ON PRINCIPALS AND AGENCY
Reassembling Trust in Indian Ocean Commerce

Abstract:
The role of trust in long-distance trade has long been a topic of scholarly inquiry and debate amongst economists, sociologists and historians. Much of this literature hinges on the social, legal and economic structures that undergird – if not obviate – the concept of trust. This article draws on assemblage theory to suggest that trust in Indian Ocean trade would be better understood as a key component of a commercial assemblage. Law or social mores are not external but rather enrolled within an assemblage constituted by people, commodities, profits, and “feelings,” as well as judicial systems. This conceptualization of trust is demonstrated through a close analysis of a trading relationship between a Somali merchant and an Indian merchant based in Aden and trading in the Idrisi Emirate of Asir. They established a partnership to exploit the elevated prices in Asir during the First World War. After several months of trading, accusations of fraud and embezzling unraveled the partnership and entangled both men in years of legal battles. By tracing the changing socio-material assemblage of this partnership, the article demonstrates how trust should be understood as a dynamic and contingent factor in the operation of commercial agency.
Ahmed Najoo Khan did everything right. He could have organized his business according to a micro-economics textbook, indeed a textbook written a century after he was in business. Ahmed Khan was an Indian Muslim merchant and a successful landlord in the colonial entrepôt of Aden near the southwest corner of the Arabian Peninsula. In the summer of 1916, he was approached by a Somali merchant named Ali Ibrahim Noor with an exciting commercial opportunity in Asir. The previous year, this region on the Red Sea coast became a new front in the First World War, as the leader of the Idrisi Sufi order inaugurated the Arab Revolt against the Ottoman Empire.¹ There was money to be made in the business of war, but the risks of trading in the midst of battle and entrusting capital to an unfamiliar agent were substantial. So Khan did everything an economist would tell him to do: he created the right kind of profit-incentives for his agent, obtained a security deposit against losses, and he secured a legal contract with mechanisms for monitoring and arbitration in case of disputes. He seems to have done everything possible to secure the success of this enterprise.

But Ahmed Najoo Khan got it all wrong. All his contractual foresight and management of incentives ultimately resulted in failure. After initial successes, the profits started to dry up and Khan became convinced that Noor was embezzling the returns of their enterprise and diverting them to Noor’s father. These two men would subsequently spend years fighting this dispute in courts across the globe. The first suit was brought to a judge in the city of Maidi, in the Idrisi Emirate. Then it was re-litigated in colonial courts in Aden, Bombay, and ultimately reached the final court of appeal in the British Empire, the Lords of the Privy Council in London. But for all

his litigious persistence, Khan lost the case. So where did Ahmed Khan go wrong, and what might his failures illuminate about trust in the Indian Ocean commerce?

Perhaps it is strange or naïve to imagine that trust had anything to do with this enterprise. Clearly Ahmed Najoo Khan and Ali Ibrahim Noor had made extensive efforts to entrench their partnership within multiple legal frameworks. Moreover it is clear that when the profits diminished Khan turned aggressively to the courts for restitution. Indeed the very existence of this partnership in the historical record is due to the fact that it was so resolutely contested within the colonial legal system. The law was central to the establishment of this partnership, but it seems unlikely that the outcome was what either man had intended. This was not a simple debt transaction or a contract for a specific service, rather it was an agency contract. Khan needed Noor to use his expertise and discretion to find profitable markets, sell at high prices, and make numerous unknown and unanticipated decisions to facilitate the success of this enterprise. As the Nobel-prize winning scholarship of Oliver Hart demonstrates, this was almost certainly a contract that was purposefully incomplete, because it was both impossible and counterproductive to attempt to specify everything that Noor should do. Leaving this enterprise loosely defined permitted the relationship and the business to evolve and change along with shifting market conditions. This ambiguity was good for business, but it obviously made the law less useful as a means of enforcement. As scholars have argued for other contexts, litigation is notoriously long, costly and unpredictable, and thus becomes useful only after a contractual relationship has

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2 Ahmed Najoo Khan vs. Ali Ibrahim Noor and Hajj Ibrahim Noor, case number 72 before the Privy Council in 1923 (Henceforth 72 UKPC 1923) Page numbers are from the “Record of Proceedings.”

The law might mitigate Khan’s losses, but it could not insure his profits. At best litigation provided a deterrent to outright malfeasance, but it was of little aid in sustaining this agency relationship, working through its difficulties and enforcing its terms. Law was essential both in the construction and the dissolution of an agency relationship but was less useful in enduring the vicissitudes of commerce in between.

Ahmed Najoo Khan and Ali Ibrahim Noor were engaged in long-distance trade, which crossed political borders, legal jurisdictions and cultural worlds. In the absence of an enforceable contract, or even a state that could reliably enforce such a contract, many traders turned to the institutions of diaspora. Cohesive social networks could monitor the actions of agents, mediate disputes, and increase/decrease social capital to incentivize good behavior. Historians and economists have worked out in great detail the mechanisms by which such social networks were able to facilitate long distance trade. Yet Khan and Noor were not part of the same diasporic group, at most their social networks occasionally intersected. Khan was from India and Noor from Somalia, and these two diasporas were competitive if not antagonistic to one another.

Khan did not have established networks in Asir that could monitor Noor actions, and if Noor

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proved to be an incompetent or duplicitous agent his reputation would not necessarily suffer in his own social networks. Diasporic networks thus cannot provide an alternative institutional framework for explaining why Khan was willing to take such a large risk.

However, rather than seeing the gaps in their social worlds as insurmountable, it may be useful to think about why and how Khan and Noor tried to bridge this gap. Almost half a century ago, Mark Granovetter argued for the “strength of weak ties,” suggesting that the weak links that bridged social networks were often the most valuable.  

For Khan this link made accessible vast returns from war-profiteering. For Noor it made accessible capital that he sorely lacked. If this partnership was successful their social networks could connect, and they could garner much of the value and the social capital generated from this connection. While exceptional, this relationship between Khan and Noor presents an almost unique opportunity to explore how merchants moved beyond their own secure network of correspondents. Noor had much to gain and little to lose in this endeavor, but Khan risked everything he put into this enterprise in the hope of a competent and trustworthy agent. Why was Khan willing to take the risk of engaging in commerce where neither state nor society provided sufficient security?

This brings us back to the amorphous notion of trust. We use “trust” constantly in everyday parlance and we understand the term intuitively in a variety of situations. But its very currency in different contexts means that trust has come to encompass a number of diffuse ideas. I have no intention here of providing a general definition of trust, but in the particular context of commercial agency we might think of trust as the irrational hope that one’s agent will act not in their own immediate self-interest but in the principal’s interest. They will be, in a word:

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altruistic. It is almost by definition irrational to assume that someone will be altruistic, and yet it nonetheless captures something of the affective valence of the term. Trust is often experienced as a “gut feeling.” It does not itself mitigate risk but it does make that risk palatable. This instinctual feeling and confidence in another’s altruism is also a hope that this risk will mitigated over time by embedding it within a dense network of social ties. Trusting an unknown person is often a crazy idea, but over time it can prove to be prescient and profitable. In this context, trust needs to be understood as something dynamic and contingent, something that changes over time.

It is intuitively obvious that trust builds up, is proven over time, and potentially can collapse. However rather than exploring the contingent itineraries of trust, scholars have tended to examine it as simply existing or not existing. In part, this is due to the binary of structure and agency that still undergirds most social science. No matter how nuanced it may be, this binary is poorly suited to explaining the temporalities of trust. Stable legal and social institutions cannot easily explain both the success of Khan and Noor’s partnership and also its failure. We might understand what went wrong for Ahmed Khan if we focused a little less on how this agency was structured and a little more on how it evolved. So this article investigates these temporal dynamics by framing this agency relationship as a dynamic socio-material assemblage.

The concept of assemblages refers to an *agencement* or arrangement of heterogeneous, human and non-human, material and intangible components, specifically (as the French connotes) an arrangement that *acts*. Assemblages allow us to think of a trading network as a

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diverse group of people, but also something inclusive of and constituted by letters, commodities, account books, ships, laws, and even trust. The framework of assemblages is particularly useful in this case because it moves beyond stable structures to emphasize the dynamic and precarious nature of this relationship. As socio-material connections thicken, dissipate and form anew, assemblages transform and come in and out of being. Laws and social norms are not then external institutions that structure a partnership but are rather enrolled within this commercial assemblage. The partnership between Noor and Khan is an assemblage in that it has a temporality and contingency that is not encompassed in traditional scholarly understandings of institutions and structures and yet it is also more than simply two individual agents operating out of their own self-interest. Even though this partnership had a legally defined purpose and boundaries, it could not function without relying on multiple people, goods, markets and technologies that could not be enumerated and defined. Thus, in order to fully grasp this agency relationship we need to be attentive to its precarious cohesion and its contingent dynamics. Ahmed Najoo Khan and Ali Ibrahim Noor drew upon multiple legal frameworks and social customs to establish their partnership, but it was the reconfiguration of these frameworks through particular expressions and silences, actions and inaction that explains why their relationship soured.

If we begin with trust as the feeling that underwrites risk, we can then more accurately conceptualize it as a key component of an assemblage. By this I mean that legal structures and social connections brought Ahmed Najoo Khan and Ali Ibrahim Noor together, but trust solidified their commerce as their personal ties congealed into an assemblage. These institutions

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were essential to creating this partnership but they were insufficient to sustain it. Their trust was initially tentative but was necessary to undertake the significant risks that this partnership required. Khan in particular had to believe that if he sent trading goods to Ali Ibrahim Noor in a war-torn region, that Noor would not run off with them, that he would exert his best effort to sell them at the highest price, and then would properly divide the profits and send Khan his share. By conceiving of trust as a vital component of an agency relationship we can trace how it waxes and wanes in tandem with the social and commercial ties between these men.

In following the relationship between Ahmed Najoo Khan and Ali Ibrahim Noor I hope to demonstrate the precarious and contingent role of trust in sustaining this partnership. After a brief discussion of sources, this article proceeds to examine how Khan and Noor drew upon multiple legal traditions, neighborly sentiments and a surprising demonstration of trust to assemble this partnership. The second section will account for the myriad ways that this relationship was bolstered and sustained through the circulation of goods, information and profits. We might say here that trust was stabilized as it became incorporated into the routines of commerce. The third section examines how the sudden evaporation of trust caused the whole partnership to collapse despite the stability of legal structures of support. The inchoate feeling of trust continued to be essential to this agency, and its disappearance illustrates the precarity of trust and this commercial assemblage as a whole. The narrative arc of Khan and Noor’s agency is not representative of all agency relationships but its circuitous storyline is nonetheless indicative of the vital yet contingent itinerary of trust in long-distance commerce.

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11 My argument here builds off the notion of “uneasy trust” suggested in Trivellato, The Familiarity of Strangers, 4–9.
Trust in the Legal Archive

Much of the historiography of long distance trade has quite properly been built around large caches of commercial correspondence.\(^\text{12}\) These substantial archives have permitted scholars to discern the aggregate patterns, norms and structures that appear to regulate and undergird commercial practice. This approach has yielded enormous dividends in multiple disciplines, but there are also facets of commercial relationships that cannot be perceived at this scale of imperial legal systems and diasporic social structures. The microeconomic scale of a single case study, on the other hand, makes perceptible the temporal dynamics of trust. Consequently, the specific relationship between Ahmed Najoo Khan and Ali Ibrahim Noor is the central archival thread that organizes this article.

The strategies, efforts and feelings of these two men and the nature of their relationship is accessible today only because both had the resources and the determination to take their case to the Lords of the Privy Council in London. The documentary fetish of the British Empire produced an enormously detailed record of all levels of the case between Khan and Noor. The records include pleadings, depositions, and cross-examinations by Khan and Noor themselves. The original correspondence and contracts are preserved in some cases down to the marginalia in the original Arabic script. But as meticulous as this case file is, it would be a mistake to imagine

\(^{12}\) This approach was established in large part by the seminal work of Goitein and Curtin Goitein, *A Mediterranean Society*; Curtin, *Cross-Cultural Trade in World History*. 
it to be a transparent reflection of their reality. It has undoubtedly been transformed by transcription, translation, and framing within the genre of common law litigation.

In the following pages, I make a concerted effort to read against the grain and through the conventions of this text to shed some light – however dim – on the ordinary operation of commercial agency in the Indian Ocean world. While laws are undoubtedly a key component of commerce, I do not propose here to investigate the legal systems which have been far more capably examined by other scholars. Rather, I try to pay attention to the issues that flit through and stray beyond the legal archive. Indeed at various moments it becomes clear that withholding information from the court can yield substantial dividends in the courtroom. As the plaintiff in the initial suit, Ahmed Khan provided the correspondence he received from Noor as well as his own account books. Ali Ibrahim Noor on the other hand, failed to produce his accounts or the correspondence he received from Khan. We cannot be certain that this was a cunning legal strategy, but it would be vital to Noor’s ultimate success in the Privy Council. I consequently attempt to read into these silences and around the legal debates to reconstruct the itinerary of trust in this agency relationship.

Furthermore, the “thick description” of this case will be supplemented by other evidence, particularly fatwas (non-binding judicial opinions) from the Indian Ocean world of the late nineteenth and early 20th centuries. I draw on three fatwa collections that were explicitly engaged

with the diasporic commerce of the Indian Ocean world. The largest collection is derived from the opinions of Imam Abdullah al-Salimi, perhaps the most important jurist in the Ibadhi sect of Islam in the late 19\textsuperscript{th} century, and whose opinions were widely cited both in Oman and among merchants trading in Omani dominions in East Africa. The second collection is that of Shaikh Abi Bakr ibn Ahmed al-Ansari, a noted jurist of the Shafiʿi school of Sunni Islam who catered to the Indian Ocean diaspora originating in the Yemeni region of Hadhramout. Lastly, I draw upon a fatwa collection catering specifically to Muslims from insular Southeast Asia and curated from the opinions of three jurists from Mecca. Most important among these was Shaikh Ahmed Zayni Dahlan: a historian, influential teacher, the chief Shafiʿi jurist of Mecca and for a period the Shaikh-ul-Ulama, or the highest juridical authority in the city. This broader archival canvas helps to fill in some of the gaps in the story of Khan and Noor, but it does so imperfectly.

There is little available scholarship on the Somali diaspora in the Arabian Peninsula or the history of Asir because of a paucity of records.\textsuperscript{14} It is consequently almost impossible to firmly ground this case – of a young Somali merchant acting as agent in Asir for a more established Indian principal in Aden – in its unique historical context. So while it is admittedly imprecise and broad, I place this commercial relationship within the larger frame of Indian Ocean commerce. Fatwas issued for the Hadhrami diaspora in Java or the Omani diaspora along the Swahili coast are imperfect proxies for Somali-Indian partnerships in the Red Sea. Yet all of these were Indian Ocean milieus where laws overlapped, communities intermarried and empires

competed. As Fahad Bishara powerfully demonstrates, jurists and merchants were constantly expanding and transforming the law in the Indian Ocean. In order to accommodate the diversity of practices and partners, they drew together different legal traditions and reinterpreted old concepts for new transactions. Khan and Noor could draw upon this diverse, overlapping and evolving set of Indian Ocean legal systems to assemble their agency relationship.

Like colonial records, these fatwa collections are also shaped by particular interests and genre conventions, and must be read cautiously. The fatwas included in these collections were carefully selected to reflect the jurists sense of their importance and potential use for other jurists and judges. They were also usually organized by legal concept, and the fatwas analyzed here fell under the concepts of muḍaraba and wakala, two subtly different kinds of commercial agency in Islamic jurisprudence. In an effort to glimpse the commercial world veiled within this specific legal discourse, I focus attention on the practices that frustrated the muftis (jurists qualified to issue fatwas) and indeed on the questions from merchants rather than the answers of the muftis. Because these fatwas were non-binding, they reflect the ways that law was harnessed by merchants in constructing a relationship rather than serving as a structure that was enforced upon them. While this was not as true of colonial courts, in a context of legal pluralism merchants wielded significant control over which laws applied to them and when these laws would be applied. I also focus particular attention on fatwas that indicate commerce occurring across the lines of religion and community. While these were not the norm they both needed the support of legal frameworks and had greater flexibility in which law applied. The partnership between Khan

15 Bishara, A Sea of Debt, especially chap. 3-4.
17 In a sense I am only working one side of what Doumani calls the double reading of the Ottoman legal archive Doumani, Family History in the Middle East.
and Noor was exceptional in many ways but like much Indian Ocean trade it trespassed the boundaries of community, sect and polity. By situating this relationship within the Indian Ocean I hope to discern the ways that these two men developed trust in a diverse, complex but ultimately shared commercial world.
Figure 1 – Map of the Red Sea Region\textsuperscript{18}

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\textsuperscript{18} Map by Author, given the constantly changing and porous borders of the region during the First World War I have not indicated borders in this map, country names are generally indicative of their location.
Building Trust
Before 1916, Ali Ibrahim Noor spent his entire career as employee and agent to his father. Hajj Ibrahim Noor trained his son in commerce and in turn trusted that Ali would loyally carry out his orders. It is unlikely that father and son had any written contract, yet Ali Ibrahim Noor acted on his father’s behalf in distant ports. The firm of Hajj Ibrahim Noor, as a family business, was representative of much, if not most, of the commerce of the Indian Ocean world. In all the collections examined here, a large percentage of fatwas involved family members acting as agents, and more than half of the fatwas concerning the wakala form of agency involved family.

There is even evidence to suggest that family ties superseded the arms-length contracts enforced by legal authorities. In a number of fatwas, the merchants posing questions to the mufti indicate that family members de facto operated as commercial agents without any legal documentation. In more than one fatwa, the merchant seeking advice assumed that a family member’s status took precedence over that of an agent with regards to the principal’s property. In these fatwas, the mufti disabuses his questioners of this belief, insisting that the shari’a does not recognize any agency – even that of a family member – that has not been formally witnessed.

These muftis clearly dealt with this issue often enough that it merited inclusion in their collections and even if they had no legal backing, family members were routinely presumed to be trusted agents in Indian Ocean commerce.

19 See for example: Archive of Abdullah al-Ṭābūr, copies held at Juma’ al-Mājid Library, Dubai, henceforth Ṭābūr Archive: ‘Abdallah Ṣalih al-Muṭawa’ to Ahmed bin ‘Abd al-Rahmān bin Hadid, 28 Shawal 1346 AH; Sala Mohommed Jafferbhoy and Alli Mohamed Jafferbhoy v. Dame Janbai [1897] UKPC 17; Goldberg, *Trade and Institutions*, 136–37; ‘Abd Allāh ibn Ḥumayyid Sālimī, *Jawābāt Al-Imām Al-Sālimī*, ed. ‘Abd al-Sattār Abū Ghuddah (Muscat: Maktabat al-Imām al-Sālimī, 2010), vol. 4, 538a, the fatwas are not numbered separately so I have listed the first, second or third fatwa on a page as a, b or c respectively.


21 Sālimī, *Jawābāt*, vol. 4, pp. 537a, 537b, 539a, 541a; Anṣārī, *al-Fatāwā al-nāfi‘ah*, 77b, 78a.
So if family was central to commercial agency, how did Ahmed Najoo Khan come to appoint Ali Ibrahim Noor as his agent. Not only did they lack a familial bond, they did not even belong to the same community. Ahmed Najoo Khan was Indian but the court records provide us with no further information about his ethnic or religious ties. The Indian mercantile community was quite diverse including Hindus, Parsis, and various sects of Muslims. His name is also frustratingly generic and gives little indication as to his particular regional or sectarian heritage. Noor is somewhat easier to place. The very fact that Hajj Ibrahim Noor settled in Aden makes him a member of a relatively defined Somali diaspora that was involved in the trade of cattle for meat and hides which Indians tended to refrain from. So there are only two things that we can be sure these two men shared: Islam and commerce. If the antagonistic relationship between Indian and Somali merchants in Somalia is any indication, a shared religion or mercantile customs would not have easily overcome the competition and negative stereotypes that shaped the interactions between these communities. A broadly shared moral framework and overlapping worlds of commercial practice were shallow foundations for risking large amounts of capital.

Instead it was the built environment of Aden that provided a point of intersection between these men. Located just outside the entrance to the Red Sea with a marvelous natural harbor, Aden was an entrepôt par excellence. For centuries Aden had brought together merchants from across the Indian Ocean and Mediterranean worlds. Aden was an urban space that exemplifies

22 Pankhurst, “The Trade of the Gulf of Aden Ports of Africa in the Nineteenth and Early Twentieth Centuries.”
23 Scholarship on Somalia focuses overwhelmingly on the pastoral society and economy which was far more important than the small-scale maritime trade. Cassanelli, *The Shaping of Somali Society*; Lewis, *A Modern History of the Somali*; Reese, *Renewers of the Age*, chap. 4.
what Francesca Trivellato has called the communitarian cosmopolitan character of this commerce. Peoples of different religions, languages, cultures traded with each other and yet also maintained endogamous communities. It was only in a cosmopolitan cauldron like Aden that Ahmed Najoo Khan could end up being neighbors with Hajj Ibrahim Noor. Their houses were on the same street, and Ahmed Khan possibly even watched Ali Ibrahim Noor playing on the street as a child and growing into a man. These close quarters gave a certain level of familiarity that might precipitate bonds across communal bounds.

If the commerce of Aden put these two men in the same place at the same time, Ahmed Khan was still unlikely to go into business with a young, unproven merchant like Ali Ibrahim Noor without some additional assurances. It was almost certainly the elder Hajj Ibrahim Noor who initiated the link between his son and Ahmed Khan. Khan undertook this partnership with the understanding that the father stood as a guarantor for his son. Indeed Ali Ibrahim Noor routinely sent the profits of the partnership to Ahmed Najoo Khan via a hawala (a remittance instrument) drawn on his father. There is little question that Hajj Ibrahim Noor was essential to both the establishment of this partnership and its successful operation.

So these men relied upon the intermediary of Hajj Ibrahim Noor and a coincidence of Aden’s urban geography to construct a personal relationship that could undergird trust. But these social connections were insufficient in and of themselves. Consequently, they also turned to the law to bolster this precarious arrangement. They obtained stamped paper from the colonial government of Aden and they wrote down the terms of their joint enterprise. The contract also appears to have been written in both English and in Arabic, with each partner keeping copies.

25 Trivellato, The Familiarity of Strangers, 18; For the cosmopolitan milieu of Aden see Reese, Imperial Muslims.  
26 Examination of Plaintiff (Khan) 72 UKPC 1923, 7.  
27 Noor to Khan, 6 Dhu al-Hijjah 1334 (3 October 1916), 72 UKPC 1923, 101.
The agreement was signed by both men and witnessed by one person from each side. Legal documentation was thus crucial to the establishment of this enterprise.

However, the legal environment in which Khan and Noor entered to document this partnership was enormously diverse and complex. In Aden at the turn of the 20th century, one might have encountered merchants using English common law, Anglo-Muhammadan Law, the Shafiʿi school of Islamic Law, modernist interpretations of Islamic law that borrowed from different schools, Hindu and Parsi legal traditions, and various understandings of mercantile custom. These varied legal traditions were often overlapping, and even when they were not, arbitrators and judges were open to ruling on the basis of multiple and combined legal frameworks. The court of the assistant resident of Aden where Khan and Noor would eventually submit their dispute was presided over by a revolving cast of British officers who happened to be posted in the city. Their case was judged by a Captain H.M. Wightwick, who was likely a military officer with little legal training. The court proceedings suggest that he administered justice more according to a general understanding of fairness than a scrupulous adherence to legal procedure. Asir presented a less complicated legal terrain where the state courts probably followed Shafiʿi jurisprudence, though it is again possible that particular qadis (judges) borrowed from the other three recognized schools of Sunni jurisprudence. It is certainly conceivable that Khan and Noor saw Shafiʿi jurisprudence as a common framework for establishing their partnership but there is no indication of this in the legal record. There was consequently no

28 Copy of an agreement between Plaintiff and Defendant No. 1, 72 UKPC 1923, 34-35.
29 See trial proceedings and Judgment of the Assistant Resident, 72, UKPC 1923, 44-50; For an excellent discussion of the overlapping and contested nature of legal system in Aden see Reese, Imperial Muslims, chap. 4; For a similar understanding of colonial law in East Africa see Bishara, A Sea of Debt, 137–47.
defined and specific legal system that could provide a predictable and enforceable set of contractual obligations in this case.

Instead, it appears that this partnership was left open to potentially be adjudicated in any British, Islamic or mercantile court. Moreover, these two men would eventually take this case to merchant arbitrators, qadis and colonial courts. In the pleadings we have, the only legal framework that was explicitly appealed to was that of mercantile custom. Moreover we can see that key components of this relationship were denied legal validity in different levels of the colonial legal system. Hajj Ibrahim Noor was clearly a key player in this enterprise but his name appeared nowhere in the contract of partnership. Khan insisted in court that Hajj Ibrahim Noor had verbally agreed to stand as a guarantor of his son’s performance. Islamic law and mercantile custom gave real weight to such verbal agreements especially if they could be witnessed and documented in other ways. Capt. Wightwick accepted Hajj Ibrahim Noor as a participant in this enterprise, but the appellate judges above him did not give much credence to contractual obligations that were not specified in the contract. This overlapping of legal traditions allowed a great deal of flexibility for the litigants, but it did not provide much precision or security for Khan in enforcing the terms of their contract.

This overlapping and somewhat muddled legal environment is further reflected in the contract between Khan and Noor. On the one hand, this contract was written in English on colonial government stamped paper. The English text referred to this relationship as a

30 Regarding merchants framing contracts to be legible in multiple legal regimes see Goldberg, *Trade and Institutions*, 124–26, 150–64.
31 Examination of Plaintiff (Khan) 72 UKPC 1923, 6-7.
32 Regarding the prevalence of verbal contracting see Goldberg, *Trade Institutions*, 133–35.
33 Judgement of the Privy Council, and Judgement of the High Court of Bombay, 72 UKPC 1923, 78-80.
partnership and colonial courts would consequently define it as a common law partnership.\textsuperscript{34} Interestingly, Ali Ibrahim Noor also left a security deposit against potential losses, which was unusual for agency relationships in Indian Ocean trade. Clearly Khan was wary and relied upon colonial legal forms to protect his interests. On the other hand, both parties signed this document in their own vernacular scripts, indicating neither were literate in English. There was also an Arabic text of this contract, which unfortunately was not preserved in the records. Perhaps the Arabic original/translation was framed in the conceptual vocabularies of Islamic law and served as the primary legal document, but Ahmed Najoo Khan did not understand Arabic either. Thus we have two translations neither of which is comprehensible to the individual primarily being protected by the document. These two men documented their obligations to each other, yet its precise meaning was shielded from them in unfamiliar languages. Consequently, this contract appears less a precise delineation of obligations and more a totemic document that formalized their agency relationship.

If the languages of this contract were somewhat opaque, there was nevertheless a general familiarity with the kind of relationship into which these two men were entering. This enterprise was clearly structured as a \textit{mudaraba} partnership.\textsuperscript{35} This was a long-established form of limited partnership, which was commonly used in Indian Ocean trade. Khan was the elder, stationary partner who provided all the capital and sent commodities from the home port of Aden. Noor was the agent who provided the skilled labor and undertook the risks of travelling to distant places in order to sell those commodities and would send the profits and other trade goods back

\textsuperscript{34} There was an Islamic form of partnership \textit{sharika} but it would have involved both partners contributing capital.

to Aden. The profits were split evenly between them. The mudaraba partnership provided a clear framework for this relationship that could be legible in multiple legal traditions. Legal concepts like mudaraba provided an essential scaffolding for assembling this relationship and within which conflicts could be negotiation. This contract thus served as an important reference point for two men building up a commercial assemblage.

There is one final detail that is necessary to understand the role of trust at the origins of this enterprise. It is a detail that was so insignificant to the participants and their lawyers that it passes without comment over years of depositions, court proceedings and judgements. I myself didn’t notice it for months during which I read and re-read these court records. Ali Ibrahim Noor and Ahmed Najoo Khan signed their contract of partnership on the 17th of August 1916. But three days earlier, on August 14th Khan handed over almost twelve thousand rupees worth of textiles, cinnamon, ginger, and various kinds of rice to Ali Ibrahim Noor without the security of a legal contract. Certainly this transfer was done in coordination with and in anticipation of the signing of a contract, but legal protections were not a prerequisite of this venture. This legal contract sustained and bolstered an assemblage that was already being constituted by personal networks and an unsecured transfer of capital.

We can only imagine what it felt like for Ahmed Najoo Khan to hand over this large and valuable cache of commodities. Certainly there would have been the queasiness of uncertainty, but also the hope for outsized returns. Something in his demeanor, their interactions and the

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36 Copy of an agreement between Plaintiff and Defendant No. 1, 72 UKPC 1923, 34-35
38 This would be worth a little over 50,000 pounds in 2017 in terms of commodity prices, but as a proportion of the total economic activity of Aden or Indian Ocean trade at this moment its value would be at least half a million pounds today. See discussions of purchasing power and economic cost conversions in “Measuring Worth - Purchasing Power of Pound,” accessed August 2, 2017, https://www.measuringworth.com/ppoweruk/.

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wider environment must have convinced Khan that Noor could be trusted despite the risks. This gut feeling, this irrational hope for another’s altruism was the first blush of trust as a property of this relationship. This incipient trust was brought into being through the interaction of law, social structures, profit motives and gut feelings that convinced Ahmed Khan to take this large risk. Moreover, this initial trust was precarious and uncertain, Noor’s subsequent behavior would determine whether it would remain tentative or whether it would blossom into something more.

**Maintaining Trust**

As Ali Ibrahim Noor sailed up to Asir he would be putting political borders, cultural boundaries and hundreds of miles of sea between himself and his principal. This commercial assemblage could cohere across this distance only through the regular movement of ships, commodities, letters and money. These material objects connected, obligated and at least precariously united Ahmed Khan and Ali Ibrahim Noor in their enterprise. The trust between them was not produced by institutional structures, but rather was secured as the regular flow of commodities, profits, and information solidified this commercial assemblage. To understand how trust was maintained between Ahmed Najoo Khan and Ali Ibrahim Noor, we must then trace this ebb and flow between Aden and Asir.

Ali Ibrahim Noor made his way up to the city of Jizan, as specified in their contract. Jizan was the major port of the Idrisi state, and it was served by the British-Indian steamships of Cowasji Dinshaw Brothers. Noor set about selling the various goods that Khan had provided, but the market in Jizan was not as profitable as he had expected. Perhaps others saw the same

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39 India Office Records, British Library: R/20/A/2960 W. Baddeley, Admiralty to Undersecretary of State for Foreign Affairs, 22 September 1919; Aden Residency Note, 15 November 1919; Major A.S. Meek, Political Officer, Hodeida to First Asst. Resident 3 December 1919.
opportunities and beat Noor to the profits. But Noor continued to work his connections and search out information about which markets could make this enterprise a success. Thus almost immediately Noor had to explore options and take actions unspecified in their partnership contract. Finally, on the 16th of September 1916, Ali Ibrahim Noor sent a letter bearing good news. Noor had found his profitable market in the city of Maidi. 40

Maidi was south of Jizan and actually closer to Aden, but it was not served by any steamship lines during the war. Since the port of Maidi was a little more isolated, commodity prices were higher and less tied to market prices in Aden. Despite this isolation from global markets, the small port of Maidi was buzzing with activity. Ali Ibrahim Noor wrote that some two thousand camels were anxiously waiting in the city for sufficient textiles, tobacco and especially potash (a kind of fertilizer) to carry into the interior of Asir. Noor implored Khan to send goods as fast as possible and quoted current prices for a various different kinds of sugar, textiles, cigarette paper, and thread. 41 But if it had taken time for Noor to write to Aden with promising opportunities, it would take Khan even longer to take advantage of them.

Part of the difficulty was that communication between Maidi and Aden was challenging at the best of times. Maidi’s poor connections with the wider world made it a more profitable market, but it also made communication unpredictable. Indeed, three days after Noor sent his first letter from Maidi, he sent another letter which basically reprised the information in the first letter, but with greater detail and a more fervent sense of urgency. In this second letter, Noor says that he has sent several letters with duplicate copies. Noor wrote a third letter in early October, this one was much shorter again referring to the many previous letters and praying for the swift

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40 Noor to Khan, 16 September 1916, 73 UKPC 1923, 102-3.  
41 Noor to Khan, 16 September 1916, 73 UKPC 1923, 102-3.
delivery of the commodities requested. He wrote again and again because he had not heard back and could not be sure if his letters were reaching Ahmed Khan. Keeping lines of communication open was vital for the transmission of market prices and trends. Letters from both men would eventually inform the other partner about current prices, recent trades, and perhaps most importantly the reasoning behind their commercial decisions. Understanding why one partner made a particular decision helped the other know what to expect in the future, and reassured each other in cases of questionable transactions. This enterprise would yield profits largely to the extent that these two men separated by hundreds of miles, could act as one.

This work of communication and explanation allowed Khan and Noor to operate as a single commercial assemblage distributed across markets and jurisdictions. Indeed one of the few legal obligations of a commercial agent to his principal was to explain why he took the decisions he did. In the fatwa collection of Shaikh Ansari, a merchant complains to the mufti about his agent who mysteriously cannot account for some of the property that was entrusted to him. The merchant thinks his agent may have stolen from him and wants full compensation. The shaikh advises instead that the principal must accept whatever losses his agent has incurred, however he can demand an explanation. The agent could have made a mistake, suffered from bad timing, or simply made poor decisions. However, if the agent could explain exactly what occurred, the principal had to be satisfied, at least in this mufti’s interpretation of the law. What was absolutely required of the agent is not to make profits, or even preserve value but to be scrupulous in accounting for what their decisions were and how they made them.

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42 Noor to Khan, 22 Dhu al-Qa‘ada (19 September 1916); 6 Dhu al-Hijjah (3 October 1916), 73 UKPC 1923, 104-6.
The underlying moral of this fatwa is that an agent has expansive powers over the property of the principal and so one should refrain from appointing an agent whom you cannot implicitly trust. Numerous fatwas affirm and reaffirm that an agent’s decisions unequivocally bind the principal. Merchants complain of agents seeming to overstep boundaries or badly managing transactions, but the muftis repeat that the principal has delegated their authority and is bound to the decisions of their agent.\textsuperscript{44} The idealized agent would intuit and carry out the intentions of the principal; they would simply be an instrument of the principal’s will. Indeed the perfect commercial agent has no agency in the fuller sense of the term. In reality, principals either transferred their agency over to their agents, or this agency was distributed and shared across two individuals working together as a single commercial assemblage. Legal enforcement could not constrain the powers of an agent, so principals had to find ways of directing agents to further their interests.

Merchants trying to insure that their agents could be trusted, consequently worked to realign the incentives, ambitions, and sentiments of their agents. This was accomplished through the sharing not just of market information but also effusive personal greetings, inquiries after the health and families of correspondents, and the sharing of gossip and political events.\textsuperscript{45} Indeed one mercantile proverb exhorts the scrupulous sharing of accounts in the service of brotherly

\textsuperscript{44} Anšārī, \textit{al-Fatāwá al-nāfi` āh}, 76a; Sālimī, \textit{Jawābāt}, vols. 4, 537a, 537b, 540a, 554b, there are also exceptions 552a, 556a.

bonds rather than vice versa. One of the most interesting aspects of Ali Ibrahim Noor’s letters to Ahmed Najoo Khan is his frequent reference to Khan as “father,” once it is even “beloved dear father” and Noor signs off as “your son.” This was as much a term of respect and honor as it was an expression of actual filial sentiment, nevertheless the language reinforces the ways in which they needed to be more than just business associates. Such words and social graces helped to inculcate the unity characteristic of family firms into this more precarious partnership. Noor was reassuring Khan that they were acting together and their interests were merged. These epistolary conventions hopefully reassured Ahmed Khan that his agent was as loyal as a son, and their interests were aligned and inextricable like a family firm.

If these subtle and meaningful forms of communication were vital to maintaining trust, the mechanics of transporting commodities was equally important. In the opening and closing to each of Noor’s letters we hear of constant efforts to overcome obstacles to transportation. Goods and letters were sent by steam ship and by sailing dhow, moved through many cities, and the hands of multiple merchants before reaching Khan and Noor. Noor’s letters also convey anxieties over the climatic rigors of sea travel. He asks for tarpaulins to protect the goods from waves and inclement weather, and obsesses over the packaging of these goods. In an excruciatingly detailed passage he instructs that certain kinds of textiles must be removed from their packaging and placed in a case with tin lining, others should be enclosed in doubled-up gunny sacks. Noor specifies that Parsi soap should be sent with four packages combined into one

47 See letters in 73 UKPC 1923, 101-111.
48 Noor to Khan, 16 September 1916; 22 Dhu al-Qa’ada (19 September 1916), 73 UKPC 1923, 102-6.
49 Statement showing the goods sent for Partnership. 73 UKPC 1923, 93-97.
but American soap should combine eight packages into one, and even describes how the ropes should be tied to ensure the packages are securely fastened together. He also warns that Khan’s letters should clearly specify what commodities were being sent and in what weights. Furthermore these letters should come separately from the cargo itself, because if they arrived in the same vessel a sailor who discovered the correspondence could easily purloin the most valuable commodities. Probably related to this threat, Noor specifies in his letters how much the captains of vessels should be paid for delivering goods and letters. Neither Noor nor Khan would have profited if the goods arrived damaged or were pilfered en route. Consequently, sustaining this commercial assemblage and maintaining trust was as much a logistical problem as anything else.

There was one more logistical hurdle that shadows this enterprise. During the First World War, British colonial officials intensively managed the trade of this region. The Red Sea was a particularly complicated space to govern because it was partly controlled by the Ottoman Empire and the Ottoman allied Imam of Yemen, partly by French and Italian colonies, and partly by British allied Arab rulers in the Hijaz and Asir. The Royal Navy attempted to enforce a blockade on the Red Sea in general and on Yemeni ports in particular to starve Ottoman and Yemeni forces. Trade between Aden and Asir was therefore highly regulated and limited to the Cowasji steamers plus a handful of licensed dhows. A total blockade was imposed from French and Italian ports to Maidi in particular, because it was easily accessible to the territories of the Imam of Yemen and was thus a smuggling threat. Indeed legal trade was funneled to Jizan because there was less of a concern about smuggling from there. However, most merchants around the

50 Noor to Khan, 22 Dhu al-Qa’ada (19 September 1916); 16 November 1916, 73 UKPC 1923, 104-9.
Red Sea paid little attention to these new regulations, and the blockade was much more substantial on paper than in practice. It was almost certainly the counterintuitive effects of this blockade that caused Ali Ibrahim Noor to find a dull trade at Jizan and the thriving market in Maidi in 1916.

The war severed commodity flows, increased regulations, and elevated prices. It was Noor’s ability to circumvent those regulations and exploit those price levels that must have made this partnership so attractive to Ahmed Khan. Noor repeatedly asked Khan to obtain special permits for the trading of goods like thread and particularly kerosene, which was banned because of its high value for military purposes. Since we don’t have Ahmed Khan’s side of the correspondence it is difficult to ascertain whether in fact he was able to obtain special permission, but it is clear that they were importing kerosene into Maidi. These men were doing a healthy trade that pushed the limits of what was legally permitted, and possibly strayed well beyond those limits. Merchants certainly could not rely on colonial law to enforce transactions that circumvented colonial laws. When pushing the boundaries of legal trade, social ties and outsized profits were necessary to sustain trust and solidify this commercial assemblage.

With these myriad regulatory and logistical obstacles between Aden and Asir it was difficult and yet also essential that value complete the circuit between Khan and Noor. The profits of this venture were the irreplaceable adhesive securing this partnership. In the initial consignment of goods, the sugar and cloth appear to have been profitably sold off in Maidi. However rice and spices made up half of the cargo and Noor found it more difficult to sell these

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52 Noor to Khan, 22 Dhu al-Qa’ada (19 September 1916); 16 September 1916, 72 UKPC 1923, 102-3.
53 Statement showing the goods sent for Partnership. 73 UKPC 1923, 93-97.
even in the thriving market of Maidi. So the profitability of this venture was decidedly mixed and Khan had some reason to be concerned. Was Noor’s mistaken information just a result of the unpredictable fluctuations of a market in uncertain times? Or were Noor informants less reliable that he had imagined?

Khan seems to have bided his time before making a decision. The court records only include Noor’s letters to Khan but they also include Khan’s account books which provide dates for when he shipped goods to Maidi. It is impossible to know exactly why but Khan refrained from sending commodities to Maidi for over a month. Then in a very curt letter in early October Noor informed Khan that he was sending three bags of coins totaling 4500 Maria Theresa Dollars (the main trade currency of the Red Sea region). By the end of October these coins as well as additional profits had been received by Ahmed Najoo Khan. All told they totaled a few hundred rupees more than his initial investment. This may not have been the best return, but it was half the proceeds from the sale of half the cargo. This generative circuit of value from Aden to Maidi and back undoubtedly reassured Khan that his initial trust was well-placed.

In early November, a little over a week after receiving this money, Khan sent a new consignment of commodities to Noor worth almost 17,000 rupees. Once this first circuit of value was completed, Noor and Khan settled into a regular flow of letters and commodities. Noor would write a letter specifying which commodities could fetch the highest prices in Maidi. In the following days and weeks Khan would purchase whatever goods that were available at remunerative prices in Aden. In November and December, Khan and Noor entered into a virtuous cycle of trust and their enterprise found considerable success. Ali Ibrahim Noor’s letters

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54 Noor to Khan, 16 September 1916, 72 UKPC 1923, 102-3.
55 Statement showing the goods sent for Partnership, 93-97, Statement showing the goods sold by Defendant No. 1, 72 UKPC 1923, 99-100.
from this period are almost carefree, they tell Khan to send whatever he can get his hands on as prices are high and the market is brisk. The value that was being generated by this circulation of goods helped to ensure that their individual self-interests were becoming inextricable. Khan could leave decisions to Noor because their commercial assemblage had coalesced, and the trust between them had become routine.

Collapsing Trust

Unfortunately, markets are fickle. One moment prices are high, trading is brisk and profits are easy. The next moment traders are scarce, prices slump, and profits turn into losses. Something happened around the turn of the New Year that seems to have led to a slump in Maidi. There were no obvious shifts in the battles around Asir and colonial regulatory provisions did not change with the new year. Nevertheless, this was a war-zone and such markets are quite naturally volatile because trade routes can unexpectedly be severed or reopened. Even rumors of new troop movement can cause markets to wildly fluctuate. The profits garnered during war are in part a compensation for this increased volatility and risk. It is not surprising then, that on the ninth of January, Ali Ibrahim Noor wrote that he could find no purchasers for the textiles, tobacco or even the kerosene that he had requested just a few weeks previously. In lieu of a cash sale, Noor managed to barter some tobacco and kerosene for coffee beans that he hoped could be sold in Aden at a profit. The transaction was done under the general duress of a hard market and Noor seems to have paid too much for inferior goods. This could have been a bump on the road

56 Noor to Khan, 16 November 1916, 16 December 1916, 72 UKPC 1923, 107-109, 111.
57 Evidence of Sayad Ahmad bin Taha Safi, Sayad Mahamad Mohsin Safi, Sheriff Mahamad Hasson, 39-41; Noor to Khan, 16 Rabi’ al-Awwal (9 January 1916), 72 UKPC 1923, 98.
to a long and enduring commercial relationship. Khan and Noor had overcome serious obstacles before, and their patience eventually yielded significant profits. But this time would be different.

The failure of trust was as unpredictable and as dependent on “gut feelings” as the initiation of trust. As we have seen, commercial agency was contingent on the continuous transfer of goods, information and value. Noor and Khan set aside their doubts and regularly took the risk of trusting each other in order to profit from their commercial assemblage. This was not a house of cards but even the best constructed building can collapse in the right conditions. While sending commodities out and profits back could performatively generate a relationship of trust; small miscommunications, misplaced goods and mistakes quickly eroded an otherwise solid relationship. Ali Ibrahim Noor merely bought the wrong kind of coffee but it undermined Khan’s trust and initiated a vicious cycle that unraveled this partnership.

This coffee frustrated Ahmed Khan partly because it highlighted a nagging problem in the partnership that had been there from the beginning. In several months of successful trading, Khan regularly asked Ali Ibrahim Noor to send him detailed accounts of what he had sold and at what prices. Noor’s letters went into depth on the current market conditions and were full of details about what commodities Khan should purchase and how exactly to ship them. But they mostly glossed over the sales and purchases he had made in Maidi. This was merely annoying when profits were accumulating, but started to take on more ominous tones in a downturn. Thinking of trust as a key component of an assemblage means that this commercial loss impacted Khan’s feelings which in turn undermined the stability of the partnership. This framing allows us to see how precarious and yet essential trust can be in the context of volatile markets.
This overpriced coffee led Khan to rethink his partner’s neglectful attitude to accounting, and as January turned into February the skeins of trust were starting to fray.

Khan had entered into this partnership with Noor in part because he did not have any trusted relations or friends who could undertake a trading enterprise in Asir. And yet by the end of February, Khan had been seeking out correspondents in Maidi who could provide him with alternate sources of information about his agent. It was only prudent for Khan to broaden his social network into this region where he had devoted so much of his capital. These networks were often most useful for the information they could provide to monitor and regulate the actions of agents. Khan eventually received a report from the nephew of a shaikh in Maidi, that Noor had sold all of the partnership goods at double profit and was absconding to the interior of Asir. Why exactly Khan believed this new correspondent whom he had never met over his own agent is hard to discern, but if nothing else it shows that he no longer had confidence in the information coming from Noor. Khan now believed that he had spent the last several months and over 50,000 rupees as a patsy in a complicated con by Ali Ibrahim Noor and his father. There is of course another interpretation: that a mistake fed Khan’s suspicions which compounded and became self-perpetuating. Noor denied the charge and no hard evidence was ever forthcoming to corroborate these rumours from the nephew of the shaikh. Whatever the underlying cause, their trust had turned brittle. Khan no longer trusted his own agent and so he became receptive to these rumours and this commercial assemblage was on the verge of collapse.

So Ahmed Najoo Khan resolved to catch Ali Ibrahim Noor before he escaped, and seize Khan’s rightful share of the profits. Khan did not go to Maidi himself, but sent his servant Abdul Razzak Fatoo. Ahmed Khan appointed Abdul Razzak Fatoo as his agent to bring Ali Ibrahim Noor back into line, but this second agency would generate its own complications. Both Noor and Fatoo were agents of Ahmed Najoo Khan but their status in law was very different. Noor’s agency was in the form of a mudaraba partnership where each shared equally in the profits of a joint venture. Fatoo’s agency was in the form of wakala, which is often glossed as a power of attorney. A wakeel had broader powers to handle the affairs of their principal. A wakeel was often an intimate relation or friend, and already had the interests of the principal at heart. Fatoo had been employed by Ahmed Khan for about 12 years when he was sent to Maidi: he collected rents at Khan’s properties around Aden, he read and wrote all his Arabic correspondence and often signed off for Khan in his everyday business affairs. The meaning of wakala and the precise powers that Fatoo had as Khan’s agent would become the fulcrum on which the case of Khan v. Noor would turn.

On the 21st of March 1917, Khan made out a wakala in the presence of witnesses and in the office of the qadi of Aden. The document empowered Fatoo to settle accounts with Ali Ibrahim Noor, recover any monies due to Ahmed Khan and if necessary pursue litigation against Noor in the courts at Maidi. While legally the partnership between Khan and Noor had not been wound up, this moment marks a clear decision on Khan’s part that their enterprise had come to a close. This wakala and the subsequent negotiations were simply about recovering the monies due to him. Most contentiously the wakala document included a formulaic phrase in such wakala

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60 Evidence of Abdul Razzak Fatoo, 72 UKPC 1923, 19-28.
documents: “wa bil-jumla fa qad aqâm maqâm nafsihi” which the court translated as “generally he has appointed him in his place as if he was personally present in the matter.” Khan took particular care that this document was only written on a one-rupee stamped paper, because in his interpretation a full power of attorney could only be transferred on five-rupee stamped paper. He claimed to have reluctantly used even the one-rupee stamped paper, and did so only because Arabs in Maidi would not deal with a servant like Fatoo except with written authority on stamped paper. For Ahmed Khan the paper on which a legal document was written had profound implications for how that document should be interpreted.

Khan was constructing a very particular assemblage that attempted to calibrate and confer a specific amount of agency to Abdul Razzak Fatoo. However, Noor and his attorneys dismissed these details of paper quality as trivial distractions from the words themselves. After all, if stamp duties were not paid to the colonial government in Aden why should judges and officials in the Idrisi Emirate care. Generally in Islamic jurisprudence, documents did not derive their power from the imprimatur of the state, but from the reliability of the witnesses who lent their seals and their honor to make paper a carrier of trust. In the court proceedings, Noor continually harped on the phrase “as if he was personally present,” which indicated that Fatoo exercised complete agency, including the power to dissolve the partnership of Khan and Noor. Noor highlighted the

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strength of Khan’s trust in Fatoo, as well as the broad powers conveyed by Islamic law and the mercantile understanding of *wakala*. Indeed a commercial agent, whether legally empowered through a *wakala*, *mudaraba*, or simply through mercantile custom had broad powers in the world of Indian Ocean trade.

This argument would likely have held water with many muftis along the Indian Ocean littoral. Jurists of various traditions insisted that the principal must accept whatever price his agent sells his goods for, and even if there are conflicting orders issued by principal and agent, it is the agent’s orders which take precedence as the principal no longer controls the commodities. While the powers of a *wakeel* were often restricted in specific ways it is clear that they were generally deputized to handle the affairs of the principal. In an interesting *fatwa*, a merchant asks the Omani jurist Imam al-Salimi whether an agent commissioned to sell a principal’s goods, has the right to buy them for himself. Al-Salimi states that this is not permitted because a sale requires two parties, and so this is not a sale. We can either interpret this as suggesting the goods now fully belong to the agent, or that the agent has fully taken on the mantle of the principal. In either case the power of the agent is reaffirmed and the seemingly natural distinctions between the two individuals are blurred. As we saw in the earlier fatwa by Shaikh Ansari (in the previous section), a principal may demand explanations from his agent, but the actions of his agent must be accepted. In this fatwa the questioner seems to suggest that his agent is cheating him and believes that the agent should provide full restitution. The shaikh responds that the principal cannot expect a guarantee against his agent, because this would effectively be a

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64 Evidence of Sayad Mahamad Mohsin Safi, Sheriff Mahamad Hasan, Ahmad bin Taha Safi, 58-59; Argument of Appellants (Noor) to High Court of Bombay, 72 UKPC 1923, 22, 38-41
guarantee against his own actions.\footnote{Anṣārī, \textit{al-Fatāwā al-nāfi ʿah}, 76a.} \textit{Wakala} thus presumes a certain identity between principal and agent that confirms how such a relationship functions as a cohesive commercial assemblage.

In the opinions of these various jurists there is a general consensus that an agent was an extension of the principal. No matter their regrets, these merchants had released the genie of commercial agency, and these muftis would not stuff it back in the bottle. Indeed, a power of attorney/\textit{wakala} seems to perform a mystical legal process by which the principal is able to divide their individual agency, and then by means of a piece of paper disperse this agency across vast distances. This notion of shared and distributed agency reaffirms the importance of a deep and multiplex relationship between these partners rather than an arms-length contract which would be enforced by law. Moreover it suggests how law in the absence of a relationship of trust cannot sustain this shared notion of agency.

So when Abdul Razzak Fatoo finally met Ali Ibrahim Noor in Maidi, two different agents of Ahmed Najoo Khan haggled with each other over his interests and property. According to Noor they examined each other’s account books, divvied up the partnership property and eventually signed a contract dissolving the \textit{mudaraba} partnership. Their negotiations were facilitated by mediators and the final contract was signed in the presence of official witnesses from the Idrisi government. Fatoo on the other hand, claimed that he saw no accounts, and only signed the agreement under duress. He was a peaceful, helpless Indian merchant in an uncivilized region populated by armed bedouin. Noor allegedly hinted that a man’s life in Maidi was worth two annas – the price of one bullet.\footnote{Plaintiff’s Reply, 24 July 1918, 72 UKPC 1923, 12-13.} Fatoo claimed that he was not permitted to get on a vessel home until he signed whatever was put in from of him. It is impossible to know
which account is correct, or if the truth was somewhere between these stories. Nonetheless, on April 18th, 1917 – exactly eight months since Noor had left Aden – the dissolution agreement was signed and legally dissolved what had failed some months before. Khan would of course insist that Fatoo never had the legal authority to dissolve the partnership and so Noor continued to owe Khan half of his profits. But however much Khan hoped that the law could recover his profits, his trust in Noor had collapsed.

The Corpse of Trust

It is strangely appropriate that the case which arrived at the Judicial Committee of the Privy Council, was brought by Ahmed Najoo Khan (deceased). The appeals process lasted until 1924, longer than Ahmed Khan himself, and in many ways it was an extended post-mortem of this relationship of trust. Ahmed Khan did not survive the long appellate process, but in Indian Ocean commerce an unexpected corpse was more often the beginning of a legal battle and the end of relationship of trust.

If commercial assemblages were constituted by material objects like paper, coins and ships, they were also made of physical bodies. These bodies had to endure the stresses of sea travel, political violence, and disease vectors. In fatwa collections, death and the problems of inheritance were a regular occasion for the public airing of private disputes. With some frequency, agents and principals passed away in media res. Subsequently, all kinds of disputes arose as to which obligations had to be fulfilled and who might claim the property and profits. While the partner was still alive, conversations and negotiations might resolve disputes, and specific rights could remain ill-defined under the assumption that they would be jointly

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69 Kaptein, Muhimmât Al-Nafâ’îs, XXI, XXXVII; Anšārî, al-Fatâwá al-nâfi’î ah, 77a, 77b; Sâlimî, Jawâbât, vols. 4, 537a, 537b, 539a, 539b, 540a, 547a, 550a.
addressed if and when the time came. Death removed the possibility of this deferral, and forced heirs and business associates to reform the assemblage or extract themselves from the ties that bound both to the deceased.

So how is it that this partnership died before either of the partners? Or why is it that Khan could have been such a cautious, rational economic agent and yet been so woefully unprepared for the challenges of this enterprise? In one interpretation, Khan was too quick to trust the legal and social structures that undergirded his relationship with Noor. Noor was able to deceive Khan and the colonial legal system, and embezzle a small fortune by exploiting the slippages in the structure that governed this commerce. In the other interpretation, Noor was not a criminal mastermind, but simply more patient than his partner. Markets had their ups and downs, and experienced traders knew how to wait out the slumps and quickly exploit the bubbles. Khan, in this reading, saw a minor mistake and jumped to the conclusion that it was systematic fraud. Khan’s trust in Noor dissipated as the flows of goods and profits were interrupted, and without that trust the partnership itself could not endure.

Trust is slippery concept. But rather than pin it down and enclose it within a precise definition, perhaps it is more productive to follow trust’s slippery tracks. We might recover the explanatory value of trust if we acknowledge its protean qualities. I hope that this article has done just that, tracing the dynamics of trust between Ahmed Najoo Khan and Ali Ibrahim Noor. Trust in each other was performed by repeatedly risking items of value in the hope of altruistic behavior. As these acts became routine and they established a regular flow of communication and profits. In the process, trust became routinized within the relationship itself. But this trust was always precarious and contingent: subtle changes in behavior, poor decisions and bad luck
could all contribute to the breakdown of trust. Even if Noor had been deceiving his partner from
the first day, it was overpriced coffee beans that turned the tide for Khan. The vicissitudes of
time and markets are consequently essential to understanding the dynamics of trust in Indian
Ocean commerce.

The dynamic nature of trust is also connected to the fact that it is embedded in and
emergent from the material world. In Indian Ocean trade, trust helped to assemble things, bodies,
ideas and sentiments so that they might act together. These assemblages could be extended,
modified and recreated with legal contracts and economic incentives, but they required
considerable effort, support and perseverance. But by the same token trust is not merely a
material relationship, it is also entangled in gut feelings, religious beliefs and legal concepts. The
contention, emotion and unpredictability of the legal proceedings between Khan and Noor
provide a glimpse into the broad and ever-changing connections and contexts through which
commercial agency was assembled, sustained and broke down.

The law was clearly a vital part of the relationship of Ahmed Najoo Khan and Ali
Ibrahim Noor. But legal systems were too weak and too unpredictable to mitigate much less
obviate the need for some kind of trust. Social and economic structures were also inadequate to
the task of sustaining this enterprise across communal and political borders. Indeed there is little
to suggest that social or legal frameworks could constrain the agency of Ali Ibrahim Noor.
Ahmed Khan was a rational actor, but in order to realize this opportunity he would have to hope
or at least gamble that he could align economic interests, forge a familial bond and sustain a
relationship of trust with Noor. Ultimately, Khan did not have the patience to endure the tortuous
life-cycle of this assemblage. An Arabic proverb from North Africa advises that “Those who are
not patient with the treason of trade partners will never get wealthy.” If Ahmed Khan had taken this advice, he probably would have been much more prosperous. However, he also would have denied historians the possibility of reading the dynamics of trust in the entrails of this commercial assemblage.

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