A. Similar feeling is manifested by the audience at
 nation of the Passion at Antwerp in the Tyrol. The
 they observe the Mohurrum also, but not in the same
 the Shihs do. They carry about what purports to be the
 son, but as a mere empty show, and they only pretend
 ing. In a book relating to the natives of Bombay there
 elaborate description of the Bombay Mohurrum, and the
 that the tableaux are intended by the Shihs as a great
 and ludicrous exhibition, while the Shihs regard the
 as a most solemn season of mourning and would be deeply
 that any fool who should make merry over the death of
 Q. One piece of fun practiced by the Sunis on the tableau
 dress as fakiers and scatter obscene ribaldry on all sides.

truth of the allegation in the "Times," and directing the people to give
 up their outward Suni practices, and show themselves what they really
 were. The paper was among the denunciation of the people, that they
 were Shihs, was subscribed by the great majority of the caste, and
 it was only the old *Ischihiya* party who took for granted a opposi-
 tion to the Agh and the majority of the caste.

I have occupied the attention of the Court at great length, and now,
 finally, I will only ask your Lordship to apply the law as it is to
 this case that you would apply wherever there is a conflict of
 evidence. The Plaintiffs have, I understand, directed themselves by
 the way they have put their case before the Court. They have
 unquestionably endeavored to mislead your Lordship. They have
 concealed important facts which they must have known, I know the
 Law, they are ignorant of the old Khoja, and the practices disclosed
 in the *Diwan* records. They have instructed or allowed their counsel
 to carry on the suit in a spirit of rancour and hostility towards
 Agh Khan; they have slandered him as an impostor recently dead
 among their own people, but at least his grandfather
 was the subject of their father's reverence, and they have even put it
 into his tomb, the last of insults in the east. They have been met,
 not by explanation, but by history, which any one may read, and
 by the paper of the records of the *Diwan* of Agh Khan, the first,
 which the Court is not right to suppress. They pray that Agh Khan and
 the majority of the Khojas were peacefully, he expelled the caste;
 and they do this, I repeat, in the interests of religion and morality!
 That was the last touch we want to complete the picture. Mentality
 and morality are inseparable without a touch of religious hypocrisy.
 I submit, my Lord, that these Tactics represent neither the interest
 of justice, truth, nor benevolence, and that they are in no way out-
 fitted to your Lordship's duties.

Mr. Green and Mr. McCulloch, followed on the same side, and
 many witnesses were called in support of the Defendants' case.

THE JUDGMENT.

THE HON. SIR JOSSEPH ARNOLD in the course of his learned and able Judgment in the case, referred to the Oriental authorities on the bar of the Court by the exhaustive industry of Mr. Ansley on one side and Mr. Howard on the other" as supplying "ample material for a dissertation on a subject of considerable interest, both historical and theological."

The Judge ruled that there was no ground left upon the evidence upon which the Relators and Plaintiffs could seek relief from the Court, either in its charitable or any other Jurisdiction. The Court must therefore grant the injunction restraining the Defendant from exercising his powers for excommunicating Khujas; and upon the whole case, before the decree which the Court must pronounce was quite clear it was:

"That the Plaintiff's suit be dismissed, as against the first defendant, His Highness Aga Khan; as against Allyullah Noman and his co-suretyors; as against the Plaintiff's Advocate; and as against Arsoo Mangjee—with costs, as to all the Defendants to be paid by the relators and plaintiffs,

"And against the other Defendants on the record not in the same manner as against the Defendants above named, the decree is that the suit be dismissed without costs."





जैसे जैसे अंधकार मारि काई जैवरी परी है ताकै कोई मनुष्य निरपे के नरम सौ मस्यो अरु मरि कै वा अरु जैसे अपने क नाव नै म सुइ दे सो
को मर पमानि लीये सदा स्थिर रूप ही है। अरु पा

धायो है जैसे अंधकार मारि जे वा निरधि नर नरम सौ मर पि सरप मानि आयो है अपने सुनाइ जैसे सागर सु
ताल कलसा कै पवन के संयोग नै उबरि है। अरु अऊल व्याऊल नै सौ ए जीव है सो निश्चैन य नै ज म रूप वरु कौ व्यापक है पै नादिकाल को स

थिर सुदा पवन संयोग सौ उबरि अऊल आयो है नै सै जीव ज म सौ व्यापक सहज रूप नरम सौ कर्म को
हज रूपी उम है १३ अथ जो सम्यग होइ सो अपने स्व नाव नै उम हरि केश न्यारे स्व नाव जाने। इ सं राज हंस के वदन क चां वप
जो को दृष्टान रि के सकुं है। ताके पर स नै इ धरा

करना कहायो है १३ अथ सम्यग दृष्टी स्व नाव वर्न नं राज हंस के दृष्टान सत्र जैसे राज हंस के वदन
नी एक मेक ऊइ र सो सो फा टिके धीर न्यारे होइ नीर न्यारे होइ नै सै सम्यक दृष्टी की सम्यक दृष्टि में सद ज रूपे जी व है सो न्यारे ही ल धीये। अरु सरी
र न्यारे ही ल धीये। इ त नै बा द्या न्मा। अ नरा न्मा पर मा न्मा ए नीने

के स पर सत दे धीये पु गट न्यारे बीर न्यारे नीर है नै सै सम किती की सु दृष्टि में सहज रूप न्यारे जीव न्यारे
ही ल धीये जैसे नासन नै सु सुवेतन को मु न व अ न्या सौ न व आपु में इ विचल आपु ही ना सौ या नै इ जो क अरु पूर्व संविन कर्म है

कर्म न्यारे ई सरीर है जब सुवेतन को अरु नौ अ न्या सै आपु अ चलन हू जो और सीर है पूरव कर्म उ दे अ
मार्तिक को और सीर न ल के उ नाइ सो अपनी थिन पूर्ण

जये। अथ वा उदीरणा करि कै कर्म उ दे आइ कै दिषा दे है। पिय ऊ जीव या कर्म को क शिष्य बूके स्वामी। जीव पु ऊल एक मेक करे है तापे अ सो नि
न न होइ अरु निनिक म के उ दे को न मा स गीर सो त मा स र्थे न्त श क नाव के स ल धीये अरु कहे। ता नै पा
इ कै दिषा ई दे हि करतान होइ ति कौ त मा स गीर है १४ अथ कर्तव्य स्व नाव त मो द क दृष्टान तथा व्यज