

JUDGING CONVERSION TO ZOROASTRIANISM

Behind the scenes of the Parsi Panchayat
case (1908)

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In the 89th *quartier* of Paris's Père Lachaise cemetery lies the grave of a French woman who tried to become a Parsi and failed.¹ It is testament to Sooni Tata's 1908 defeat in the Bombay High Court. Had Mrs Tata's side won, her body could have been left in Bombay's *dokhmas* or towers of silence to be exposed to vultures according to traditional Zoroastrian death rites. In 1903, Suzanne Brière married into the Tata family, the Parsi 'royalty' of mercantile-industrial Bombay (see Lala 1992: 8–9). Immediately before, she tried to convert to Zoroastrianism by undergoing the *naujote* or initiation ceremony. Whether conversion to Zoroastrianism was permitted was in dispute. For orthodox Parsis, being born into the community was a prerequisite for initiation. For reformists, birth was just one possible route into the Parsi community. The other was conversion. Dinshaw Davar, the first Parsi judge of the Bombay High Court, and Frank Beaman, a blind British judge, ruled against Mrs. Tata (Figure 9.1). Rather than declaring conversion itself impermissible, they held that *juddins* or non-Parsis were excluded from enjoying the benefit of Parsi trusts, the legal instrument governing Zoroastrian religious properties and funds.

This chapter goes behind the colonial bench to offer new insights into *Petit v Jijibhai*, informally known as the Parsi Panchayat case. It provides a full account of the judicial dynamics at play – ethnic, personal, and professional – between the two individuals who decided the case. The case is generally taken to stand for the rejection of *juddin* admission into the Parsi Zoroastrian community, although a debate rages over whether the judges' comments on conversion were *obiter dicta* (of no precedential value) because the aspiring converts were not parties to the case (see Stausberg 2002: 56–7).² New archival sources from the Bombay High Court emphasize the contingency of this

witness, among others, the Ripon Memorial Fund— which he helped to carry through with conspicuous success.

In early life, working in concert with Mandlik, Sorabjee Bengalee, and Nowrosjee Furdoonjee, Sir Harkissondas gave promise of future usefulness; after the manner and with the independence of those immortal friends of the people. But the magnetism of empty titles proved irresistible, and he gradually subsided into the shrewd and calculating man of the world with an eye to number one.

It must be admitted, however, that in his own way and according to his lights, our late colleague was a highly useful citizen, useful to his own community to whom he rendered some very valuable services in social matters, and to the public by acts of munificence, such as the establishment of the *Narajpada Lunatic Asylum* with which much-needed institution his name will remain associated in local history. He was a man of unbounded energy, and as Sir Leo rightly observed, we all thought from the activity he showed that he was going to live very long, but we have *no voice against Providence*.

Another death had occurred about the same time, only passingly alluded to by one of the speakers to the last named resolution, because the event did not directly concern us; the deceased gentleman not having been a member of our body, though filling in life a conspicuous place in the larger outside world of which we form but an insignificant part. I refer to Mr. Virohand Deepchand, C. I. E., a highly respected Jain, honoured and esteemed not only by his own community but by all Bombay and Ahmedabad besides, a successful merchant and mil owner, General Secretary of the Swatanter Conference, a large-hearted, liberal-minded man, a true and earnest reformer in sympathy with the people and with important public movements, and one who took an active, though unostentatious and quiet interest in all the important social, educational, and political problems of his time. Mr. Virchaud was a useful citizen whose death is a distinct loss to this city and to the land of his birth.

Monday, 23rd November—We finished malaria today, though not in the sense desired by sufferers from its ravages. After having unsuccessfully medicated it at three sittings with hot words, we have simply handed it over, bound hand and foot, to Government, to be dealt with according to its deserts, and Government, in turn, are going to transfer it to a committee.

Breath wasted! If Government had but communicated their intention earlier, we should not have opened our mouths at all. As it is, we have simply exhausted ourselves in the vain attempt to talk down malaria.

But better late than never. For mere words never could have brought about a tangible result, and probably we would not have gone beyond words. Here was a good opening, therefore, to retire with

SIFTING!



[Justices Daver and Beaman delivered their judgment on Friday last (27th Nov.) in the famous Parsi Juddin Case. They have found that the defendants—the Trustees of the Parsi Panchayat Funds—were not validly appointed trustees; that the Trust Deed of 1884 was invalid so far as the power of appointing successors which the Deed purported to confer on the Trustees was concerned; the Court however would appoint them, together with the present Sir Jamsetjee, Trustees for life; the Court dismissed the suit so far as it sought relief on all points relating to the conversion of Juddins and their right to participate in the charitable funds and institutions in the possession and under the management of the defendants.]

मेढो ने शुबु खालवा प्हेरेली आर्धव्या.
[शुबु माटे लुम्बा भील तरके.]

व्येसं रोळनी कुं करवे लतनां मधुअंक तथा संगीतना वाळंत्रेना! ह्रींइस्तानभां सरवेणी
कोट, सुंअध. उदम पेहेरी.

Figure 9.1 'Sifting!'

Source: *Hindi Punch* (29 November 1908), 14.

final outcome. Drawing upon *Petit v Jijibhai*'s unpublished case papers and the judgment notebooks of Davar and Beaman, I show that the two judges were initially in favour of permitting limited conversion, that the position of Davar and the leading expert witness, J. J. Modi, turned against *juddin* admission in the final month of proceedings, and that ultimately Beaman also yielded to their view. Beaman's judgment notebook is particularly revealing because, until now, the only information available on witness testimony consisted of a few references in the published judgments. Beaman's notebook documents the cross-examination of Modi in great detail, along with Beaman's own reactions to Modi's testimony. His notes do not explain why Davar and Modi changed their position midway through the proceedings, but the informal influence of the Bombay solicitor and orthodox orator, J. J. Vimadalal, seems likely. The refusal of the defendants' lawyer to accept a compromise earlier during proceedings was also an important precondition for the final outcome of the case. By filling in the details of who these two judges were and how they interacted, I aim to historicize two judicial texts that have acquired pre-eminent status – both famously and infamously – in the Parsi community over the past century. *Petit v Jijibhai* was as much a story about personalities as about principles.

A number of scholars have analysed the case (although see Kulke 1974: 47). Tanya Luhrmann misreads the case as a reformists' victory, taking the case as authority that Parsi men who married out of the community could have their children recognized as Parsis, following proper initiation (Luhrmann 1996: 163–5). The case was not in fact about the status of offspring of mixed parentage. The issue was whether a *juddin* who converted to Zoroastrianism could enjoy the benefits of Parsi funds and facilities. The court ruled that she could not. Rashna Writer, Jesse Palsetia, Michael Stausberg and John Hinnells offer more careful readings of the case as an orthodox victory (Writer 1994: 129–48; Palsetia 2001: 228–51; Stausberg 2002: 53–7; Hinnells 2005: 118–20). They untangle the knot of public meetings, petitions, and published judgments that the *juddin* controversy produced. Because the existing scholarship does not rely upon unpublished court records, though, it reports on the final outcome of the case, rather than on what happened in the courtroom *en route*. This chapter tells that story.

The judges and the case

Frank Beaman and Dinshaw Davar arrived on the Bombay High Court bench by opposite routes. Frank Clement Offley Beaman (1858–1928) came to India as a covenanted member of the Indian Civil Service (ICS) at the age of 21 in 1879, having completed undergraduate studies at The Queen's College, Oxford. His father was Arderne Hulme Beaman, a Surgeon General in the army stationed at Hoshangabad in India ('Obituary: Beaman' 1928: 14; Foster 1968). His mother was a member of the illustrious Gompertz

family of Jewish converts to Anglicanism.³ From 1883 on, Beaman served in the judicial wing of the ICS. He began his judicial career in Gujarat, and spent the next 14 years there, and in princely Kathiawad and Baroda as an assistant collector, magistrate and sessions judge (Beaman 1925a). Beaman became a High Court judge in 1907 (Figure 9.2). Although members of the covenanted ICS enjoyed status and privilege generally, the judicial wing had long been the poor cousin of the revenue branch (Candy 1911: 472).⁴ Similarly, judges in the High Court who came through the ICS were considered second-class. This put Beaman in a doubly inferior position. Judges trained as barristers at the Inns of Court in London viewed ICS or ‘civilian’ judges with wariness on account of their lack of formal legal education: they were not actually lawyers by training. On the other hand, ICS judges could usually boast a greater knowledge of Indian languages and customs than their barrister colleagues (‘Judicial Administration’ 1914: 16; Vachha 1962: 59–65). Beaman learned his trade through years of experience at the middling levels in the *mofussil* or provinces, which were notorious for low-quality legal work (see Strangman 1931: 53).⁵ At his death, colleagues agreed that he was a remarkably able judge, particularly given his ‘civilian’ background (‘Ex-Bombay Judge’ 1928: 11). Magnifying this achievement was the fact that Beaman went blind over the course of his judicial career.⁶ He hired readers and learned to take notes on a typewriter in court (see Kamath 1989: 38–62). Beaman was a theosophist and a freemason, and published conservative articles extrajudicially that attracted public criticism – for defending the caste system and opposing women’s emancipation [see Figure 9.5; ‘(Bea-)man’

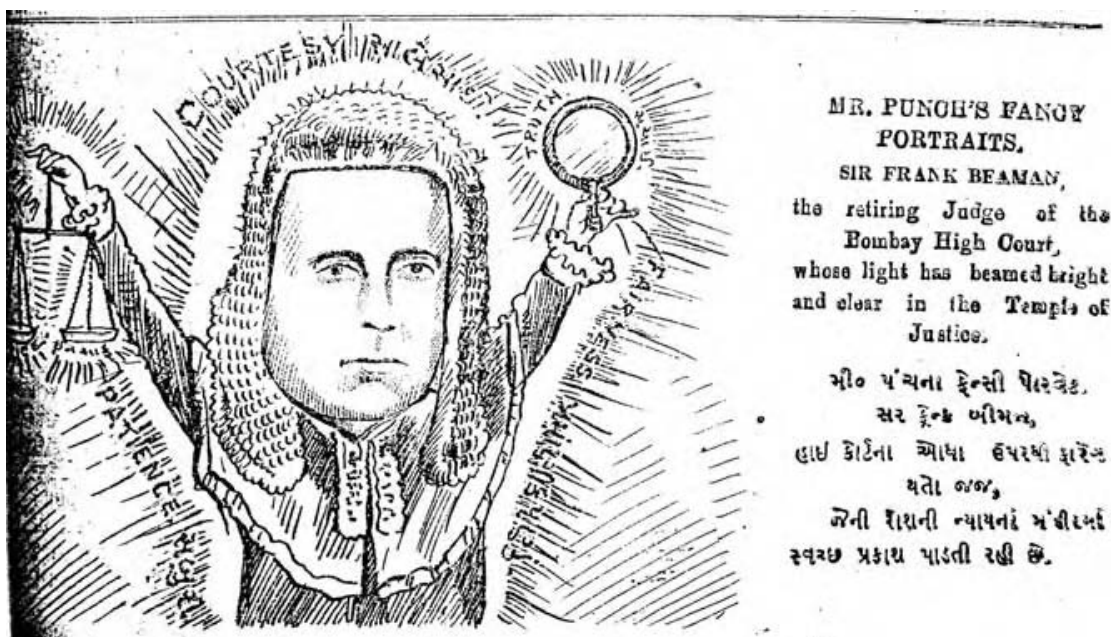


Figure 9.2 ‘Mr Punch’s Fancy Portraits: Sir Frank Beaman’.

Source: *Hindi Punch* (27 October 1918), 21.

1908: 10; also ‘Obituary: Beaman’ 1928: 14; Beaman 1890].⁷ He died in 1928 after diving into an empty swimming pool at his Swiss villa.⁸

Dinsha Dhanjibhai Davar (1856–1916) arrived at the High Court with the more prestigious pedigree of a London-trained barrister. He was the only son in a wealthy family of the priestly class (‘Justice Davar’s Death’ 1916: 8). After studying at Elphinstone College in Bombay, Davar went to London in 1877 where he joined Middle Temple. He was called to the Bar in 1880. Davar returned to Bombay in the same year and was admitted as an advocate of the Bombay High Court. He built up a successful practice in the Small Causes Court and Police Court, where he excelled at cross-examination (see Davar 1911: 31–3). On 27 October 1906, Dinshaw Davar was made a judge of the Bombay High Court, the first Parsi appointed to the post (‘First Parsi Judge’ 1906: 9). His appointment would have huge ramifications for the Parsi community’s relationship with colonial law. It was Davar who decided most major Parsi cases originating in the city of Bombay during his decade on the bench.⁹ He also famously sentenced the nationalist hero Bal Gangadhar Tilak to six years’ rigorous imprisonment for sedition (untitled *Mahratta* article 1914: 205; ‘On the release’ 1914: 193–41; Vachha 1962: v, 93, 262–72; Chicherov 1966: 545–626). Davar campaigned for equal rights for Indian advocates (Davar 1911: 36; Darukhanawala 1939: 150). In 1914, he became the first Parsi to serve as Acting Chief Justice. Davar remained a High Court judge until his death in 1916, which struck before he could testify in the case deemed a Rangoon sequel to *Petit v Jijibhai*, the Privy Council appeal of *Saklat v Bella* (see Sharafi 2006).

Petit v Jijibhai was originally meant to be heard by Davar alone. At first, he refused to take the case on ethical grounds: he had advised the defendants as a lawyer a few years earlier.¹⁰ But even the plaintiffs insisted that he hear the case. Finally, convinced that there were new issues involved, Davar accepted, provided that another judge be brought in to hear the case with him, forming a ‘special bench’. Beaman was the Chief Justice’s addition.¹¹

The chain of protests, petitions and meetings leading up to the litigation has been documented by the existing scholarship. In court, the defendants argued that although Zoroastrian scripture permitted and even encouraged conversion, the Parsis had not accepted converts since their arrival in India from Persia in the eighth century. Convention trumped text. According to Davar, the point was moot because even if conversion were allowed, Parsi religious trusts were framed for the benefit of Parsis only. It was Davar’s judgment that established that the term *Parsi* referred to an ethnic category and *Zoroastrian* to a religious one. In Beaman’s view, the Parsi community had metamorphosed into a caste. The Parsis had adopted the institution after living amongst Hindus for over a millennium, and one could only enter a caste by being born into it. Together, the judgments of Davar and Beaman prohibited Mrs Tata from entering Zoroastrian fire temples, benefiting from Parsi charitable funds, and having her body consigned to the *dokhmas*. Even

if Mrs Tata may have been able to convert to Zoroastrianism – a point left technically unresolved by the judgments – she could never avail herself of the ritual, material and social benefits that came with membership of the Parsi Zoroastrian community.

Converting the bench

Hearings lasted just over nine weeks – from 7 February until 13 April 1908 (Figure 9.3). For at least the first month, both Davar and Beaman urged the parties to come to an out-of-court settlement allowing conversion under

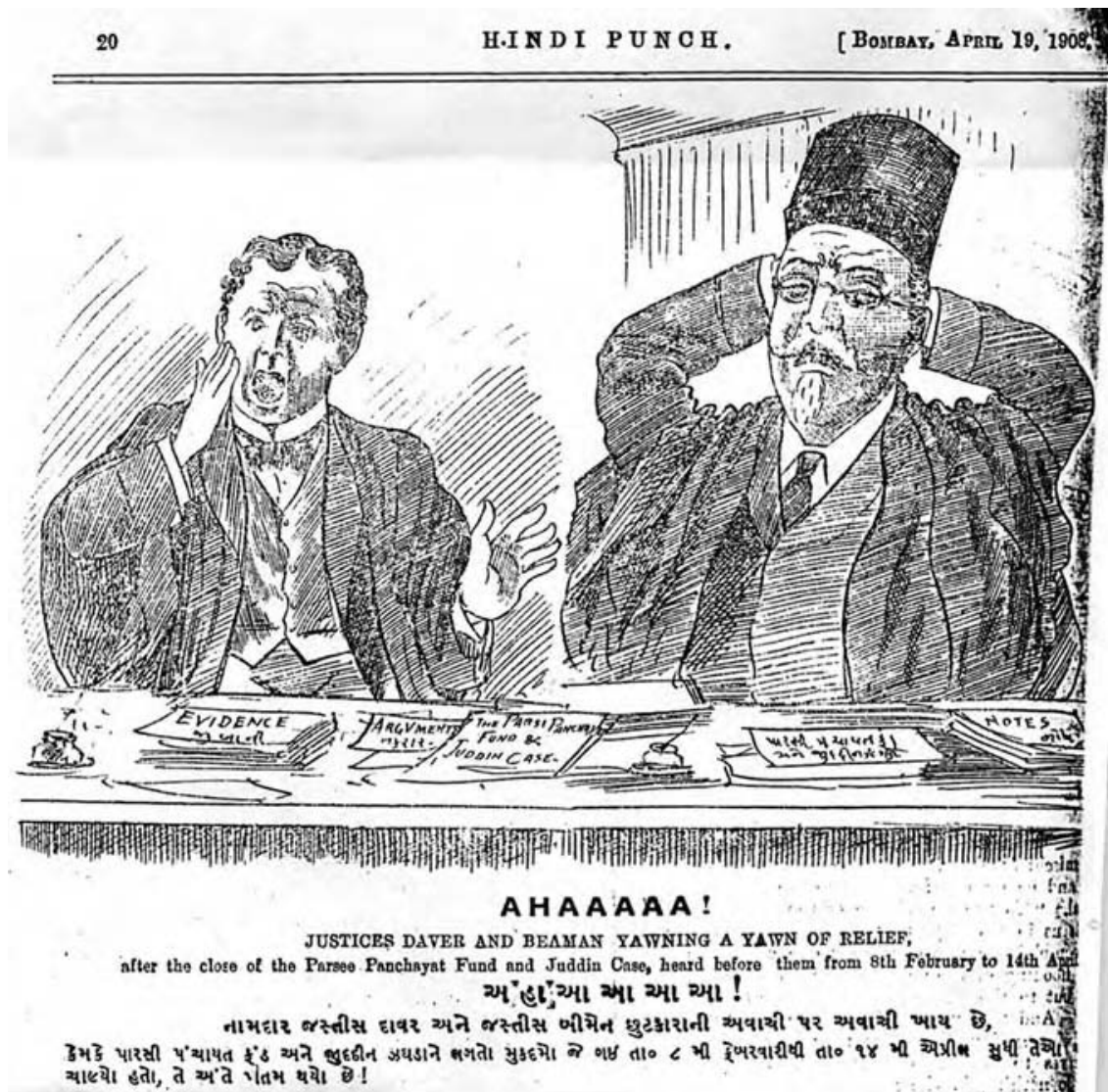


Figure 9.3 ‘Ahaaaaa! Justices Davar and Beaman Yawning a Yawn of Relief after the close of the Parsi Panchayat Fund and Juddin case, heard before them from 8th February to 14th April.’

Source: Hindi Punch (19 April 1908), 20.

limited circumstances. On 7 March 1908, the judges stated that they ‘might declare that the Zoroastrian religion permits conversions, but that the community (in a manner to be settled, if necessary, after further discussion) should regulate conversion by framing rules to safeguard it against abuse’ (‘Bombay Parsi Case’ 1908: 10). The defendants’ advocate, Thomas Strangman, noted in his memoirs that Davar and Beaman pressured him to recognize Mrs Tata’s conversion. They even supplied the parties with the terms of a proposed settlement. Strangman advised his clients to reject the offer – he considered it even more advantageous to Mrs Tata’s side than what her own lawyers were requesting. As a result, he was ‘subject to severe heckling by the Bench’. He consulted his senior, J. D. Inverarity, the Scottish star of the bar who was engaged with another suit during *Petit*. Inverarity advised Strangman to continue resisting the judges (Strangman 1931: 33).

Between 7 March and the close of hearings on 13 April, Davar changed his mind about conversion. Between 13 April and the delivery of the court’s decision seven months later, on 27 November 1908, Beaman also adopted an anti-conversion stance. But his acceptance of Davar’s view was half-hearted. Beaman’s reservations surface in his judgment notebook, particularly in his notes to himself. Beaman’s notes on the cross-examination of the leading expert witness, J. J. Modi, reveal details that have remained unknown since the trial took place: the notes have never before been examined. They also highlight points at which Beaman disagreed with Davar, the most important of which relate to Modi. In court, Modi adopted an anti-conversion position in opposition to his earlier published works and to the Parsi Panchayat’s sub-committee report. The report, overseen by Modi, had favoured limited conversion. Whereas Beaman perceived Modi to have lost all credibility by his ideological U-turn, Davar adopted Modi’s new reasoning enthusiastically during the last month of proceedings.

The scholar-priest J. J. Modi was the leading Parsi expert witness of the early twentieth century (Figure 9.4).¹² He was the most prolific author on Parsi and Zoroastrian topics of the late colonial period. Modi was secretary of the Parsi Panchayat. According to the plaint, he was in virtually complete control of Parsi Panchayat funds and properties.¹³ He had been a member of the expert committee appointed by the Panchayat to advise on the issue of *juddin* conversion. In fact, he drafted the committee’s report (Beaman 1908: 46).

Davar mentioned Modi only sparingly in his judgment. However, Modi was the hidden motor behind Davar’s ruling, an unsurprising line of influence given that both men were religiously orthodox. Davar adopted the *Parsi–Zoroastrian* distinction from Modi (Beaman 1908: 51). He also borrowed the ‘floodgates’ argument: if converts were accepted, the lower castes would rush in to deplete Parsi wealth (Beaman 1908: 53).

Beaman disliked Modi intensely. In his published opinion, the judge

case judgment, discussions of Modi have been strangely silent on the episode (see Godrej 2002: 652; JamaspAsa 2002: 406).¹⁴

Three contradictions in Modi's testimony irked the blind judge. The first related to the fact that Modi had written the opinion of the Parsi Panchayat's sub-committee of experts. The report's conclusion was that Zoroastrianism permitted conversion: in court, Modi took the opposite position. In the report, he accepted conversion on theological grounds: when testifying, he rejected it on social ones. If converts were allowed, large numbers of lower caste opportunists might convert, draining Parsi resources (Beaman 1908: 53). Furthermore, allowing conversion would encourage Parsi men to marry out, creating a shortage of Parsi husbands for the young women in the community (Beaman 1908: 53; 'Materfamilias' 1908: 12). Another exchange with Lowndes, counsel for the plaintiffs, proceeded as follows (see Vachha 1962: 144–5; Kamath 1989: 44–5):

A. I am a religious man. In conflicts between the world and Religion, of course Religion prevails.

Q. If Religion told you to do one thing and the voice of the community another, which would you, do?

A. I would obey my Religion.

(Beaman 1908: 44)

And yet his contradiction of the report's conclusion was precisely on social, not religious, grounds. In Modi's own words,

I think that Religion in a sense should give way to social considerations. I don't think it advisable to take in alien converts in any circumstances whatever. I have thought long over the question. . . . I drafted that [report of the expert committee] myself. I signed it. I published it to the world. I have changed my opinion since drafting that and publishing it . . . I have not published any recantation. I have not recanted. I had not then to consider the social side of the question.

(Beaman 1908: 47–8)

Beaman was unimpressed.

The second contradiction involved historical cases of alleged conversion. Three Hindu pandits were said to have converted to Zoroastrianism 1,200 years earlier. Their names appeared in the Zoroastrian prayer, the *Dhup Nirang*. Lowndes, counsel for the plaintiffs, argued that '[t]ill he went into the box Modi had never doubted that the Pandits were converts from Hinduism' (Beaman 1908: 64). In court, Modi changed his view. First, he suggested that they were in fact Parsis from the beginning. He referred to a Gujarati book in which a Parsi named Dastur Edalji was spoken of as 'pandit', reprinting a newspaper article from the Parsi paper, *Jam-e Jamshed*, of 60 years earlier. 'The statement is that Edalji was a Pandit of the Pehlvi and Avesta language.

That makes me think it likely that the expressions in the Dhup Nirang refer to learned Parsis not to Hindus' (Beaman 1908: 44). The following day, though, Modi argued that the pandits were originally Hindus and remained so, their names appearing in Parsi prayers only because they were good men (Beaman 1908: 43, 53, 64). Davar accepted this explanation (*Judgments* 2005: 85). For Beaman, Modi's shift of argument meant a loss of credibility. The pandit issue only convinced Beaman that Modi's mind 'was so obsessed by the cause he had at heart, that he was utterly incapable of reasoning or even thinking correctly' (*Judgments* 2005: 172).

Modi's third contradiction concerned the alleged conversion of the Mughal emperor, Akbar. Beaman noted that Modi wrote 'an elaborate treatise, or, one might say, almost a book, to prove that the priests of Navsari were fairly entitled to the credit of having converted the Emperor Akbar' (*Judgments* 2005: 173). A scholarly debate ensued, eliciting interest as far away as England and France.¹⁵ The question was whether it was a Parsi or an Iranian Zoroastrian who deserved the credit for Akbar's religious re-orientation. Akbar was famous for inviting authorities from all religions to his court to debate the merits of each religion. A Parsi from Navsari, Dasturji Meherji Rana, attended, and Modi argued that it was he, rather than the Iranian Zoroastrian Ardeshir of Kerman, who influenced Akbar. But did Akbar convert? Modi's book was ambiguous. In Modi's own words, the question was: '[w]ho were the Zoroastrians that went to the Court of Akbar and influenced him, to a small or great extent, towards Zoroastrian forms of worship, ritual and festivals?' (Modi 1903: 3; italics added). Beaman was convinced that Modi's book claimed Akbar had converted, a view taken by historian Delphine Menant, who sent Modi a key source for his Akbar project (see Menant 1903: 38–9; although compare 'Social Evolution' 1922: 351 at note 106). In cross-examination, Modi disagreed:

It is not my opinion that Akbar was a convert to Zoroastrianism. That never was my opinion . . . When I used there the word 'influenced' I did not mean attempted to convert. It is correct that Akbar openly adopted some of the Parsi forms of worship. I think that was in consequence of the influence of the Naosari Parsi . . . It is not correct that Akbar was invested with the sacred shirt and thread.

(Beaman 1908: 54, 51)

The plaintiffs' advocate was critical of Modi:

Next Modi has to give up his most cherished tradition, the conversion of Akbar. He has written a book to prove it, and that he was so converted by a Naosari Parsi, and not by the Persian Zoroastrian Ardeshir. However Modi may now try to wriggle out of the plain meaning of his own words, the fact remains that he does

tell of a Naosari Parsi going up to TRY to convert Akbar, and how could that be if conversion had gone out of practice for 1200 years.

(Beaman 1908: 64)

Beaman agreed.

On several occasions, Beaman noted that he was not writing down everything Modi said because so much was irrelevant. While Modi was discussing the view of the *rivayats* on burial and exposure, Beaman wrote, '(I omit here notes of a good deal of unimportant and rather irrelevant talk. F. B.)' (Beaman 1908: 48). Not long after, he noted again, '(more fencing on the part of the witness as to whether in those days the Zoroastrians would have allowed converts to be exposed on their towers. It is useless to take down all he says. F. B.)' (Beaman 1908: 48). While Modi explained a point relating to his book on Akbar, Beaman commented, '([g]ives reasons for not believing the correctness of the statement [in] the Gazetteer, that the Parsis forgot whence they came etc. Not worth recording)' (Beaman 1908: 54).

At other times, Beaman noted that Modi contradicted himself and was visibly uncomfortable. On one occasion, Modi stated that he had never heard of any non-Parsis aside from Mrs Tata and the lesser-known aspiring convert in the case, a Rajput woman, being invested with *sudreh* and *kusti*.¹⁶ Beaman noted to himself: '(It appears to me all through this part of his evidence and indeed all through his cross examination this witness has prevaricated and fenced and shown such strong bias, that his evidence is virtually worthless, except where admissions are wrung out of him. F.C.O.B.)' (Beaman 1908: 45). At another point, Modi was asked for his opinion of Mrs Tata's *naujote* at the time of the ceremony. Initially he said that he opposed it, but then a letter he wrote several hours before the *naujote* was produced. In it, he accepted the initiation of *juddins* provided there were certain safeguards.¹⁷ Modi responded that he accepted *juddin naujotes* provided that no harm was done to the community. But harm would by definition be caused to the community, by his own account. During this exchange, Beaman remarked to himself: '(the witness now begins to fence and [tries] to get out of the difficulty)' (Beaman 1908: 50).

Differences of opinion between Davar and Beaman were obvious from Beaman's asides. On several occasions, Beaman wanted to exclude portions of Modi's evidence but was forced to admit them out of respect for Davar, who wanted them included. When Modi was about to list the social reasons why conversion ought to be forbidden, Beaman wrote, '(what follows is in my opinion quite irrelevant, but my learned Colleague thinks it might be remotely so, so of course the evidence must be taken. F. B.)' (Beaman 1908: 53). When Modi was asked about the community's view of conversion, Beaman again disapproved and lost: '(this was again objected to, and although I am of opinion that it ought not to be put, my learned Colleague thinks it

may be relevant, so it is put regardless of what if any weight may be given to the answer. FB)' (Beaman 1908: 54).

It seems that Modi and Davar changed their view of conversion, and left Beaman in favour of limited conversion until he too reluctantly came around. What happened? The legal record offers no clues. But external evidence makes the intervention of a Parsi solicitor named J. J. Vimadalal plausible. Vimadalal was a charismatic and influential figure in late colonial Bombay. 'The leader of the orthodox section of the community' and 'the last of the great Parsi orators', he was known for the 'clear, placid, mellow splendor' of his public speaking, and for his leadership in orthodox as well as theosophical and mystical *khshnoomist* circles (Patel 1937: 137). By one account, Vimadalal acted as a 'mighty brake on the headlong course of go-ahead reformers' who would otherwise have led the community 'into the vortex of destruction' (*Shet Jehangir Vimadalal Yadgari Granth* in Kulke 1974: 103 at note 47). He also took a lead in the creation and administration of a number of Parsi housing societies, the Athornan Mandal (a society for the education and well-being of the priesthood), the Zoroastrian Physical Culture and Health League, and the Jashan Committee, which worked to provide religious education for Parsi children ('Obituary: Vimadalal' 1931: 19). Vimadalal was a founder of the Iran League, a body that strengthened ties between Bombay Parsis and Zoroastrians in Iran through charitable projects. He was also a prominent eugenicist. The Bombay solicitor adapted the Euro-American race theory that enjoyed worldwide favour until the Second World War to a South Asian and Parsi context (see Sharafi 2006: 328–41). Vimadalal published two works against intermarriage, the first of which was a series of letters in the *Oriental Review* responding directly to *Petit v Jijibhai* (*Mr. Vimadalal* 1910; Vimadalal 1922). Although the details of the meeting went unrecorded, it is known that Davar and Beaman consulted Vimadalal during *Petit* (Patel 1937: 140). Vimadalal was a constant presence in a number of other lawsuits involving Parsis during the same period. He and Davar knew each other well through these interactions, and were two of the most powerful Parsi legal minds of their time.¹⁸

A united front?

Beaman yielded to Davar because he was the weaker judge in several ways. The *Times of India's* obituary of Beaman noted his submissiveness:

after having taken throughout a strong line in favour of recognising the rights of converts to Zoroastrianism, at the end he somewhat weakly gave in to his more practical and masterful colleague, and became party to a monumental judgment which has been freely criticised.

(‘Ex-Bombay Judge’ 1928: 11)

Beaman himself opened his judgment by describing the shift in his position:

When I left India, in April, I did not feel prepared to adopt, in their entirety, what I then understood to be my brother Davar's reasoning and conclusions . . . But it was also understood that, in the time which must elapse before we could meet and deliver Judgment, we would give unremitting attention to the principal points and to each other's views upon them, so that, if possible, we might, after all, avoid the necessity of any difference of opinion, if possible, even of pronouncing separate Judgments . . . I have carefully studied the elaborate second part of Davar J's Judgment; and while I am doubtful still whether we look at all parts of the complicated question eye to eye, it is a source of great satisfaction to me that I am able to agree with the main conclusion.

(*Petit* 1909: 558–9)

A popular Parsi song by the early twentieth-century satirist Dr Jehangir Wadia made the point more bluntly: '*Justice Davar betha chukado karva ne sathe betha Beaman ha ji ha dhunva*' ('Justice Davar sat to do justice and beside him sat Beaman to chant, "Yes Sir!"') (see Bana 2005).¹⁹ The advocate P. B. Vachha reported that Davar occasionally let personal prejudice colour professional opinion (Vachha 1962: 91). At Davar's death, one obituary noted that he never hesitated to speak his mind without restraint 'when a stronger judge would have found virtue in discreet silence' ('Justice Davar's Death' 1916: 8). On one occasion, counsel described a client as being of respectable social standing. Instead of considering only the admissible evidence, Davar exploded, '[r]espectable man of high position! You think I do not know him? Ask him if he was not a hack Victoria driver only a short while ago!' (Vachha 1962: 91 at note 6). His extrajudicial behaviour during *Petit* was another case in point. Popular memory has it that, returning home after the hearings every evening, Davar would take the long route home in order to wave to crowds of orthodox Parsis who lined the streets outside Allbless Bagh, a Parsi meeting place, in his honour.²⁰ One Parsi biographical dictionary reported that Davar was proclaimed 'the saviour of Zoroastrianism' by the orthodox section of the community for his 1908 decision (Darukhanawala 1939: 150). A 1917 book dedication to Davar made the same point, calling him

A true Parsee Hero, who has for good routed the efforts of the advocates of *Juddin*-marriage and conversion, who has saved the Parsee community from racial degeneration and extinction, who has by his *learned decision* from the bench in the year 1908, given effect to the wishes of thousands of Parsee donors that the use of the

charity funds, fire temples, dokhmas and other religious institutions endowed by them should be allowed to Parsees only.

(Masani 1917; italics original)

One further connection reinforced Davar's ultimate identification with the orthodox in *Petit*. His son, Jehangir D. Davar, was married to the former Miss Virbaiji J. Jijibhai, presumably a member of the family of one trustee-defendant, Sir Jamsetjee Jijibhai. Jijibhai was the unofficial head of the Parsi community in Bombay (Darukhanawala 1939: 110; see Figure 1 for the image of an airborne Sir Jamsetjee Jijibhai).

One factor contributing to Beaman's deference was Davar's seniority. Davar was made a judge of the Bombay High Court on 9 November 1906 ('D. D. Davar' 1909: 487). Beaman's judgeship was confirmed two months later, in January 1907 ('F. C. O. Beaman' 1909: 404). Although this made Davar only slightly senior to Beaman, judicial culture took seniority seriously (see s. 103(2) of Government of India Act 1915 in *Letters Patent* 1922: 77; Beaman 1926: 10–12).²¹ It was the judgment of the senior judge that would prevail even if the other judge disagreed (s. 36 of Amended Letters Patent 1865 in *Letters Patent* 1922: 67). Judicial culture and etiquette may have informed the politics of dissent for Beaman.

Davar's seniority gave Beaman a procedural reason to concur. Only if the Davar-Beaman 'special bench' reached a unanimous finding could the plaintiffs leapfrog over the next level of the Bombay High Court to be heard directly by the Judicial Committee of the Privy Council in London (ss. 15, 39 of Amended Letters Patent 1865 in *Letters Patent* 1922: 67, 72–3). By an odd procedural twist, Beaman could help the plaintiffs more at the next level by ruling against them in the immediate term. In other suits, Beaman delivered his rulings with the likelihood of appeal explicitly in mind (see Beaman 1925b: 251). Perhaps he was trying to clear the way for a swift appeal to London. Despite general expectations, it was a road not taken by the parties (see 'Butterflies' 1908: 17).²²

Finally, Beaman was out of India on furlough 'on urgent private affairs' between 9 June and 18 October 1908.²³ The hearings ended on 13 April 1908, and judgment was delivered on 28 November 1908. Beaman referred somewhat sheepishly to his absence from India for the period when the judgments were being written. The two judges corresponded about the case while Beaman was away, but it still seems that Davar did the bulk of the work associated with the case. Beaman wrote,

I cannot close without expressing my deep sense of gratitude and obligation to my brother Davar for the immense amount of labour he has spared me. All the drudgery of the case fell on his shoulders . . . No one who was not associated with him can fully appreciate his unwearied patience and serenity, sustained throughout a great trial

which must have imposed upon him – *himself a leading member of the Community whose interests were so vitally at stake* – an almost unprecedented strain and responsibility.

(*Judgments* 2005: 193; italics added)

The last sentence further explains Beaman's weakness in *Petit*. Beaman was a British judge in a colonial court, but he was well aware that he was an outsider in *Petit*.

Petit v Jijibhai caught the colonial legal profession at a moment when South Asians – and Parsis in particular – were making their presence felt in bold new ways. One managing clerk of a Parsi law firm declared triumphantly that South Asian firms were taking over. Writing in 1911, he commented that Europeans were finding it hard to compete with Indians 'who have secured almost the whole of the native public for their clients. The European firms were obliged to consolidate together to make a stand against the native firms' (Mistry 1911: 73). In the early twentieth century, Parsis constituted between a quarter and two-fifths of all the advocates and solicitors in Bombay, despite being just 6 per cent of the city's population (Mistry 1925: 47, 60–3; *Gazetteer* 1909: 273). They were even over-represented on the bench of the Bombay High Court, constituting almost 11 per cent of judges (see ILR Bom judges' lists, 1876–1930). As the first Parsi appointee, Davar led the way.

The structure of legal judgments also reflected the shift in the legal profession's ethnic makeup. Prior to 1900, South Asian judges generally contributed a single concurring line after their European colleagues' leading judgments, if they said anything at all (see, for example, *Keshav Ra'mkrishna v Govind Ganesh* ILR 9 Bom (1885) 94–7; *Padajira'v v Ra'mra'v* ILR 13 Bom (1889) 160–7). Nasty anonymous poems about the few South Asian judges of the late nineteenth century surface in the private papers of their European colleagues.²⁴ As South Asian judges became more senior, though, they began to deliver the court's judgments (see Ranade J in *Vyas Chimanlal v Vyas Ramchandra* ILR 24 Bom (1900) 473–81; *Hanmantapa v Jivubai* ILR 24 Bom (1900) 547–55; *Venkappa Bapu v Jivaji Krishna* ILR 25 Bom (1901) 306–12; *Vinayak Narsinh v Datto Govind* ILR 25 Bom (1901) 367–9; *Krishna v Paramshri* ILR 25 Bom (1901) 537–43). In this way, the idiosyncratic religious and political views of South Asian judges became etched upon South Asian communities as those communities' cases passed through the legal grid.

The larger mandate of the colonial legal system gave Beaman another reason not to dissent from Davar's position. Rule-of-law rhetoric was an essential strand in the justification of colonialism in India, not least of all in Beaman's own writings (see Beaman 1890: 40, 45). By pro-colonial accounts, the law courts of British India were run both for the benefit of the South Asian population, and because Indian rulers were incapable of doing the job properly (Vachha 1962: 4–5, 52, 60–2).²⁵ Law courts in pre-colonial and

princely states were depicted as bastions of arbitrary despotism (Beaman 1890: 40–5; Strangman 1931: 189, 197). The rule of law was a standard pretext for annexation into British India.²⁶ Judicial unity and uniformity were key bricks in the rule-of-law edifice. Colonial justice had to be seen to be meted out through a consistent process that did not depend upon the idiosyncrasies of the individual assigned to a case. Judicial uniformity was essential if like cases were to be treated alike – the definition of fairness and antidote to the ‘justice’ of Oriental despots. Because judicial dissent was particularly inappropriate in a colonial setting, Beaman may have felt obliged to yield to Davar. The final court of appeal for the empire, the Judicial Committee of the Privy Council, was not permitted to issue dissenting judgments, or even concurring ones (Bentwich 1912: 341; Hollander 1961: 29–30). Like political ‘children,’ colonial subjects needed a clear and simple message (Chakrabarty 2002: 8–9; Mehta 1999: 31–3). Contradictory judgments from the same bench would only create confusion, and potentially undermine the authority of the court and the legitimation of colonialism that was an unspoken part of its work. Beaman’s decision to write a concurring opinion reflected the desire to assert some independence, whilst stopping short of actually contradicting his Parsi colleague.

A final insight into Beaman’s shift may lie in his caste-based argument against conversion. Beaman was a well-known admirer of the Hindu caste system.²⁷ After addressing a Bombay student organization in 1914, Beaman was ridiculed by reformist Parsi magazines like *Hindi Punch* for declaring the ‘wonderful system of caste’ an essentially sound organizing principle that was ‘admirably adapted to social needs’ whilst guaranteeing social stability (Figure 9.5) (‘Rishi’ 1914: 17). Beaman rested his ruling in *Petit* on the idea that the Parsis had transformed themselves from a religious community into a caste. It was through this rationale that the community could initiate illegitimate children of Parsi paternity but not non-Parsi candidates, albeit from ‘respectable’ social backgrounds like the French Mrs Tata (*Petit* 1909: 594–608). One wonders if this argument had special appeal for Beaman. The caste argument left virtually no mark on the Parsi conversion debates (for a rare exception, see Strangman 1931: 32). But having the opportunity to present his pet thesis may have helped Beaman rationalize his final change of position.

Conclusion

The Davar–Beaman relationship was an inversion of the stereotypical one between European and South Asian judges. It was a reversal that became increasingly possible as South Asians rose within the ranks of the legal profession. Davar dominated Beaman by force of personality, seniority and membership of the Parsi community. There seemed to be a sense of guilt on Beaman’s part for his long absence from India. Beaman’s ICS background



"A RISHI COME TO JUDGMENT!"

RISHI BEAMAN-MITRA—*Kalyán, betá, kalyan!* You're of the hoary past, and you deserve to be cherished!
THE BLOATED BOGEY—Rishi Maharaj, how can I sufficiently thank you! You are my saviour! My friend, not judged a true Rishi, when my own kith and kin level anathemas against me and heap coals of fire on my head!
 ["I must own at the risk of some unpopularity to an evergrowing admiration for the wonderful system of caste, finely conceived and admirably adapted to social needs by your sagacious and most rightly venerated ancestors. Proof, if any were needed, of its essential soundness, is best given by its long duration and the general social stability which it ensured"—*Mr. Janku Beaman at the Students' Brotherhood of Bombay.* At the Social Conference, held at Meerut during the Easter holidays and presided over by Rai Bahadur Lala Baijnath, and at the Tanjore District Social Conference, presided over by Sir *Bankaran Nair*, the question of the abolition of caste was discussed with much warmth in the inaugural addresses of the Presidents.]

એક ર્ષી મારો ઇતસાદ કરવા આવ્યા છે!

[વધુ માટે લુચ્ચા બીજ તરફ.]

Figure 9.5 'A Rishi Come to Judgment! Rishi Beaman-Mitra': *Kalyán, betá, kalyan!* You're of the hoary past, and you deserve to be cherished! The Bloated Bogey: Rishi Maharaj, how can I sufficiently thank you! You are my saviour! My friend, not judged a true Rishi, when my own kith and kin level anathemas against me and heap coals of fire on my head!

Source: *Hindi Punch* (26 April 1914), 17.

and even his blindness may also have created a residual feeling of weakness vis-à-vis his Parsi colleague (see *Petit* 1909: 569). If Davar and the expert witness Modi became persuaded to oppose conversion midway through, the real force behind the scenes may have been the charismatic orthodox solicitor, Vimadalal. The defendants' lawyer's refusal to give in to the judges' initial pressure also enabled the shift. Beaman was probably the last proponent of restricted conversion; this may explain his unusual decision to produce a separate but concurring judgment in the case. In a period when Parsi lawyers and judges were starting to take control of cases involving Parsi litigants, the Davar–Beaman interaction is significant not just for the substantive outcome of *Petit*, but also as an indication of changing dynamics within the colonial legal profession. The fissure between the two judges was coated in understatement and deference for the sake of maintaining the appearance of a unified judiciary, a symbol of the rule of law. Within the Parsi community, the legal profession, and in the larger colonial context, the influence of personalities and politics underscore the contingent nature of *Petit's* final outcome.

Notes

- 1 I am grateful to Princeton University and Sidney Sussex College Cambridge for their support, and to Dirk Hartog and John Hinnells for their encouragement. Thanks are also due to staff at the Bombay High Court, Privy Council Office, Cama Oriental Institute, and British Library; and to participants of the 2006 Parsi studies workshop in London for their constructive criticism. Translations from the Gujarati have been provided by Homi D. Patel. All *Hindi Punch* images (SV 576) appear by permission of the British Library (© The British Library. All Rights Reserved). Unclear words from archival sources are indicated by square brackets. BHC stands for Bombay High Court; BLJ for *Bombay Law Journal*; ICS for Indian Civil Service; ILR Bom for *Indian Law Reports* Bombay series; IOR for India Office Records; and PCO for Privy Council Office.
- 2 Given the nature of legal interpretation in practice, the debate has been overstated. The question is not so much whether the judges' comments are of binding or no authority, but whether they are of binding *or persuasive* authority. By ruling at length on the point, Davar and Beaman put a number of arguments into circulation for use in future legal discussions. Furthermore, the rulings need not be of any social authority. That they have acquired quasi-canonical status in the Parsi community reflects the implicit esteem with which many Parsis regard the legal system.
- 3 I am grateful to Roland Hulme-Beaman of Dublin for this information (4 January 2004). The Gompertz family included the inventor Lewis Gompertz (d. 1861) and the mathematician Benjamin Gompertz (d. 1865). Beaman's Jewish heritage made his likening of Parsi and Jewish communities in *Petit* particularly intriguing (*Petit* 1909: 582).
- 4 See 'Memorial addressed to the Government of India from Mr M. H. W. Hayward, ICS, a third grade judge in the Bombay Presidency, making certain suggestions for the improvement of the Judicial Branch of the Indian Civil Service in this presidency, addressed to Lord Curzon, Karachi (24 September 1902),' Bombay Judicial Proceedings: September–December 1902 (P/6487) (IOR).

- 5 See letter from F. C. O. Beaman to B. G. Kher (Gulmarg, Kashmir; 29 June [1920–1]), 41 in Kher Collection.
- 6 The judge had a brother in England who was also blind. Many thanks to Roland Hulme-Beaman for this information (21 December 2003).
- 7 Beaman's openness to conversion to Zoroastrianism is noteworthy because so many fellow theosophists were orthodox Parsis and strictly opposed. See Sharafi 2006: 92–100.
- 8 The pool had been drained without Beaman's knowledge. Beaman's blindness prevented him from seeing this fact for himself. Many thanks to Roland Hulme-Beaman for this account (18 January 2004).
- 9 After *Petit*, Davar's most famous Parsi decision was the commemorative death ceremony or *muktad* trust case of *Tarachand v Soonabai* ILR 33 Bom (1909) 122–213. See Sharafi 2006: 398–402.
- 10 See 'Plaintiffs' Evidence. Exhibit 36: Copy of Queries with answers of the Advocate General, Mr Davar and Mr Inverarity, filed before Commissioner, 23 January 1905,' 303–17 in *Saklat v Bella* (PCO).
- 11 *Petit v Jijibhai* (Suit No. 689 of 1906), 28–1–08, 1–2 in Davar, 'Judgments 7 January 1908–7 December 1908' (BHC).
- 12 After *Petit v Jijibhai*, the most famous case in which Modi testified was *Tarachand v Soonabai*. See note 9.
- 13 Complaint, 7 recto-verso in *Petit* (BHC).
- 14 There was little mention of the *Petit* episode at a conference held to commemorate the 150th anniversary of Modi's birth (21 February 2004, K. R. Cama Oriental Institute, Mumbai).
- 15 See Letter to Delphine Menant from [G. Boneto Maury], Paris (undated), 1–2; and letter to Delphine Menant from Edward S. Browne, Newcastle-on-Tyne (31 December 1903); in Menant Papers.
- 16 The Rajput woman was the elderly mistress of a Parsi man, and mother of several children by him. She was in a 'much humbler sphere of life' than Mrs Tata, and remained unnamed throughout the proceedings (*Judgments* 2005: 9; *Petit* 1909: 525).
- 17 Even Davar felt that the sixth plaintiff had not been treated fairly, given Modi's letter. The sixth plaintiff was R. D. Tata, the husband of Suzanne Brière and the driving force behind the litigation (*Judgments* 2005: 141).
- 18 For instance, Davar awarded victory in the *Tarachand* case to Vimadalal's team. See note 9.
- 19 I thank K. N. Suntook of Mumbai for this rendition (16 February 2004).
- 20 Many thanks to Fali Nariman of Delhi for this account (8 March 2004).
- 21 See Sir Norman Macleod, 'Reminiscences from 1894 to 1914' (HRA/D63/A5), 64–5 in Macleod Papers.
- 22 See 'Defendant's Evidence. No. 29: Evidence of Nanbhoy Nowrojee Katrak, taken on commission in the Court of Small Causes, Bombay' (15 May 1916), 569 in *Saklat v Bella* (PCO).
- 23 Histories of Service 1917–8 (V/12/305), 3 (IOR).
- 24 See 'The Bombay Beucle as constituted 29 April 1884' (HRA/D63/A1) in Macleod Papers.
- 25 See 'An English Judge,' *Jam-e Jamshed* (4 May 1926) in 'Press Cuttings, 1915–40' (HRA/D63/A6) in Macleod Papers.
- 26 This was particularly so before 1857–8, although the 1885–6 annexation of Burma was a notable exception: 'Confidential. British Burma. Foreign Department – No.1610. From E. S. Symes . . . Officiating Secretary to the Chief Commissioner, British Burma. To the Secretary to the Government of India, Foreign Department (Rangoon, 16 October 1884)' (MSS Eur E356/10), 3 in White Collection.

27 He also believed in *karma* and reincarnation. See letter from Beaman to Kher ([Gulmarg], June 20 [1919–22]), 35–6 in Kher Collection.

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