Privy Council Appeals Nos. 10, 108, and 109 *of* 1932.

Hem Singh and others - - - - - - - - *Appellant*

v.

Mahant Basant Das, since deceased, and another - - *Respondents*

Shiromani Gurdwara Parbandhak Committee - - - *Appellants*

v.

Ram Parshad and others - - - - - - - *Respondents*

Same - - - - - - - - - - - *Appellants*

v.

Fauju Ram and others - - - - - - - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23rd JANUARY, 1936.

Present at the Hearing:
LORD ALNESS.
SIR JOHN WALLIS.
SIR GEORGE RANKIN.
[*Delivered by* SIR GEORGE RANKIN.]

These three appeals concern a religious institution in Manak in the Lahore district, and the buildings, lands and other property belonging thereto. The first appeal, No. 10, is brought by the plaintiffs in a suit under section 92 of the Civil Procedure Code to remove the defendant Basant Das from the office of mahant or custodian of the institution upon the grounds of misconduct and mismanagement. The learned Subordinate Judge found for the plaintiffs and made an order removing Basant Das and appointing another custodian. The High Court at Lahore set aside this decree and dismissed the suit. No question or difficulty arises as to the competence of this appeal, but the defendant, Basant Das, having died since the High Court's decree, the appeal has not been pressed.

Appeals Nos. 108 and 109 are brought from two decrees of the High Court reversing the decision of a tribunal appointed under the Sikh Gurdwaras Act, 1925, (Punjab Act VIII of 1925). The tribunal had enquired under

section 16 of the Act whether the institution in suit should or should not be declared to be a Sikh Gurdwara and by a majority had decided in the affirmative. Two appeals were brought from this decision to the High Court by different sets of persons interested in preventing the institution from being dealt with as a Sikh Gurdwara under the Act. The High Court by two decrees dated 13th January, 1931, allowed these appeals, set aside the majority decision of the tribunal, and made a declaration that the institution in suit is not a Sikh Gurdwara within the meaning of the Sikh Gurdwaras Act.

Upon application made to the High Court for a certificate that the cases were fit to be taken on appeal to His Majesty in Council, the learned Judges of the High Court delivered judgments by which they appear to have held that section 110 of the Code did not apply to the cases but that a certificate could be given under what they described as the latter portion of clause 29 of the Letters Patent of the Lahore High Court, referring apparently to the words " or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid when the said High Court declares that the case is a fit one for appeal to us &c." They followed up this judgment, however, by signing a certificate in which it was certified " that the case above set forth fulfils in our opinion the requirements of section 110 of the Code of Civil Procedure Act V of 1908 as regards value and nature and is fit for appeal to His Majesty in Council ". From these proceedings their Lordships have some difficulty in ascertaining the exact provision of law under which the learned Judges intended to act. It would appear, however, that whether or not they were satisfied that the amount or value of the subject-matter exceeded Rs.10,000, they were of opinion that the case was otherwise a fit and proper case to be taken on appeal to His Majesty.

Before the Board a preliminary objection was taken by learned counsel for the respondents to the competence of these two appeals. While not disputing the proposition laid down by more than one of the learned Judges who took part in the decision of the *National Telephone Co. Ltd.* v. *His Majesty's Postmaster General* [1913] A.C. 546, that " when a question is said to be referred to an established Court without more, it . . . . imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches " (*per* Viscount Haldane L.C. 552), learned counsel contended that an examination of the Sikh Gurdwaras Act discloses that the present case is not within this general principle. He submitted that it is governed by *Rangoon Botatoung Co.* v. *The Collector, Rangoon* (1912) 39 I.A. 197, and that the principle to be applied to it is that the tribunal were exercising a special jurisdiction; that the right of appeal to the High Court conferred by section 34 of the Act gave to the High Court a

special jurisdiction; and that the decree of the High Court, not being made in the course of its ordinary jurisdiction, the provisions of sections 109 and 110 of the Code do not apply to confer a further right of appeal on any party. In support of the preliminary objection it was pointed out that by the provisions of sections 34 (2), 36 and 37 the decision of a tribunal under the Act was very specially protected from interference; that sub-section 3 of section 34 provides that an appeal preferred under the section shall be heard by a Division Court of the High Court; and that by section 37 any order passed on appeal from a tribunal is given a special efficacy analogous to the effect of an order *in rem*, all courts being prohibited from doing anything inconsistent therewith. It was further contended that the kind of question with which under section 16 of the Act the tribunal was in this case concerned—a question as to the religious character of an institution—is of a very special kind; and that the decision of this question is undertaken merely as a step towards deciding whether or not the institution shall be subjected to the management of certain bodies constituted by the Act, namely, a Committee, a Board, a Judicial Commission. Accordingly their Lordships were pressed to hold that, the Act having given one appeal to the High Court, there is no sufficient basis for an implication that the decision of the High Court is to be subject to the usual incidents as regards a further appeal.

Their Lordships intimated at the hearing that they were not of opinion that the preliminary objection should be sustained. They observe that the tribunal is given by section 12 (9) the same powers as are vested in a Court by the Code and by 12 (11) its proceedings " so far as may be and subject to the provisions of this Act are to be conducted in accordance with the provisions of the Code." The formal expression of its decision is described by the Act as a decree or order. The matters which may be brought before the tribunal for decision include not only the question whether an institution is a Sikh Gurdwara within the meaning of section 16, but include also questions of the amount of compensation to be given to office holders of Gurdwaras on their being superseded in office by the statutory authorities, and the decision of claims made to property which has been included in a list or lists as property belonging to a Sikh Gurdwara. The provision that appeals from the tribunal are to be heard by a Division Court and not by a single Judge does not in their Lordships' opinion indicate that the High Court in dealing with such matters would be exercising a special jurisdiction; nor should any such inference be drawn from the provisions of section 37 which is consistent with the view that the jurisdiction conferred upon the High Court by section 34 is intended to include the new subject-matter as part of the ordinary appellate jurisdiction of the High Court. In *Secretary of State for India*

in Council v. *Chelikani Rama Rao* (1916) 43 I.A. 192, the Board had occasion to consider a case which raised very much the same considerations as the present. Under a Madras Forest Act, the Forest Settlement Officer was charged with the duty to examine all claims made to land within a certain area which the Government was proposing to constitute as a reserved forest. The respondent claimed to be the owner of three parcels of land within the notified area but the Forest Settlement Officer rejected his claims. The Special Act provided that in such a case a claimant might prefer an appeal to the District Court in respect of such rejection only. On appeal being made to the District Court the District Judge affirmed the Forest Settlement Officer's decision. No further appeal had been provided for expressly by the Act and it was contended that all further proceedings were incompetent. The view taken by the Board however was: " When proceedings of this character reach the District Court that Court is appealed to as one of the ordinary courts of the country with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply ". The Rangoon case already mentioned was considered and the decision was held to be explained by the fact that the proceedings were from beginning to end ostensibly and actually arbitration proceedings, the nature of the question to be tried being merely the value to be put upon certain land. Of the case then before the Board it was said: " The claim was the assertion of the legal right to possession of and property in land; and if the ordinary courts of the country are seised of a dispute of that character it would require in the opinion of the Board a specific limitation to exclude the ordinary incidents of litigation." Again in *Maung Ba Thaw* v. *Ma Pin* (1934) 61 I.A. 158, the Provincial Insolvency Act, 1920, having provided first that the decision of the District Judge should be final, and secondly that in a limited class of case there should be a right to appeal to the High Court, the question arose whether, following upon such an appeal to the High Court, a certificate for a further appeal to His Majesty in Council could be given under the Code. The Board, following the case already cited, laid it down that " when such a right of appeal is given to one of the ordinary courts of the country the procedure, orders and decrees of that Court will be governed by the ordinary rules of the Code of Civil Procedure."

In the present case their Lordships are of opinion that the same reasoning applies. The questions which may come for decision before a tribunal under the Sikh Gurdwaras Act include questions which in substance concern the nature of the trusts under which the endowments of certain religious institutions are held. They also include questions of compensation for loss of office and questions as regards claims to property in respect of which the tribunal's powers are

not limited by any provisions as to value. There is moreover a provision in section 32 of the Act whereby, in the course of any suit or proceeding in a civil or revenue Court, such Court is empowered to frame an issue in respect of claims made in connection with a notified Sikh Gurdwara, and to forward a record of the suit or proceeding to a tribunal for decision, the Court being obliged to determine the suit or proceeding in accordance with such decision subject to the right of appeal given to the High Court by section 34. Having regard to the character, the variety and the importance of the questions to be dealt with by a tribunal, and to the terms in which the right of appeal to the High Court is provided by the section, their Lordships are of opinion that the provisions of the Civil Procedure Code with reference to appeals to His Majesty apply to decrees of the High Court made under section 34 of the Sikh Gurdwaras Act. The preliminary objection is therefore overruled. Their Lordships have not had occasion to consider and do not pronounce upon the question whether the same conclusion could be reached in the case of appeals brought to the High Court under sections 106 and 142 of the Act.

The questions in these appeals (Nos. 108 and 109 of 1932) are governed by sub-section 2 of section 16 of the Act, which is as follows :—

> " (2) If the tribunal finds that the gurdwara—
>
> (i) was established by, or in memory of any of the Ten Sikh Gurus, or in commemoration of any incident in the life of any of the Ten Sikh Gurus, and is used for public worship by Sikhs, or
>
> (ii) owing to some tradition connected with one of the Ten Sikh Gurus, is used for public worship predominantly by Sikhs, or
>
> (iii) was established for use by Sikhs for the purpose of public worship and is used for such worship by Sikhs, or
>
> (iv) was established in memory of a Sikh martyr, saint or historical person and is used for such worship by Sikhs, or
>
> (v) owing to some incident connected with the Sikh religion is used for public worship predominantly by Sikhs,
>
> the tribunal shall decide that it should be declared to be a Sikh Gurdwara, and record an order accordingly."

Another provision of the Act which has some bearing upon the questions to be decided is the definition of " Sikh " in section 2, sub-section 9, which is as follows :—

> " (9) ' Sikh ' means a person who professes the Sikh religion. If any question arises as to whether any person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in such manner as the Local Government may prescribe the following declaration :—
>
> ' I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus, and that I have no other religion.' "

The tribunal framed six issues of which numbers 4 and 5 need not be noticed. The first three issues were framed under section 16 (2). They have reference to the third, fourth and second clauses of the sub-section and are as follows :—

1. Was the Gurdwara Bhai Prithi Sahib established for use by Sikhs for the purpose of public worship and is it used for such worship by Sikhs? [16 (2) (iii).]

2. Was the Gurdwara established in memory of a Sikh saint and is it used for public worship by Sikhs? [16 (2) (iv).]

3. Is the Gurdwara used for public worship predominantly by Sikhs owing to some tradition connected with one of the ten Sikh Gurus? [16 (2) (ii).]

The tribunal and the High Court have rightly placed on the appellants the onus of proving the affirmative upon these issues. A further issue numbered 6 was framed as follows :—

" Whether Udasis are Sikhs for purposes of the Sikh Gurdwaras Act? "

and much careful and learned discussion was expended upon this question.

Third Issue.—The tribunal and the High Court were in agreement that the appellants are unable to make out their case on the third issue, which was framed in view of the second clause of sub-section 2 of section 16 of the Act. To satisfy that clause a tradition has to be proved which is connected with one of the Ten Sikh Gurus and owing to which the Gurdwara is used for public worship predominantly by Sikhs. Before the tribunal the only basis for a case upon this issue was some evidence of a tradition that Guru Govind Singh and Bhai Prithi, the founder of this dera, met at Pokhan in the Deccan, and that the Guru commanded him to go and preach Sikhism in the Punjab, in consequence of which command this dera was established at Manak. The learned President held that it had been rightly pointed out by the respondents that " ' some tradition connected with one of the Ten Sikh Gurus ' does not mean a tradition such as we have in association with the shrine in suit, but a tradition of an actual sojourn or miracle by one of the Gurus as at Panja Sahib, Rori Sahib, Tombu Sahib." Sirdar Kharak Singh took a similar view, holding that the second clause " implies that one of the Ten Sikh Gurus should actually visit a place and sit there ", the requirements of the clause not being fulfilled by any tradition which remotely connects the Gurdwara somehow or other with one of the Ten Sikh Gurus. The third member, Rai Munna Lal Bahadur, was of the same opinion. In the leading judgment of the High Court it is stated :—" The tribunal also agreed that the third issue did not arise and that decision has not been challenged in appeal." Their Lordships are accordingly not troubled with this issue. Whether or not the meaning of clause (ii) of section 16 (2) is accurately expressed in the passages cited, their Lordships have no doubt that it would be impossible

to show that the use of the institution in suit for public worship predominantly by Sikhs was owing to a tradition of the character here alleged. The third issue must therefore be answered in the negative.

Second Issue.—Upon the second issue the tribunal by a majority found in favour of the present appellants, holding it proved that the Gurdwara was established in memory of a Sikh saint. The learned President in his judgment remarks: " On the second issue it is not clear whether Bhai Prithi himself established the shrine or whether it was established after his death. Bhai Prithi lived and worked in the village and the smadh (tomb) was built after his death." Nevertheless the learned Judge holds that " as Bhai Prithi was a devotee and disciple of the Tenth Guru, endowed by him with divine knowledge and the rank of Companion of God, he was a Sikh; the Gurdwara grew up in memory of him and it is certainly used for public worship by Sikhs ". Sirdar Kharak Singh says that he is in entire agreement that this Gurdwara at Manak was established in memory of Bhai Prithi, who was a devout Sikh and disciple of Guru Govind Singh, the Tenth Guru, and thus a Sikh saint within the meaning of section 16 (2) (iv). Rai Munna Lal Bahadur observes :—

> The issues 1 and 2 suggest the argument that the respondents are themselves not sure of the ground on which they stand. The issue No. 2 would mean that the Gurdwara was established by somebody else than by Bhai Prithi himself and that Bhai Prithi was a Sikh saint. But the tradition set up is that Guru Govind Singh gave an express command to Bhai Prithi at Pokhar in the Deccan to establish the Gurdwara. Such a tradition, if true, would be inconsistent with issue 2, which pre-supposes that Bhai Prithi himself was not the founder.

This member also states that upon the evidence he is unable to agree that Bhai Prithi was a Sikh saint.

In the High Court the learned Judges agreed with the dissenting member and held that the dera was not established in memory of any Sikh saint.

Their Lordships are in agreement with the High Court upon this issue. In order to bring the dera within the clause their Lordships would have to negative the contention that this shrine was established by Bhai Prithi himself or else to hold that Bhai Prithi established it in memory of some other Sikh martyr, saint or historical person. Their Lordships are of opinion that the case made by the appellants and the evidence adduced by them is inconsistent with and does not support either finding. It is difficult, if not altogether paradoxical, to maintain that the shrine was founded in memory of some person now unknown and unidentified, and there is no evidence to that effect. The balance of the appellants' own evidence and their case before the High

Court was to the effect that Bhai Prithi himself established the shrine and there is no evidence worth considering in favour of the suggestion that he established it in memory of some other Sikh saint. This issue also must be answered in the negative.

First Issue.—There remains the first issue and on this it is to be observed that clause (iii) of section 16 (2) does not require proof of user of public worship predominantly by Sikhs but merely that the institution is used for worship by Sikhs. The main stress under the clause has to be taken by the first part thereof. The appellants have to prove that the institution in suit was established for use by Sikhs for the purpose of public worship. They may prove this by any class of evidence permitted under the Evidence Act, but in order to succeed the evidence which they adduce must prove it, and the circumstance that this institution is an old one does not absolve them from giving suitable and sufficient proof, though it is a fact which has to be taken into account in estimating the evidence. The learned President of the Tribunal did not decide this issue at all. Sirdar Kharak Singh held that the facts of the case and the documentary evidence contained in " the Muafi file " (hereinafter described) conclusively prove that this shrine was established by the command of the tenth Guru for use of the Sikhs inhabitating the locality for the purpose of public worship. He relied also upon the evidence that Sikhs had been the principal donors of lands and of votive offerings and that predominantly Sikhs were worshippers at the shrine. The third member was of opinion that " Udasis are not Sikhs and this dera is not a Sikh gurdwara ". In the High Court this issue was answered in the negative, Johnstone J. saying : " I think that it can be safely held that the dera was not established for use by Sikhs for the purpose of public worship and was not established in memory of any Sikh saint."

No doubt, if it can be accepted as proved that Bhai Prithi founded this shrine in the lifetime of the tenth Guru, Govind Singh (1675-1708) and in consequence of his command or request, the inference would be plain that it was established for use by Sikhs for the purpose of public worship. But such evidence as points in that direction falls very far short of proof. The main evidence consists of statements made in the middle of the 19th century for the purpose of inducing Government to continue a grant of a jagir for the benefit of the shrine. Thus there is the statement in 1866 of Mahant Mehar Das to the effect that " a dera of Bhai Prithi Sahib who was a follower of Guru Govind Singh and a very holy man is situate at Mosa Manak ". The same mahant in another application dated 12th May, 1866, purports to give a history of the shrine and incidental thereto of the Udasi sect. After stating for the benefit of the Deputy Commissioner that the Udasi sect was started by Guru Nanak

(1469-1568, the first of the Ten Gurus) he goes on to give the following story :—

> When Guru Govind Singh, the tenth Guru, went towards Deccan on pilgrimage to Pokhu, Bhai Pirthi Sahib who was a great devotee (of God) met him. Guru Sahib blessed him with the merits of a saint and divine knowledge and sent him to the Punjab. Bhai Pirthi Sahib wrought great miracles. Aurangzeb was the ruler in those days. After his death, Tara (?) Azim, his son, ascended the throne of the Indian Empire. Bahadur Shah, second son of Aurangzeb, sent Nand Lal, his Dewan, to Guru Govind Singh with the prayer that he might get the kingdom. The Guru Sahib permitted him to wage a war and prayed to Almighty God in his favour. The said Tara Azim died in the war and Bahadur Shah became the king. During those days Bhai Pirthi Sahib erected this shrine and having preached Satnam to the people made them his Sikhs and Sewaks. Zabardast Khan (Khan Bahadar) was the Governor of Lahore. One day Bhai Pirthi Sahib was putting up at Lahore with his Sikhs, Dewan Lakhpat and Jaspat who were extremely poor came and sought his blessings. Thereupon Bhai Pirthi Sahib after bestowing his blessings said "I have made you Dewan." Accordingly they became famous Dewans of the kingdom. Under the Orders of Bahadur Shah they built the shrine of pacca masonry The king too had a great regard for the shrine.

References to the tenth Guru as having requested Bhai Prithi to found the dera are also made by a Tehsildar and a Deputy Collector, Canals, but add nothing to the above.

Their Lordships have some sympathy with the members of a religious persuasion who find their traditions, beliefs and practices canvassed in a court of law. That this should be necessary is at any time a misfortune. In the present case, however, it is the policy of the Sikh Gurdwaras Act of 1925 that these matters should be so settled, and their Lordships are glad to observe that the beliefs and traditions have been most patiently enquired into and most carefully discussed by the Courts below. But whatever value can be claimed for the statement made by Mahant Mehar Das in 1866, it is at best poor evidence of the allegation that this shrine was established at the command of Guru Govind Singh, if indeed it is any better evidence of this fact than of the other fact alleged, that Bhai Prithi performed miracles. Not only would it be arbitrary to select this particular allegation for credence : it would be otherwise unreasonable. The tenth Guru Govind Singh may well be thought to have been, of all the religious leaders of the Sikhs, the most hostile to those Hindu notions and practices which the Udasis tended to value. Nevertheless in a country inhabited by Sikhs no religious institution could make a more useful or honourable claim than that it was in some way connected with the great tenth Guru; hence this element in the legendary history of an old institution might very readily arise without historical foundation of any sort. It seems all the more necessary to be

careful that the account given by Mehar Das of the founding of the Udasi sect by Nanak is contrary to what appears, as the Courts below have found, to be the better opinion among historians. The story of Mehar Das that this shrine was founded at the instance of Guru Govind Singh is not said by him or so far as can be seen by anyone to be part of an esoteric oral tradition handed down from mahant to mahant or from guru to chela. Such a case would stand in need of careful proof: yet it is no more than a facile suggestion. The story is not only improbable in itself and easy to account for, but in its particulars it has a special weakness of its own. The learned Judge of the High Court (Johnstone J.) pointed this out:—

> "What has not been explained is this:—Guru Govind Singh was the originator of the Singhs and baptised many followers by the khande ka pahul. Why then should he urge Bhai Prithi to go to the Punjab the home of his Singhs and preach his doctrine? And why if the Bhai agreed to undertake the mission did the Guru not give him the true Sikh baptism?"

Their Lordships have been pressed to say that Udasis are a mere order of Sikh preachers and that there is therefore no improbability in the allegation that the tenth Guru directed Bhai Prithi to establish a shrine for the use of Sikhs without making him a Singh. But even if this reasoning can be considered clear, there is much in the evidence to make it difficult to accept this view of the Udasis. Asceticism is not the only point involved. Indeed the Udasis do not appear to their Lordships to have been a mere order of mendicant preachers among the Sikhs. Nor can it be held proved that they were merely Sikhs who had lapsed into Hindu practices. On the contrary they appear to have a long and independent history as a separate sect or persuasion occupying a position somewhere between the Sikhs and the orthodox Hindus. The differences in belief as well as in practice between Sikhs and Udasis deserve to be described as serious, extensive and inveterate, and some were outwardly striking. So far as the first issue depends upon any claim to have proved that the shrine was established at the instance of the tenth Guru, their Lordships can have no hesitation in holding that the affirmative is not proved.

It remains to see whether the appellants can make out in some other way that the shrine was established for use by Sikhs for the purpose of public worship. It is undoubtedly and admittedly a Udasi shrine and it is not now contended before the Board that at present Udasis could be classed as Sikhs for the purpose of the Sikh Gurdwaras Act, having regard to the definition of the word "Sikh" given therein. All the successors of Bhai Prithi have been, like himself, Udasi sadhs. Can then the appellants make good their case upon the first issue by showing some sufficient degree of probability that this Udasi shrine instituted at the end of the 17th or beginning of the 18th century was established for use by Sikhs? It is on this question that in their Lordships' judgment, issue No. 6 has importance for the present

case. Both the learned President of the tribunal and Johnstone J. in the High Court have given a very careful account of the history of the Sikhs and of the Udasis, with the object of throwing light upon this question. The view of the President of the tribunal was as follows :—

> " I would answer the question whether Udasis are Sikhs under the Sikh Gurdwaras Act in the negative. At the same time the historical beliefs and practices of the Udasis are such that there is nothing inconsistent in their being in charge of a Sikh shrine."

Johnstone J.'s opinion was :—

> " In view of what has been said above, both from the historical aspect of the case and from the observation of outward practices and inward beliefs of Udasis, I would have no hesitation in holding that Udasis are not Sikhs for the purposes of the Sikh Gurdwaras Act."

This learned Judge thought that the inferences to be drawn from history and historical commentators were as follows :—

> " that, although Guru Nanak founded Sikhism as a new religion by sweeping away idolatry and polytheism, Siri Chand, the founder of the Udasis, was himself not a Sikh but a Hindu; (2) that no reconciliation between the Sikhs and the Udasis ever took place; and (3) that the Udasis are in consequence not Sikhs, but schismatics who separated in the earliest days of Sikhism and never merged with the followers of the Gurus."

Having had the advantage of a most careful canvass by the Courts below of the history of the Sikh religion from the time of the first Guru onwards, and of the history of the Udasis from the time of his son Siri Chand, whom the Courts below have held to be the founder of the Udasi sect, their Lordships think it impossible to affirm the proposition that this Udasi shrine was established for use by Sikhs for the purpose of public worship, upon any general ground of probability arising out of the history of these sects or persuasions. It appears to their Lordships to be proved that the teaching of the Sikhs was against asceticism and was inimical to many customary Hindu rites; that their chief form of worship was the reading of poems, exhortations, etc., which, when collected later, became a sacred book called the Granth Sahib; that in the time of the tenth Guru the Sikh became more militant and military than before, the test of a Sikh in the strictest sense being the khande ka pahul, a form of baptism by sweetened water through which a dagger had been passed, after which the Sikh became a Singh. Parallel with the growth of this movement there seems from the time of Siri Chand, Nanak's son, to have been a sect of Udasis who while using the same sacred writings as the Sikhs kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of smadhs or tombs, and continued the Hindu rites concerning birth, marriage, and shradh. In the judgments of the Courts below the history of these two movements has been traced so far as the materials are available for the purpose. Whether or not it is safe to rely upon all that has been said as regards Siri

Chand being superseded by Angad, his father's *chela*, and of Guru Amar Das the third Guru and his hostility to the Udasis, the evidence as a whole bears out the conclusion of the learned Judge in the Lahore High Court that no reconciliation between the Sikhs and the Udasis ever took place; and that the Udasis, so far as the matter can be decided by beliefs and practices, are from the point of view of Sikhs schismatics who separated in the earliest days of the movement and never merged thereafter. Their Lordships are well aware that for the purpose of historical research and criticism upon such subjects the procedure of a Court of law is not ideal; but when they are asked to hold that this institution was established for use by Sikhs, their answer must be that from what the evidence in this case discloses no such probability can be discerned.

Mr. Dunne for the appellants did not challenge the finding of the Courts below that Udasis to-day are not to be classed as Sikhs for the purposes of the Sikh Gurdwaras Act, 1925, and suggested to the Board that much of the history canvassed below was of a speculative and uncertain character. He preferred to base his case on the statements made about the character of the institution in suit in the documents on the " muafi file ". Their Lordships have already disclaimed any belief in the statement that the institution was founded at the command of the tenth Guru, but apart from that matter, they think it right to examine these documents more particularly. The learned President of the tribunal set considerable value on them, though in the High Court they were regarded as unimportant and of small assistance to the appellants. The mahants from 1842 onwards were as follows: Mehar Das, 1842-78, Sobha Ram (1878-1906), Ganga Ram (1906-7), Basant Das (1907-27) and Ram Pershad. In 1855 Mehar Das describes himself as mahant of this institution, his caste as Sadh Udasi and occupation as " reciting of granth ". In 1866 he refers to the institution as a dera, and states that divine worship goes on at all times; that a langar (kitchen) is maintained which feeds fifty or sixty fakirs and also wayfarers; that a muafi of Rs.1,500 was granted by the rulers who preceded the British, and that the British granted one of Rs.1,200 recorded in the name of Mehar Das himself. He is naturally anxious to impress the authorities that the dera is well known throughout the country and repeats himself to that effect. He says that besides the income from the jagir the mahant also uses money received from the " sewaks " for the langar and that he himself renders services. Of the muafi his account is that the Emperor Bahadur Shah and Maharajah Ranjit Singh had a great regard for the shrine, the former erecting the masonry building and granting four villages for the maintenance of the langar; and that the latter continued the muafi with additions. These statements are made in the

course of an application to have the muafi made permanent and not merely for the mahant's life. The Tehsildar who had to report thereon repeats in brief both the history and the verifiable particulars as to the Sadhs, and fakirs at the langar, but his report has the formal heading " Case No. 29 relating to Gurdwara Manak ".

In 1880 Sobha Ram became mahant. Under the same heading a statement is recorded in which he asks for the muafi to be continued to him. He has been appointed, he says, with the consent of the other mahants of the Udasi sect. In the body of this statement the institution is called Gurdwara, but otherwise the statements in it are very much the same as were made by Mehar Das in 1866. The extra expenses, beyond the jagir income, are met out of money received from the " Sikhs and Sewaks." The lambardars who add their statement also use the word Gurdwara. They give the new mahant a good character and add certain new statements—that this shrine is like the Gurdwara of Bhai Phiru, and that the Gurdwara is of all the Sikhs of the Sindhu tribe. In 1891 the same mahant, describing himself as Sadh Udasi, and by occupation fakir, has again occasion to make an application for continuance of the muafi to meet the expenses of the langar and the fair held on the Maghi day. The lambardars again corroborate, saying that the Sikh Sewaks have a regard for and show reverence to the dera. Save in the formal heading the word used is dera throughout. The Tehsildar who reported on the application does not apparently use the word Gurdwara, but says :—

> " The spot was inspected. Enquiry was also made from the Sardars who said that the Dharamsala is maintained and that the temple and Samadhs were in flourishing condition. The muafidar renders services. The Fakirs are supplied with food. The Jagirdar bears a good character. The Granth is also recited."

In 1905 the chit or testimonial given in writing by the Deputy Collector, Canals (24th January, 1903), is really a statement by Sobha Ram himself : it pictures him as an able mahant who besides performing Puja Path feeds the poor, etc., and preaches to the people to do good deeds. " The Jats of the neighbouring places have a great faith in this Guddi. A big fair is held in this Gurdwara on the Maghi day. Sikhs of distant places attend the fair and stay here for a week. They are well attended to." etc. In June, 1905, Sobha Ram makes his will. He refers to the institution as Dera, and says that the Dera Manak is known as Adigranthian, and appoints his chela, Ganga Ram, to succeed him. He charges Ganga Ram to perform his funeral ceremonies including the taking of his ashes to the Ganges in accordance with the practice of Bhekh Sadh Udasis. The Bhekhs of other Udasi Deras are to have power to interfere in case of mismanagement by Ganga Ram. " He should continue to defray expenses, etc., *bona fide* and give food to Sadhs and Fakirs as before, get Granth Sahib read in the Dera and continue the Langar as before."

This brings the matter down to 1913, when Basant Das became mahant. He was in charge when in 1921 the Akalis took forcible possession and he was the defendant in the suit of 1st December, 1921, out of which the first of the present appeals arose. There are more reasons than one which make it unprofitable to discuss his statements, of which a number are on the record, but the chief reason of all is that if and in so far as it can be shown that his language or practice was more " Sikh " than that of his predecessors, the result is only to show how rash it would be to argue from his statements to the intention of 1700 or thereabouts when the institution was established. Their Lordships would, however, complete the picture given of the institution between 1853 and 1913 by adding that they think it unreasonable to doubt that orthodox Sikhs have made grants of land to the institution and that the Tribunal's inspection of the buildings shows the tomb of the founder as a central object and a quotation from the Granth Sahib over the door of the chief building.

The case made for the appellants being that Bhai Prithi founded this shrine at or about the beginning of the eighteenth century, their Lordships, who see no reason in the evidence to doubt this allegation but who are satisfied that Bhai Prithi was a Udasi, have to see whether the statements which have been described afford ground for the inference that the Udasi Sadhu established the institution for use by Sikhs for the purpose of public worship. It is not in dispute that Udasis practise the reading of Granth in their shrines: it is said that they keep, use and even reverence the book, though they do not worship it, their principal worship being directed to the Gola Sahib or ball of ashes. The statement of 1905 in the will of Mahant Sobha Ram that " the Dera Manak is known as Adigranthian " would appear to mean that the older or original book the Adi-Granth is read and not the newer additional book of the Tenth Guru, a circumstance which is of no assistance to the appellants. It is clear enough from the documents that the shrine having been favoured by the rulers with an endowment at some early stage in its history, was able to maintain for many years a kitchen or langar for fakirs and wayfarers and for those attending the Maghi fair. By the middle of the nineteenth century it had a considerable hold on the Sikhs of the neighbourhood and a reputation among those even at a distance. The goodwill of the lambardars and petty Government officials is apparent and they assist the mahant from time to time to impress upon Government the shrine's antiquity, its connection with great personages in the past, the ancient standing of its endowment, the good work it does by its langar and the good character and attention to duty of its mahant.

Comment has been made that the only references to worship are to the reading of Granth, but these are

directed to showing the diligence and worthiness of the applicant. Before inferences can be drawn from the absence of any reference to other forms of worship, one must remember that they might well have seemed both unnecessary and tactless when the backing of Sikh officials and persons of local influence was being sought. The word Gurdwara though not uniformly applied, has been stressed as showing that the shrine was being treated as a Sikh foundation. But this word would tend in time to be applied to any shrine in which the Granth Sahib was kept and reverenced. The mahants more frequently use the word dera but they were not always concerned to avoid Gurdwara. Sikhs would naturally use it. Government officials and others could hardly be expected to have in mind the difference between worshipping the Granth Sahib as an embodiment of the Ten Gurus and reverencing it in some other sense. The heading " Case No. 29 relating to Gurdwara Manak " for which the mahants are not responsible would have its effect upon their language. Lambardars seem in some cases to be anxious to claim it as in some sense belonging to the Jat Sikhs or the Sindhu class thereof, but this is doubtless only a description of the chief population of the neighbourhood. The Udasi aspects of the shrine are from time to time in evidence—the care for fakirs and Sadhus, the reverence done to tombs, the funeral rites of Sobha Ram, and the reference in certain circumstances to the Bhekh or committee of other Udasi mahants. Their Lordships, in agreement with the High Court, consider that for the purpose of ascertaining whether in or about 1700 Bhai Prithi established the shrine for the use of Sikhs, no great stress can be laid upon the language of these documents. Moreover they disclose no facts which are not readily accounted for by the circumstances of the shrine in times long subsequent to its foundation and the intervening history of the surrounding country, without recourse to the hypothesis that an admittedly Udasi shrine was intended originally for the use of Sikhs for the purpose of public worship. Before drawing such an inference it would be necessary that reliable and particular information should be before their Lordships as to the relations between the two sects at or about 1700 A.D. and the circumstances of the locality and its population at the time. Even then real knowledge of the life history and opinions of the individual founder—as distinct from sketchy supposition—would probably be necessary to guide the inference and govern the probability of the conclusion. Their Lordships cannot in such a matter be satisfied with the proof offered. On the first issue therefore the appellants cannot succeed.

Their Lordships will humbly advise His Majesty that all three appeals should be dismissed with costs.

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In the Privy Council.

HEM SINGH AND OTHERS

v.

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SHIROMANI GURDWARA PARBANDHAK COMMITTEE

v.

RAM PARSHAD AND OTHERS

SAME

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FAUJU RAM AND OTHERS

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